

**DRAFT FISHERIES BILL**  
**for the**  
**FEDERAL REPUBLIC OF SOMALIA**

7 January 2021

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## **FIRST SCHEDULE OFFENCES, FINES AND PENALTIES**

An Act to provide for the sustainable management and development of fisheries, aquaculture and related activities in all areas over which the Federal Republic of Somalia exercises jurisdiction and sovereign rights, for the exercise of effective control of fishing and related activities of Somalia nationals in areas beyond national jurisdiction, including persons and vessels, for the implementation of regional and international obligations and standards and to provide for related matters.

## 1. PRELIMINARY

### 1 Short title

This Act may be cited as the Fisheries Act.

### 2 Interpretation

(1) In this Act, the terms shall have the following meaning, unless the context otherwise requires:

**“Act”** means this Act, including regulations and any other instrument made thereunder having the force of law;

**“aircraft”** means any craft capable of self-sustained movement through the atmosphere, and includes helicopters and unmanned or remotely operated airborne devices;

**“applicable international conservation and management measure” or “applicable ICMM”** means a conservation and management measure adopted by a relevant regional fisheries management organization in accordance with its procedures and which is legally binding on Somalia;

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

**“aquaculture”** means the cultivation, propagation or farming of fish, and includes cultivation, propagation or farming from eggs, spawn, spat or seed, or by rearing fish taken from the wild or imported into Somalia, or by other similar process, and the collecting and holding of live fish, and includes both inland aquaculture and mariculture in the marine environment;

**“artisanal fishing”** means traditional fishing by individual Somali citizens using wholly owned and operated Somali artisanal fishing vessels in the waters where they are entitled to fish where:

- (a) the owner is directly involved in the day-to-day running of the enterprise;
- (b) the fish are taken in a manner that, having regard to the vessel, the equipment and the method used, is small-scale and individually operated; and
- (c) the fish are taken primarily for household consumption, barter or local market trade;

**“artisanal fishing vessel”** means any fishing vessel, canoe or un-decked vessel of less than 12 meters which is motorised or un-motorised and is used for artisanal fishing;

**“associated electronic equipment”** means any device or system that can be used to locate, track or otherwise monitor a fish aggregating device;

**“authorized vessel”**, in relation to an international conservation and management measure, is a fishing vessel entered on the record of fishing vessels of an applicable regional fisheries management organization that is:

- (a) twenty- four metres in length overall or above; or
- (b) in case of vessels less than 24 metres in length overall, those operating in waters outside Somali waters, and hold a valid and applicable authorization to operate in the area of competence of such regional fisheries management organization and for species under its mandate;

**“authorized fisheries officer”** means the person appointed pursuant to section 78;

**“Automatic Identification System” (AIS)** means the system required pursuant to Chapter V, Regulation 19 of the International Convention for the Safety of Life at Sea as may be applicable to vessels used for fishing or related activities from time to time;

**“beneficial owner”** means the natural person(s) who ultimately owns or controls a vessel and/or the natural person(s) on whose behalf a transaction is being conducted;

**“biological diversity”** or **“biodiversity”** means the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part;

**“bioprospecting”** in relation to activities under the scope of this Act means the systematic search for and development of new sources of chemical compounds, genes, micro-organisms, macro-organisms, and other valuable products from fish and entails the search for economically valuable genetic and biochemical resources from fish;

**“buy”** or **“purchase”** includes:

- (a) barter or attempt to barter;
- (b) purchase or attempt to purchase;
- (c) trade or attempt to trade;
- (d) receive on account or consignment; or
- (e) receive in order to send, forward or deliver for sale;

**“bycatch”** means part of a catch of a fishing unit taken incidentally in addition to the target species towards which fishing effort is primarily directed, and may include *inter alia*:

- (a) different species from the target species;
- (b) non-target species identified by any international conservation and management measure, applicable licence or fisheries management plan;
- (c) undersized or juvenile individuals or the prohibited sex of the target species;
- (d) species which are incidentally affected by interacting with fishing equipment in the fishery, but are not taken;
- (e) those components of the target species of industrial fisheries that are rejected, *inter alia*, because:
  - (i) the sizes are too small for canning or other external markets;
  - (ii) of the heavy metal content of larger fishes, damage during hauling, depredation, or rejection of target species by primary markets for other quality concerns;

**“carcass”** in relation to sharks means all parts of the shark except for the head and viscera;

**“charter vessel”** means a vessel that meets the requirements under section 59;

**“court”** refers to a court of competent jurisdiction in Somalia;

**“data buoy”** means any floating device, either drifting or anchored, that is deployed by governmental or recognised scientific organizations or entities for the purpose of electronically collecting and measuring environmental data, and not for the purpose of fishing activities;

**“Director General”** means the Director General of the federal Ministry responsible for fisheries and marine resources;



**“discard”** means that portion of the total catch which is thrown away at sea;

**“equipment”** in relation to a vessel includes electronic equipment;

**“Exclusive Economic Zone”** means the maritime zone adjacent to the Territorial Sea of Somalia, extending to a distance of 200 nautical miles from the baseline from which the Territorial Sea is measured, which has the rights, jurisdictions and freedoms described in the Proclamation by the President of the Federal Republic of Somalia on 30 June 2014;

**“fish”** means any water-dwelling aquatic or marine animal or plant, living or not and processed or not, and includes finfish, crustacean, mollusc, coral, echinoderm, holothurian, reptile, marine mammal and amphibious and sedentary species, and any of their parts or derivatives;

**“fish aggregating device” or “FAD”** means an object or group of objects of any size, whether drifting or anchored floating or submerged objects, deployed or not, that is natural, manufactured or a combination of both and includes inter alia buoys, floats, netting, webbing, plastics, metals, bamboo, logs and objects with electronic devices affixed floating or designed to float on or near the surface of the water with which fish may associate, and any natural floating object on which associated electronic equipment has been placed to facilitate its location;

**“fish product”** means any fish which has been partly or wholly processed;

**“Fisheries Exclusive Economic Zone”** constitutes the area of the Exclusive Economic Zone of Somalia that is adjacent to the Fisheries Protection Zone and extends seawards to 200 nautical miles as defined in section 4;

**“Fisheries Protection Zone”** constitutes the area of the Exclusive Economic Zone of Somalia that is adjacent to the territorial sea and extends seawards to 24 nautical miles as defined in section 4;

**“Fisheries Restricted Zone”** constitutes the territorial sea of Somalia as defined in section 4;

**“fishery” or “fisheries”** means:

- (a) one or more stocks of fish, or parts thereof, which can be treated as a unit for the purposes of conservation and management, taking into account geographical, scientific, technical, customary, recreational, economic and other relevant characteristics; or
- (b) any fishing for such stocks.

**“fishery resource” or “fisheries resource”** means any fish, fishery, stock, species, or habit of fish or part of any of them;

**“fish stock”** means a population of fish, including straddling or migratory species, which constitute a coherent reproductive unit;

**“fishing”** means:

- (a) searching for, attracting, locating, taking or harvesting of fish;
- (b) the attempted searching for, attracting, locating, taking or harvesting of fish;
- (c) engaging in any activity which can reasonably be expected to result in the locating, taking or harvesting of fish;
- (d) placing, searching for or recovering any fish aggregating device or associated electronic equipment including radio beacons;
- (e) any operation at sea in support of or in preparation for any activity in relation to a vessel described in paragraphs (a) to (d); or

- (f) any use of an aircraft which is related to any activity described in paragraphs (a) to (d), except for flights in emergencies involving the health or safety of a crew member or the safety of the vessel;

**“fishing vessel”** means any vessel used for, intended to be used for, equipped to be used for or of a type that is normally used for fishing or related activities;

**“flag State”** means the State under whose laws the vessel is registered, provided it is not a vessel without nationality;

**“foreign fishing vessel”** means any vessel not lawfully **own** registered in Somalia;

**“gear”** in relation to fishing means any equipment, implement or other item or combination of items or parts thereof that can be used for fishing, including any net, rope, line, float, trap, hook, fish aggregating device, winch, boat, craft or aircraft carried on board a vessel, manned or unmanned aircraft or vehicle used in association with the act of fishing;

**“genetic resource”** includes germplasm of plants, animals or other organisms containing useful characters of actual or potential value, and “genetically” has a corresponding meaning;

**“Government”** means the Government of the Federal Republic of Somalia;

**“illegal, unreported and unregulated fishing”** or **“IUU fishing”** has the same meaning in the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing;

**“industrial fishing vessel”** means a decked fishing vessel with an internal engine or engines of not less than 100 horsepower when combined and that is 24 meters in length overall and greater;

**“inspector”** means any person appointed under section 92 of this Act;

**“instrumented buoy”** means a buoy associated with a drifting fish aggregating device with a clearly marked reference number allowing its identification and equipped with a satellite tracking system to monitor its position;

**“international agreement”** means a treaty, convention or other form of agreement or arrangement legally binding upon Somalia and entered into with another State or other States or any regional economic integration organization or entity, and may be concluded at the international, regional, sub-regional or bilateral level;

**“international conservation and management measure”** means any legally binding measure to conserve or manage one or more species of fish that are adopted and applied by any global or regional fisheries management organization, or by any international agreement applicable to Somalia;

**“joint venture vessel”** means a vessel that meets the requirements under section 59;

**“landing”** in relation to fish means bringing any fish or fish product to a port or other landing site and offloading it from the vessel, and “landed” fish may refer to the number or weight of such fish;

**“Minister”** means the minister responsible for fisheries and marine resources in the Federal Government of Somalia;

**“Ministry”** means the Ministry of Fisheries and Marine Resources of the Federal Government of Somalia;

**“mobile transceiver unit”** means a device, as appropriate approved by the Ministry, which is installed on board a vessel and is designed to automatically transmit, whether independently or in conjunction with another device or devices, information or data concerning position, fishing, catch and such other activities as may be required, and allows detection and identification of the vessel at all times;

**“national”**, when referring to a Somalia national, includes citizens of Somalia and vessels registered in Somalia and entitled to fly the flag of Somalia;

**“observer”** means any person appointed under section 93 of this Act;

**“operator”** means any person who is in charge of, responsible for the operations of, directs or controls a vessel, including the owner, charterer, master and the beneficiary of the economic or financial benefit of the vessel’s operations;

**“organized criminal group”** has the same meaning as the 2003 United Nations Convention against Transnational Organized Crime, and includes a group of three or more persons that was not randomly formed and has existed over a period of time and that acts in concert with the aim of committing at least one crime punishable by at least four years’ incarceration in order to obtain, directly or indirectly, a financial or other material benefit;

**“person”** means any natural or legal person, whether acting in a public or private capacity, and includes a corporation, partnership, cooperative, association or other business enterprise, a group of individuals, a community, a judicial person and an institution or corporate body of Government;

**“prescribed”** means prescribed by regulation;

**“processing”** in relation to fish, includes cutting up, dismembering, separating parts of, cleaning, sorting, packing, loining, freezing, salting, canning or preserving fish;

**“public notice”** shall include the posting upon a publicly available website associated with the Ministry;

**“related activities”**, in relation to fishing, or “fishing related activities” includes any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;

**“regional fisheries management organization”** means an intergovernmental fisheries organization or arrangement, as appropriate, that has the competence to establish international conservation and management measures and includes global, regional and sub-regional organizations;

**“relevant regional fisheries management organization”** means a regional fisheries management organization in which Somalia is a party or member or is otherwise legally bound by international conservation and management measures adopted in accordance with its procedures;

**“sedentary species”** means living organisms belonging to sedentary species that are at the harvestable stage either immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or subsoil;

**“sell”** includes:

- (a) any method of disposition for consideration, including cash, trade and barter, of anything which has value or which can be exchanged for cash;
  - (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
- “sale” and “sold” have corresponding meanings;

“**semi-industrial fishing vessel**” means a fishing vessel, decked or undecked, with a length overall from 12 meters to 24 meters, and “semi-industrial fishing has a corresponding meaning”

“**Somali vessel**” means a vessel that holds a valid and applicable registration under the applicable laws of Somalia or any vessel that is not required to be registered under Somali law and is wholly owned by any Somali citizen;

“**Somali waters**” means any maritime waters over which Somalia exercises sovereign jurisdiction or sovereign rights and includes the Territorial Sea and the Exclusive Economic Zone;

“**Somalia**” means the Federal Republic of Somalia;

“**sustainable use**” means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations;

“**target species**” means the subject of directed fishing effort in a fishery, including as appropriate primary and secondary target species;

“**test fishing**” means fishing for scientific purposes excluding commercial fishing, and is normally carried out to explore and identify new stocks of fish or those that were previously unexploited in order to assess the potential for management and development of commercial fisheries;

“**transnational crime**” includes:

- (a) offences committed in more than one State and those that take place in one State but are planned or controlled in another;
- (b) crimes in one State committed by groups that operate in more than one State; and
- (c) crimes committed in one State that impact on other States;

“**transshipment**” means the transfer of fish or fish products to or from any vessel, and may include the transfer of fish or fish products from a vessel to a land-based facility exclusively for purposes of promptly onloading to another vessel, without being subject to importation into the country where the land-based facility is located;

“**use of port**” means use for landing, transshipping, packaging, or processing of fish or for other port services including, inter alia, refuelling and resupplying, maintenance and dry docking;

“**vessel**” means any boat, ship, hovercraft or other water going craft, and includes those used or intended to be used for fishing or related activities;

“**vessel monitoring system**” means a satellite-based reporting system to monitor the position and activities of vessels that are engaged in activities under the scope of this Act; and

“**vessel without nationality**” means a vessel used for fishing or related activities that is not entitled to fly the flag of any State or sails under the flag of two or more States, using them according to convenience.

(2) Notwithstanding subsection (1), where interpretation relates to a term in an international conservation and management measure and the term is defined in such measure or an applicable glossary of definitions adopted by the relevant regional fisheries management organization, such definition shall be taken into account in applying the interpretation provided in this Act, particularly where the former may be more stringent or provide better understanding of the context.

### **3 Application**

- (1) This Act shall, unless the contrary intention appears, apply to:
- (a) all areas and persons over which Somalia exercises sovereignty, jurisdiction or sovereign rights, taking into account the fisheries zones and the management authority of Federal Member States described in sections 4 and 10;
  - (b) all fish, fishing and related activities and any other activity or matter falling within the scope of this Act, including sedentary species that occur on the continental shelf declared by Somalia;
  - (c) all persons, vessels, vehicles, aircraft, fish processing facilities, export or import facilities or other craft or place engaged in or otherwise connected with any activity falling within the scope of this Act or any applicable international conservation and management measure;
  - (d) all persons and all vessels in and in relation to areas beyond national jurisdiction:
    - (i) following hot pursuit initiated in waters under Somalia jurisdiction and conducted in accordance with international law; or
    - (ii) as required pursuant to this Act or any applicable international conservation and management measure, or permitted by international law or any international agreement; and
  - (e) all Somali vessels and all persons on them, associated with them or dealing with or having any relevant relationship to them, in and in relation to any areas beyond national jurisdiction in so far as this is not in conflict with the jurisdiction of another State.

(2) A vessel is deemed not to be a Somali vessel if it is registered in a country other than Somalia instead of or in addition to being registered in Somalia, unless it is a chartered vessel operating under a parallel registration system in accordance with a relevant charter agreement and the applicable laws and standards of the relevant countries and international agreements.

(3) This Act has extraterritorial application according to its provisions and tenor.

### **4 Fisheries Zones**

(1) The following zones are established and measured seawards from the baseline from which the Somali territorial sea is measured:

- (a) the Fisheries Restricted Zone extends to 12 nautical miles and shall be reserved exclusively for artisanal fishing and related activities by Somali citizens and Somali vessels of up to 12 meters in length overall that are wholly owned by Somali citizens and semi-industrial and industrial vessels shall be prohibited from any fishing or related activities in the Zone, and the concerned authority in the contiguous Federal Member State shall have the right to manage the fisheries resources and issue licenses in relation to this Zone;

- (b) the Fisheries Protection Zone is adjacent to the Fisheries Restricted Zone and extends to 24 nautical miles and shall be reserved exclusively for fishing and related activities by Somali citizens and Somali vessels of up to 24 meters in length overall that are wholly owned by Somali citizens or any legal person established in Somalia that is wholly owned and controlled, legally and beneficially, by Somali citizens and the contiguous Federal Member States shall have the right to issue licenses for artisanal fishing vessels and ~~the Ministry shall have the exclusive right to manage the fisheries resources and issue licenses for semi-industrial fishing vessels in relation to this Zone;~~
- (c) the Fisheries Exclusive Economic Zone, being that part of the Exclusive Economic Zone that is adjacent to the Fisheries Protection Zone and extends seawards to 200 nautical miles wherein licensed fishing and related activities shall be permitted in accordance with this Act and the Ministry shall have the exclusive right to manage the fisheries resources and issue licenses in relation to this Zone.

(2) The Minister shall exercise rights and responsibilities within the Fisheries Protected Zone and the Fisheries Exclusive Economic Zone in collaboration with the Federal Member States including through agreement on a framework for implementation of this Law.

(3) The fisheries and related activities in each zone shall be managed in accordance with this Law, which accords primary responsibility for fisheries matters in Somalia to the Ministry, and with relevant Constitutional mandates, any regional or international obligations of Somalia and any agreement that may be concluded between or among the Federal Government and Federal Member States and, as appropriate, stakeholders.

## **2. OBJECTIVE and PRINCIPLES**

### **5 Objective**

The objective of this Act shall be to ensure the long-term conservation, management and development of the fisheries and aquaculture resources in Somalia and genetic material derived from them, while safeguarding the sustainability of Somalia's marine resources, biodiversity, environment and ecosystems for the benefit of the people of Somalia.

### **6 General principles**

All functions, duties and responsibilities under this Act shall be exercised in a manner consistent with the following principles:

- (a) all fisheries and aquaculture resources of Somalia, as well as the environment in which they exist, are a natural asset and heritage of all its people who have a duty to participate in the sustainable conservation, management and development of these natural resources and their environment, consistent with this Act and national policy, plans and development objectives;
- (b) conservation and management measures shall be based on the best technical knowledge and scientific evidence available to maintain or restore stocks at levels capable of producing optimum sustainable yield as qualified by relevant environmental and economic factors;
- (c) conservation and management measures shall implement Somalia's obligations under applicable international agreements, and, as appropriate, be based on applicable standards agreed at all levels of governance;
- (d) the precautionary approach shall be applied to the management and development of the fisheries;

- (e) an ecosystem approach shall be applied to the management and development of fisheries and aquaculture and to promote the health of the general marine environment, and shall take into account climate change and relevant international commitments and global developments;
- (f) activities and measures taken within the scope of this Act shall protect and enhance biodiversity, including endangered species and critical habitat;
- (g) complete and accurate data and information concerning activities and resources under the scope of this Act shall be required, collected and, as appropriate, shared in a timely manner;
- (h) conservation and management measures shall be implemented and enforced through effective monitoring, control and surveillance;
- (i) the interests of small-scale and artisanal fishers shall be taken into account, including their participation in the management of their respective fisheries;
- (j) an understanding of and broad and accountable participation by stakeholders in the conservation, management, development and sustainable use of fisheries resources shall be promoted to the extent practicable; and
- (k) effective cooperation shall be pursued with other States and regional and intergovernmental organizations in matters under the scope of this Act.

### **3. INSTITUTIONAL ARRANGEMENTS**

#### **7 Ministry of Fisheries and Marine Resources**

- (1) The Ministry shall have responsibility for the implementation of this Act and shall have primary responsibility in the Federal Government of Somalia for all matters under the scope of this Act.
- (2) The functions and responsibilities of the Ministry shall be to:
  - (a) manage activities in relation to fisheries and aquaculture and other matters in accordance with this Act, and promote the conservation, management, development and sustainable use of the fisheries resources, taking into account the rights and obligations of Somalia pursuant to international law and applicable international agreements;
  - (b) conserve and manage the fisheries and aquaculture environment, including water quality and biodiversity, within the broader ecosystem as appropriate in consultation with relevant agencies of the Government of Somalia and Federal Member States;
  - (c) in consultation with Federal Member States as appropriate, develop and implement plans, policies, strategies and mechanisms relating to the development and management of fisheries and any other matter within the scope of this Act, promote their harmonisation to the greatest extent possible throughout Somalia and implement relevant plans, policies and strategies of the Government;
  - (d) act on behalf of the Government in relation to any international agreement or arrangement relating to fisheries, related activities, aquaculture and any other matter falling within the scope of this Act to which Somalia is or may become a party;
  - (e) enter into agreements and arrangements with, and coordinate activities among Federal Member States, regional administrations, other Government agencies and relevant organizations having functions and responsibilities relating to matters under this Act;

- (f) consider and decide upon the issuance or otherwise of licenses, authorizations or other permissions and implement any relevant licensing scheme adopted in accordance with this Act;
  - (g) collect and analyse data and information in relation to any activity falling within the scope of this Act, maintain information registers and as appropriate ensure that information is made publicly and readily available;
  - (h) undertake monitoring, control and surveillance and enforcement of this Act, as appropriate in collaboration with relevant government agencies, and cooperate in relevant programmes with other States or organizations;
  - (i) promote co-management of all coastal fish stocks and resources through the development of co-operatives, fisheries associations and management committees in the States and under Federal jurisdictions.
  - (j) promote investments to develop and benefit the fisheries sector;
  - (k) promote modern fishing methods and management that benefit coastal communities;
  - (l) subject to any related law or regulation promulgated in Somalia, control and monitor the safety of fish, fishery products and fish feed along the fish supply chain;
  - (m) prepare an Annual Work Plan and Annual Report of the Ministry for approval by the Minister and ensure public availability;
  - (n) perform such functions in relation to the import, export and pricing of fish as may be necessary to support fisheries management;
  - (o) approve and undertake, arrange or facilitate research on any matter within the scope of this Act, including regionally based cooperative research;
  - (p) promote training in fisheries and aquaculture;
  - (q) lead and participate in the planning and execution of projects, programs or other activities related to matters within the scope of this Act;
  - (r) establish any procedures necessary for the implementation of this Act; and
  - (s) perform such other functions and responsibilities as may be necessary to carry out the objectives, principles and provisions of this Act.
- (3) The Ministry shall discharge some of its functions and responsibilities as appropriate in consultation with Federal Member States and their regional administrations, in particular developing policies and mechanisms to develop fisheries and fishing.
- (4) All other Ministries and agencies of the Government shall cooperate to the fullest extent with the Ministry as appropriate to ensure the effective exercise of its functions and responsibilities.

## **8 Ministry of Fisheries and Marine Resources – Functions and responsibilities of the Minister**



(1) The Minister shall perform or exercise such functions, powers and duties as are provided under this Act, and in particular shall:

- (a) give general direction, control and policy guidance on matters under the scope of this Act, including approving and as appropriate recommending amendments to or revocation of:
  - (i) international agreements, arrangements, policies, plans, strategies, budgets, expenditures and reports as may be required under this Act or relevant Somali legislation for consideration and endorsement or approval by the Council of Ministers or Parliament as appropriate;
  - (ii) any agreement, arrangement or plan under the scope of this Act between or among the Government and any or all Federal Member States, including on the allocation, management, development, investment and administration in relation to fisheries and aquaculture resources in accordance with this Act;
  - (iii) any agreement or arrangement concerning foreign access to fisheries resources in Somali waters; and
  - (iv) any agreement or arrangement with any other agency of Government on matters under the scope of this Act;
- (b) approve measures and give directions to support harmonised management of the fisheries and aquaculture resources between and among the Federal Government and Federal Member States, including through:
  - (i) institutional arrangements;
  - (ii) harmonized legislation;
  - (iii) development of co-management arrangements;
  - (iv) monitoring, control and surveillance;
  - (v) information sharing;
  - (vi) research; and
  - (vii) guiding development and investment initiatives;
- (c) issue licenses, authorizations or other permissions in accordance with this Act;
- (d) enter into a revenue-sharing agreement with the Federal Member States relating to the fees for the issuance of licenses for fishing in Somali waters;
- (e) monitor international developments in fisheries matters and ensure the fulfilment of obligations of Somalia under international agreements;
- (f) approve such circulars, guidelines and other public notices necessary for the implementation of this Act and the management of fisheries and aquaculture resources; and
- (g) approve regulations in accordance with section 158.

(2) The Minister may appoint such committees within or chaired under the authority of the Ministry as may be necessary to advise or make recommendations on any area in the scope of this Act and shall take into account the advice and recommendations of such committees.

(3) The Minister may delegate in writing any of the Minister's functions, powers and duties under this Act to the Director General, except the power to make regulations under section 158.

## **9 Ministry of Fisheries and Marine Resources – Functions and responsibilities of Director General**

- (1) The Director-General shall be responsible for the day to day management of the Ministry under the general supervision of the Minister.
- (2) Without prejudice to the generality of the foregoing, the Director-General shall:
  - (a) be responsible for carrying out the functions, managing the affairs and exercising the powers functions and responsibilities of the Ministry;
  - (b) promote the effective and fair interpretation, application and implementation of this Act, including through consultations and cooperation with Federal Member States;
  - (c) ensure efficient and effective administration of the Ministry, including through the development and preparation of annual budgets, work plans, reports and development strategies, as well as regulations, circulars guidelines and other public notices under the Act;
  - (d) promote development, marketing and investment initiatives for the fisheries and aquaculture sectors;
  - (e) by directive of the Minister, representing the Ministry and negotiating agreements on behalf for matters under this Act including the management, conservation, development, use and exploitation of fisheries and aquaculture resources;
  - (f) perform such other functions as the Minister may require from time to time in accordance with this Act.
- (3) The Director General may delegate in writing any of the Director General’s functions, powers and duties under this Act to a public officer in the Ministry.

## **10 Mandate, responsibilities and duties of the Federal Member States**

Each Federal Member State shall have such mandates, responsibilities and duties in relation to fisheries and aquaculture and their environment as are provided in the Constitution and this Act and as may be further agreed with or among the Federal Government and other Federal Member States and guided by relevant federal policies and development frameworks, and shall:

- (a) have full responsibility for protecting the Fisheries Restricted Zone (0-12nm) and the Fisheries Protected Zone (12-24nm) as established in section 4;
- (b) have full responsibility for managing and licensing fisheries and related activities in the Fisheries Restricted Zone provided that the licenses or other permissions are issued only to Somali citizens or vessels that are wholly owned by Somali citizens for fishing or related activities in the Fisheries Restricted Zone or Fisheries Protected Zone;
- (c) have full responsibility for managing and licensing fisheries and aquaculture in the freshwater and riverine systems and mariculture in the Fisheries Restricted Zone;
- (d) exercise its responsibilities and duties in consultation and coordination with the Federal Government and other Federal Member State Governments as required, agreed or guided in accordance with this Act, including through harmonised management and development of the fisheries and aquaculture resources and cooperation in:

- (i) institutional arrangements;
  - (ii) harmonized legislation;
  - (iii) development of co-management arrangements;
  - (iv) monitoring, control and surveillance;
  - (v) data collection and information sharing; and
  - (vi) development of and investment in the fisheries sector; and
- (e) enter into a revenue-sharing agreement with the Ministry relating to the fees for the issuance of licenses for fishing in Somali waters.

## **11 Fisheries Management and Development Council**

- (1) There is hereby established a Fisheries Management and Development Council with functions to take decisions on matters concerning:
- (a) the management, development and sustainable use of the shared fisheries resources and their environment;
  - (b) coordination and cooperation in the responsibilities under this Act, including matters relating to co-management, administration, information, research, the fisheries and aquaculture environment and enforcement;
  - (c) the establishment of institutional or other mechanisms and guidelines to support coordination, cooperation and the implementation of recommendations concerning shared fisheries resources and respective responsibilities;
  - (d) the development and adoption of harmonised legislation;
  - (e) the development and adoption of standards and requirements concerning investment and development of the fisheries and aquaculture sectors, including through partnerships with foreign investors;
  - (f) the sharing of revenue among the Federal Government and Federal Member States; and
  - (g) the implementation of any relevant policy that may be designed by the Minister in consultation with Federal Member States.
- (2) The membership of the Fisheries Management and Development Council shall be the Minister, who shall be the chairperson, and the Ministers responsible for fisheries and aquaculture in each Federal Member State;
- (3) The Fisheries Management and Development Council may direct such inquiries, research and reports to be made as may assist it in taking decisions.
- (4) The Fisheries Management and Development Council shall meet at least four times annually, and at such other times as may be required by the Chairperson or requested by two or more members.
- (5) The participants in the meetings of the Fisheries Management and Development Council shall include the senior official responsible for fisheries in the Ministry and in each of the Federal Member States and such experts or observers as the Council may agree to invite.

(6) Decisions shall be taken by consensus, but where that is not possible each member shall have one vote, and decisions shall be binding on all members.

(7) Each member shall appoint a focal point in its jurisdiction responsible for managing the business of the Fisheries Management and Development Council between meetings.

(8) The Fisheries Management and Development Council shall adopt its rules of procedure.

## **12 Conflict of interest**

(1) Where any person who discharges responsibilities or performs functions or duties that fall within the scope of this Act, he or she and any member of his or her immediate family shall, where any such person has an interest of a financial or fiduciary nature or otherwise that conflicts with such functions or duties:

(a) promptly disclose in writing the nature of such interest as provided in subsection (2); and

(b) not perform any functions under this Act in respect of that matter.

(2) Where any such person referred to in subsection (1) is:

(a) the Director General, he or she shall declare his or her interest to the Minister; or

(b) any other person, he or she shall declare his or her interest to the Director General.

(3) Where a disclosure is made pursuant to subsection (2), the Minister or the Director, as the case may be, shall appoint another officer to perform functions in respect of that matter.

(4) For the purposes of this section, a person has an interest in a matter if he or she:

(a) may derive a financial or in-kind benefit from the matter;

(b) is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter;

(c) may have a financial interest in a person to whom the matter relates;

(d) may have a fiduciary relationship with a person to whom the matter relates;

(e) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or

(f) may be interested in the matter because this Act so provides.

(5) A person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding the maximum amount described in the First Schedule and any other penalty provided under this Act.

## **4. CONSERVATION, MANAGEMENT, DEVELOPMENT AND SUSTAINABLE USE**

### **Division 1 - General**

## **13 Conservation and management measures**

(1) In giving effect to their respective mandates under this Act for fisheries conservation and management, the Ministry and Federal Member States shall develop, implement, monitor and enforce conservation and management measures necessary to ensure the long-term sustainable use of fisheries resources, including measures applicable to fishing, related activities, aquaculture and to any other activity which falls within the scope of this Act and their respective mandates.

(2) Conservation and management measures shall, under the respective mandates of the Ministry and Federal Member States as appropriate, provide for the sustainable management and development of fisheries and aquaculture and implement obligations and standards under international agreements and international conservation and management measures and may, *inter alia*:

- (a) provide for allocations, areas, gear, closures, effort limitation, seasonal limitation, fishing capacity, quotas, prohibitions, participatory rights and reporting;
- (b) provide for or prohibit, *inter alia*, the landing, transporting, transshipping, receiving, trading and possession of fish and provide management frameworks for landing sites;
- (c) provide for fish inspection and quality assurance of fish and fish products;
- (d) regulate any activity within the scope of this Act which may have an adverse effect on living or non-living marine resources or the marine environment;
- (e) provide for the management of aquaculture operations to ensure fish quality, including in relation to facilities, species, disease and the environment;
- (f) as appropriate, provide for the restoration of fish stocks;
- (g) include positive incentives for the sustainable business development of the fishing industry and for full compliance; and
- (h) provide for any other activity under the scope of this Act that is relevant to the conservation and management of the fisheries resources.

(3) Except as may be otherwise provided in this Act, conservation and management measures shall have legal force and effect under the mandate of the Ministry:

- (a) upon approval by the Minister, taking into account the recommendations of the Ministry, and promulgation in regulations or publication in such official government publication designated by the Minister and posted on the official website of the Ministry;
- (b) as conditions of licences, authorizations or other permissions given in accordance with this Act;
- (c) in accordance with procedures described in section 15 concerning applicable international conservation and management measures; or
- (d) through adoption of Fisheries Management Plans as described in section 17.

(4) Without prejudice to the jurisdiction and sovereign rights of Somalia over fisheries resources under its jurisdiction, conservation and management measures shall as appropriate implement applicable international conservation and management measures and scientific action plans adopted by any relevant regional fisheries management organization in respect of:

- (a) any vessel or person in areas under Somalia jurisdiction; and

- (b) Somalia nationals including persons and vessels in the area of competence of the relevant regional fisheries management organization;
- (5) Conservation and management measures shall be developed taking into account the objective and principles of this Act and consultations with stakeholders to the extent possible.
- (6) A person who contravenes any conservation and management measure taken pursuant to this Act and which entered into force in accordance with subsection (3) (a), (b), (c) or (d) commits an offence and unless otherwise provided shall be liable on conviction to a fine provided in the First Schedule and any other penalty that may be specified or provided under this Act.

#### **14 Co-management organizations or arrangements**

- (1) Co-management fisheries organizations or arrangements may be established by written agreement in accordance with this Act for the purpose of exercising rights and responsibilities within a designated area for the conservation, management, development and sustainable use of artisanal fisheries, in accordance with a framework and guidelines for co-management that may be agreed between the Federal Member States and the Ministry.
- (2) A designated area for fisheries co-management shall, in the case of communities or districts, be naturally adjacent to such community or district, traditionally used by its members, and which, in respect of marine fisheries, shall not extend beyond the Fisheries Restricted Zone.
- (3) Co-management fisheries organizations or arrangements shall include representation from governments of relevant Federal Member States and Districts, and communities and external stakeholders with an active interest in the fishery.
- (4) An agreement establishing a co-management fisheries organization or arrangement shall be made publicly available and shall provide for matters relating to:
  - (a) its functions and objectives;
  - (b) its fisheries management area;
  - (c) priorities for fisheries management, including species;
  - (d) responsibilities of stakeholders; and
  - (e) such other matters as may be appropriate and are in accordance with this Act, the objectives of the organization or arrangement and any framework or guidelines on co-management that may be agreed between the Federal Member States and the Ministry.
- (5) The co-management agreement shall:
  - (a) enter into force upon approval in writing by the Minister responsible for fisheries in a Federal Member State, with such conditions as may be required; and
  - (b) be provided for information to the Minister and the Minister responsible for fisheries in the relevant Federal Member State.
- (6) The designation of a fisheries co-management area may be cancelled:
  - (c) or the definition and demarcation of the area changed, at the request of the local community;  
or

- (d) where there has not been compliance with the terms of the establishing agreement, or that it is otherwise in the interest of the fisheries conservation and management to cancel the designation,

by public notice by the Minister responsible for fisheries in a Federal Member State.

(7) The Ministry and each Federal Member State shall, to the extent possible, provide each Association with:

- (a) guidance for fisheries conservation and management, and the preparation of fisheries management plans;
- (b) technical support, including assistance with record keeping;
- (c) assistance and guidance for data/information collection for agreed use by Association members and the Ministry;
- (d) relevant fisheries legal instruments and amendments; and
- (e) training and capacity building in fisheries management.

(8) The Minister responsible for fisheries in the Federal Member State may approve the delegation of the following information and decision-making authorities and responsibilities to an organization or arrangement established under this section and may require it to coordinate with, or receive approval in any such matter:

- (a) taking specified fisheries management measures;
- (b) designating persons who may cooperate with fisheries inspectors or the police to promote enforcement of the management measures, subject to approval;
- (c) monitoring fisheries activities; and
- (d) such other authority as the Minister may approve, consistent with the objective and principles of this Act and other laws of Somalia.

(9) The contravention of a management measure in a fisheries management and development plan or entry into a co-management area in contravention of the plan or agreement of an organization or arrangement by any person:

- (a) other than persons engaged in artisanal fishing shall be an offence punishable by a fine and/or penalty levied in accordance with the agreement of the relevant organization or arrangement;
- (b) engaged in or associated with industrial, semi-industrial or artisanal fishing or related activities shall be punishable as non-compliance with this Act, provided that such portion of the moneys received by way of fines, administrative determinations or other settlement for such offences, as may be prescribed or contained in the agreement of the relevant organization or arrangement, shall be paid to the relevant organization or arrangement and in addition compensation shall be paid for any financial loss incurred as a result of such non-compliance.

(10) Any fines or other pecuniary penalties received by an organization or arrangement shall be collected, administered, disposed of and accounted for in accordance with its agreement.

## **15 Implementation of international conservation and management measures**

(1) The requirements of any applicable international conservation and management measure in respect of:

- (a) any owner, operator and/or master of any Somalia vessel that holds a valid licence or authorization issued by the Ministry and is entered on the Record of Authorized Vessels of a

relevant regional fisheries management organization and authorized to fish for the species and in the area of competence under the mandate of such organization;

- (b) any owner, operator and/or master of any other vessel that falls within the scope of this Act and the applicable international conservation and management measure; and/or
- (c) any Somali citizen,

shall have full legal effect under this Act upon such public notice on and the official Ministry website of such applicable international conservation and management measure requirements as may be approved by the Minister, and, subject to subsection (2) the obligation to comply shall apply *mutatis mutandis* to each of the owner, operator and/or master of the vessel or Somali citizen.

(2) Notwithstanding subsection (1), where it is not possible for a vessel to fulfil the requirements for compliance for technical reasons upon entry into force, the Director General may notify an extension for a reasonable period of time to allow the necessary arrangements for compliance to be made.

(3) The Director General shall notify all holders of licences and authorizations and the Ministers responsible for fisheries in each Federal Member State of the relevant obligations of each applicable international conservation and management measure upon its date of public notice.

(4) Any person who contravenes any international conservation and management measure implemented pursuant to this section or as may be provided in this Act commits an offence and shall be liable on conviction to a fine provided in the First Schedule and any other penalty provided under this Act.

## **16 Fisheries and aquaculture development**

The Ministry, in cooperation with the Ministries responsible for fisheries in the Federal Member States, shall promote the development of fisheries and aquaculture, including for traditional, semi-industrial and industrial fisheries in accordance with national policy and development plans and this Act, including developing measures and activities in relation to the:

- (a) development of investment, employment and human capacity;
- (b) promotion of markets and marketing for fishery and aquaculture products;
- (c) promotion of cooperation in fisheries and aquaculture development among all levels of government;
- (d) promotion of skills and best practices for fishing and aquaculture;
- (e) provision of fishing equipment and development of infrastructure;
- (f) protection of their natural environment; and
- (g) conduct and coordination of scientific research.

## **17 Fisheries management and development plans**

(1) The Minister may designate priority fishery or fisheries for the purpose of developing fisheries management and development plans, and in doing so shall take into account the recommendations of the Ministry, consultations with Federal Member States and stakeholders, applicable regional fishery bodies and international conservation and management measures adopted by relevant regional fisheries management organizations.

(2) Fisheries management and development plans may be developed by the Ministry and the Federal Member States for fisheries within their respective mandates and jurisdictions, in consultation



with each other where the fisheries resources extend beyond their respective jurisdictions, and shall take effect:

- (a) for fisheries under the mandate of the Federal Government, when it is approved by the Minister and as appropriate the Ministers responsible for fisheries in relevant Federal Member States and published in the Official Bulletin and on the official website of the Ministry; and
- (b) for fisheries under the mandate of the Federal Member States, when it is approved by the Minister of the concerned State(s) and published in an official government notice of the concerned State(s), and

the management measures shall be subject to review by the Ministry in consultation with relevant Federal Member States to ensure complementarity between or among jurisdictions. .

(3) Each fisheries management and development plan adopted by the Ministry or a Federal Member State shall be consistent with the objective and principles of this Act and shall apply to persons, vessels and fish and to fishing and related activities within the scope of this Act.

(4) Each fisheries management and development plan shall:

- (a) identify the fishery and its characteristics, including the:
  - (i) current status of the fishery and resource, including area, species and state of exploitation;
  - (ii) possible adverse effects of fishing on the resource and environment;
  - (iii) status of the resource as a protected, threatened or endangered species under Somalia law and applicable international agreement;
  - (iv) applicable sub-regional, regional and international context;
- (b) specify the management objectives and strategy for the fishery or fisheries, including the biological, ecological and socio-economic aspects;
- (c) identify the process for development and implementation of the fisheries management and development plan, including stakeholder consultations with those affected by the proposed plan;
- (d) specify management and development measures to be applied to the fishery;
- (e) specify plans for periodic monitoring and review of the fishery and the Plan;
- (f) as appropriate make provision in relation to any other matter necessary for effective conservation, management and sustainable use of the fishery; and
- (g) be circulated in draft form for review;
- (h) be kept by the Ministry for purposes of centralised information

(5) Compensation is not payable where a fisheries management and development plan is made or amended or anything previously permitted is prohibited or regulated under the plan, but this shall not prevent a plan or regulations from providing for payment of compensation.

(6) The Minister may, by Order or regulation, give legal effect to the management measures, fines, penalties and sanctions, as well as the licensing and enforcement powers, authorities and other requirements in each Fisheries Management Plan approved by the Minister.

## **18 Research for effective conservation and management**

(1) Any research on matters under the scope of this Act shall be carried out by the Ministry or by others under such conditions as may be required by the Director General or may be prescribed and pursuant to:

- (a) a research authorization issued by the Ministry pursuant to section ;
- (b) permission given as a condition of a license issued pursuant to this Act; or
- (c) a written endorsement by the Director General published on the official website.

(2) All information, data and outcomes resulting from research conducted under this Act shall be:

- (a) vested in Government; and
- (b) promptly reported to the Ministry in such manner and at such time as the Director General may require.

(3) No person shall publish the results of research of any matter under the scope of this Act without providing prior notification to the Director General.

(4) The Ministry, in discharging its mandate in relation to research, shall:

- (a) support and encourage the capacity of Somali citizens to undertake research;
- (b) where research is foreign-led, require the participation of Somali experts to the extent possible; and
- (c) where relevant, take into account the research and contribute to the research or scientific advice of any relevant agency of the Government or any regional fisheries management organization.

(5) Any person who contravenes subsection (1) (a), (b) or (c), (2) (b) or (3) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or to a term of imprisonment not exceeding 6 months, or to both, and in addition, shall provide all information, data and outcomes to the Ministry.

## **19 Declaration of and prohibitions respecting protected, threatened or endangered species of fish**

(1) The Minister may declare as protected, threatened or endangered by Notice in the Official Bulletin and on the official website of the Ministry or by Regulation any species of fish within Somali waters:

- (a) that are designated as protected, threatened or endangered under an international agreement or by a relevant regional fisheries management organization; or

(b) that the Director General recommends be declared as protected, threatened or endangered, based on the best available scientific evidence and after consultation with any Federal Member State where the species may occur in its area.

(2) No person shall take, land, sell, deal in, transport, receive, buy, possess, import or export any fish or fish product declared as protected or endangered in accordance with this section.

(3) Any person who catches a protected, threatened or endangered species of fish shall release it and return it alive to the water.

(4) Any person who contravenes subsection (2) or (3) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or to a term of imprisonment not exceeding 6 months, or to both, and in addition, the fish or fish products shall be forfeited to the State.

## **20 Designation of zones or areas**

(1) The Minister may, in consultation as appropriate with Ministers responsible for fisheries in Federal Member States, establish any zone or area within Somali waters by publication in the Official Bulletin and official website of the Ministry or by regulation for purposes of:

- (a) the conservation, management, protection or restoration of fisheries or aquaculture resources;
- (b) the development of the fishing or aquaculture industry in Somalia; and
- (c) any other purpose that is consistent with the objective and principles of this Act,

and Ministers responsible for fisheries in Federal Member States may request the Minister to establish such zone or area, or may declare such a zone or area in the Fisheries Restricted Area in accordance with the legislation of the State.

(2) No person shall engage, or permit or allow any other person to engage in any activity that:

- (a) is prohibited in a zone or area established pursuant to subsection (1);
- (b) results in destruction or adverse impacts on any fisheries resources in the zone or area established pursuant to subsection (1); or
- (c) causes the objective of establishing such area to be unattainable.

(3) Any person who contravenes subsection (2) commits an offence and upon conviction shall be liable to a fine not exceeding the maximum amount described in the First Schedule or to a term of imprisonment not exceeding three years or to both such fine and imprisonment, and in addition for contraventions of subsection (2)(b) shall be liable to full compensation as determined by a court of law for any destruction or adverse impacts and restoration of the area to its original state.

## **21 Marine environmental quality**

(1) No person shall attempt or cause another person to prepare for the introduction of or introduce into Somali waters, directly, indirectly, deliberately or accidentally, any deleterious substance, including substances which:

- (a) have toxic, hazardous or other harmful properties or effects in relation to fish or their habitat, birds, human beings or the aquatic or marine environment, including industrial or nuclear waste;
  - (b) may disrupt or otherwise endanger fishing activities; or
  - (c) may constitute a threat or danger to marine navigation.
- (2) The operator of any vessel used for fishing shall, where required by the Minister in an Official Bulletin and notified on the official website of the Ministry or as a licence condition, use biodegradable materials for fishing operations.
- (3) No person shall, without a written authorization of the Director General, leave in or in such a position or place that it could enter Somali waters any gear or any other non-biodegradable object used for fishing after the termination of fishing activity, except in an emergency when the incident is promptly reported to the Director General.
- (4) The Director General may cause the gear or any other non-biodegradable object referred to in subsection (3) to be removed by any person authorized for that purpose where it constitutes a threat to the habitat or health of the fish, and any cost incurred in connection with the such removal may be recovered from the person or persons responsible for leaving the gear or object.
- (5) Notwithstanding subsection (1), in the event any deleterious substances or wastes enter the marine environment accidentally or unintentionally from any vessel in Somali waters, the vessel operator shall immediately report the event to the Director General and provide the following information:
- (a) name of the operator;
  - (b) name, call sign and registration number of the vessel;
  - (c) type and composition of waste;
  - (d) estimated quantity of waste;
  - (e) date and time;
  - (f) location.
- (6) A person who contravenes subsection (1), (2), (3) or (5) commits an offence and shall be liable on conviction to a fine not exceeding the maximum amount described in the First Schedule and be liable for full compensation in respect of any resulting loss or damage as well as the full cost of restoring the affected habitat to its previous state.

## **22 Protection of coastal habitat for fisheries resources – destruction of mangrove or other trees prohibited**

- (1) No person shall, for any purpose related to the commercial development of any coastal area, without an authorization from the Minister issued under section 74:
- (a) cut or trade mangrove or other species of tree that provide habitat or food for fisheries resources and protect against the erosion of soil;
  - (b) settle, conduct commercial activities or other activities that affect the fisheries and coastal marine environment.

(2) No person shall undertake research in any coastal area in matters related to areas that serve as coastal habitat for fisheries resources without an authorization from the Minister issued under section 74.

(3) A person who contravenes subsection (1) (a) or (b) or (2) commits an offence and shall be liable on conviction to a fine not exceeding the maximum amount described in the First Schedule and be liable for full compensation in respect of any resulting loss or damage as well as the full cost of restoring the affected habitat to its previous state as determined by a court of law.

### **23 Protection of coastal habitat for fisheries resources – destruction of coral reefs, sea shells prohibited**

(1) No person shall destroy any part of a coral reef, trade in coral from a reef that provides habitat or food for fisheries resources or destroy, collect or trade in sea shells for commercial purposes:

(a) without an authorization from the Minister issued under section 74; or

(b) unless it is in an area designated by the Ministry for development activities for the restoration or creation of coral reefs and forms part of such activities.

(2) No person shall use gear or equipment while fishing on or around any coral reef in Somali waters that may cause the destruction of any part of such reef.

(3) A person who contravenes subsection (1) (a) or (b) or (2) commits an offence and shall be liable on conviction to a fine not exceeding the maximum amount described in the First Schedule and be liable for full compensation in respect of any resulting loss or damage as well as the full cost of restoring the affected habitat to its previous state as determined by a court of law.

## **Division 2 – Management measures and prohibitions**

### **24 Management of bycatch**

(1) The operator of any semi-industrial or industrial vessel that lands or tranships the target catch of the vessel in Somalia, being tuna or tuna-like species, shall land all bycatch on board in Somalia where infrastructure is available and the Director General directs such landings;

(2) The operator of any vessel in Somali waters or of any Somali vessel in areas beyond national jurisdiction that is equipped to catch tuna or tuna-like species with purse seine or longline gear shall ensure that:

(a) measures are taken to mitigate bycatch of non-target species;

(b) non-target species are not discarded at sea, dumped on land as fish waste or are otherwise discarded or abandoned;

(c) non-target species taken alive shall be released in accordance with Somalia legislation or any international conservation and management measure, unless otherwise provided in writing by the Director General;

(3) Notwithstanding subsection (1), purse seine vessels may retain on board and land, to the extent practicable, the following non-targeted species or species group: other tunas, rainbow runner,

dolphinfish, triggerfish, billfish, wahoo and barracuda, except fish considered unfit for human consumption.

(4) The operator of any vessel in Somali waters shall comply with such other requirements or conditions concerning bycatch that may be required by the Ministry, taking into account the standards in the FAO International Guidelines on Bycatch Management and Reduction of Discards.

(5) Any operator who does not comply with any requirement in subsection (1) or (2) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule and any other penalty provided under this Act.

## **25 Management of genetic resources**

The management of access to fisheries as genetic resources, including for purposes of marine bioprospecting, shall be in accordance with the objective and principles of this Act and regional and international norms and standards applicable to Somalia, including the equitable sharing of benefits from their use, the conservation of biological diversity and the sustainable use of its components, and where any fishing activity includes marine bioprospecting no licence or authorization shall be issued for the exploration and exploitation of genetic resources without the prior approval in writing of the Minister.

## **26 Marking of gear**

(1) The Director General may, by notice on the official website of the Ministry or license conditions, set requirements for the marking of gear used by semi-industrial and industrial vessels, taking into account standards in the FAO Voluntary Guidelines on the Marking of Fishing Gear, and the owner or operator of such gear shall comply with such requirements.

(2) The operator of any vessel in Somali waters, or of any Somali vessel beyond areas under national jurisdiction and within the area of competence of a relevant regional fisheries management organization shall ensure that gear set in the sea is clearly marked in accordance with the following minimum standards and such other requirements as the Director General may impose, subject to an exemption of any vessel or gear or class of vessel or gear approved in writing by the Minister:

- (a) the ends of nets, lines and gear in the sea, shall be fitted with flag or radar reflector buoys by day and light buoys by night sufficient to indicate their position and extent;
- (b) marker buoys and similar objects floating on the surface, and intended to indicate the location of fixed gear, shall be clearly marked at all times with the letter(s) and/or number(s) of the vessel to which they belong;
- (c) each and every buoy used for setting gill nets, long lines and set nets shall be marked with the licence number or local identification mark assigned to the vessel utilizing the gear;
- (d) the identification marks shall be in block letters and numbers;
- (e) letters and numbers shall be as large as the surface of the buoy permits;
- (f) the identification mark shall be in either white or black, whichever colour gives the higher contrast to the colour of the buoy;
- (g) good quality marine paint shall be used in writing the identification marks;

- (h) the identification marks and the surrounding background shall be maintained in a good condition all times; and
- (i) marking complies with any other requirements or conditions that may be required by the Minister.

(3) Any operator who does not comply with any requirement in subsection (1) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule and any other penalty provided under this Act.

## **27 Fish aggregating devices**

- (1) The operator of an industrial or semi-industrial vessel:
  - (a) shall not have on board, deploy or maintain any fish aggregating device (FAD) in Somali waters;
  - (b) shall not deploy or allow to be deployed any drifting FAD equipped with an instrumented buoy in areas beyond national jurisdiction that drifts into Somali waters;
  - (c) registered in Somalia shall not deploy or allow to be deployed any drifting FAD device equipped with an instrumented buoy in the area of competence of a relevant regional fisheries management organization,

except under an authorization issued by the Director General and in accordance with such conditions as he/she may specify or as are otherwise specified in this Act or an applicable international conservation and management measure.

- (2) The operator of vessels referred to in paragraph (1) shall ensure that each FAD:
  - (a) is clearly marked with the name of the owner and of the vessel from which such a device was placed and any applicable Unique Vessel Identifier number, RFMO, FAD registration number and IMO Vessel number;
  - (b) is equipped with a radar reflector and such lights as shall be clearly visible at night from a distance of one nautical mile; and
  - (c) has such other associated equipment and markings as may be prescribed or required by the Director General and an applicable international conservation and management measure.
- (3) Unless otherwise provided under this Act or specified by the Director General, permission to deploy a FAD shall not confer any exclusive right to fish in the vicinity of the device and no person shall claim such right.
- (4) The operator of any vessel referred to in paragraph (a) placing a FAD shall notify the Ministry within twenty-four hours of such placement and of the nature and location of the device.
- (5) No person shall use or dispose of a FAD, whether or not authorized, in a manner other than in accordance with this Act or as may be required by the Director General.
- (6) The Ministry shall develop a management plan for FADs, taking into account any requirements or guidelines of a relevant regional fisheries management organization.

(7) A person who contravenes subsection (1) (a) (b) or (c), (2) (a) (b) or (c), (4) or (5) commits an offence and upon conviction is liable to a fine provided in the First Schedule in respect of each FAD or to a term of imprisonment not exceeding three years or both, and each FAD that is used or found in Somali waters in contravention of this Act shall be confiscated, any authorization to deploy FADs may be revoked and the licence for fishing or may be revoked and all costs for cleanup, repatriation and disposal of fish aggregating devices shall be borne by the licensee or operator of the vessel with which the device is associated.

## **28 Prohibited to fish on data buoys**

(1) No person, including the operator of any vessel in Somali waters or using a Somali vessel within the area of competence of a relevant regional fisheries management organization shall:

- (a) deploy a data buoy in Somali waters, or from a Somali vessel unless the Director General has been notified of such deployment and provided with such information in any form and manner and at such times as he or she may require;
- (b) interfere with or take on board a data buoy unless specifically authorized or requested to do so by the Director General or the owner responsible for that buoy,

and shall comply with such further conditions concerning data buoys as may be prescribed;

(2) Any operator who does not comply with any requirement in subsections (1), (a) or (b) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule and any other penalty provided under this Act.

## **29 Prohibition on commercial whaling and conservation of cetaceans, etc.**

(1) No person shall engage, support or assist in commercial whaling for any species or population of whales in Somali waters or in areas beyond national jurisdiction being a Somali citizen or using a Somali vessel.

(2) No person shall engage in fishing for, harm, kill or trade in cetaceans.

(3) The operator of a vessel in Somali waters shall ensure that in all fishing and related activities, gear is used and disposed of in a manner that avoids entanglement or any other adverse or harmful impact on cetaceans.

(4) The operator of any vessel in Somali waters or any Somali vessel in the area of any relevant regional fisheries management organization shall not intentionally cause or allow a purse seine net to be set around any cetacean or whale shark.

(5) Where any cetacean or whale shark is unintentionally trapped in fishing nets or equipment, the operator referred to in subsection (4) shall release it immediately and return it to the sea, and take such other actions as may be provided pursuant to an international conservation and management measure.

(6) No person shall settle or conduct fishing operations in such zones as may be proclaimed under this Act as breeding zones for cetaceans.

(7) Where any cetacean is trapped in the coastal areas, coastal communities have a duty to release it and return it to Somali waters.



(8) Any person who does not comply with any requirement in subsection (1), (2), (3) (4) (5) or (6) commits an offence and upon conviction shall be liable to the fine described in the First Schedule to the Act or to a term of imprisonment not exceeding three years or to both.

### **30 Prohibitions in relation to marine turtles**

(1) No person shall engage in fishing for, harm, kill or trade in marine turtles.

(2) The operator of a vessel in Somali waters shall ensure that in all fishing and related activities, gear is used and disposed of in a manner that avoids entanglement or any other adverse or harmful impact on marine turtles.

(3) The operator of any vessel in Somali waters or any Somali vessel in the area of any relevant regional fisheries management organization shall not intentionally cause or allow any net to be set around any marine turtle.

(4) Where marine turtle is unintentionally trapped in fishing nets or equipment, the operator referred to in subsection (3) shall release it immediately and return it to the sea and take such other actions as may be provided pursuant to an international conservation and management measure.

(5) No person shall, for any purpose related to the commercial development of any coastal area, without an authorization from the Minister issued under section 74, undertake construction, operate or conduct research in the breeding zones for marine turtles.

(6) Any person who does not comply with any requirement in subsection (1), (2), (3) (4) or (5) commits an offence and upon conviction shall be liable to the fine described in the First Schedule to the Act or to a term of imprisonment not exceeding three years or to both.

### **31 Prohibitions on removal of shark fins and sale, etc of illegally removed shark fins**

(1) The operator of any vessel used for fishing in Somali waters or of any Somali vessel fishing in areas beyond national jurisdiction:

(a) shall ensure that all sharks caught are fully utilised, through retention on the vessel of all parts of the shark excepting head, guts and skins, to the point of first landing;

(b) shall not:

(i) remove shark fins on board the vessels; and

(ii) land, retain on-board, tranship or carry shark fins that are not naturally attached to the carcass at the first point of landing;

(c) in respect of sharks landed frozen, shall not:

(i) have on board fins that total more than 5% of the weight of sharks, up to the first point of landing where the requirements in paragraph (b) are not applied by the operator;

(ii) offload fins and carcasses separately at the point of first landing, unless there is compliance with the 5% ratio through certification, monitoring by an observer, or other appropriate measures approved by the Director General.

(2) In order to facilitate on-board storage under section 1(c), shark fins may be partially sliced through and folded against the shark carcass but shall not be removed from the carcass until the first point of landing.

(3) The operator of a vessel shall release or cause to be released any species of shark that is caught, for which fishing is not permitted, as soon as possible after the shark is brought alongside the vessel, and to do so in a manner that results in as little harm to the shark as possible.

(4) No person shall buy or sell or buy shark fins which have been removed on-board, retained on-board, transhipped or landed in contravention of this Act.

(5) Any person who contravenes subsection (1)(a), (b) or (c), (2), (3) or (4) commits an offence and on conviction is liable to a fine not exceeding the maximum amount described in the First Schedule or to a term of imprisonment not exceeding two years, or to both, and in addition any fish or fish products that do not comply with the requirements in sub-section (1) shall be forfeited to the State.

### **32 Prohibited fishing methods – explosives, etc. and sale, etc of fish caught using such methods**

(1) No person shall:

(a) use, permit to be used or attempt to use any explosive, poison or other noxious substance for the purpose of killing, stunning, disabling or catching fish or in any way rendering fish more easily caught;

(b) carry on board a vessel, transport or have in his or her possession or control any explosive, poison or other noxious substance for any purpose referred to in subparagraph (a);

(c) land, sell receive or possess any fish or fish products, knowing or having reasonable cause to believe they were taken in contravention of subsections (a) or (b).

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

(3) Any person who contravenes subsection (1) (a), (b) or (c) commits an offence and on conviction is liable to a fine not exceeding the maximum amount described in the First Schedule or to a term of imprisonment not exceeding two years, or to both, and in addition any fish or fish products that were taken in violation of subsection (1) shall be forfeited to the State.

### **33 Prohibited fishing methods – trawling**

(1) No person shall use a trawl net for fishing in Somali waters.

(2) Any person who contravenes subsection (1) commits an offence and on conviction is liable to a fine not exceeding the maximum amount described in the First Schedule or to a term of imprisonment not exceeding two years, or to both, and in addition any fish or fish products that were taken in violation of subsection (1) shall be forfeited to the State.

### **34 Prohibited fishing methods – minimum gear size**

(1) The Minister may specify requirements for minimum gear size by regulation or in the Official Bulletin and shall post the information on the official website of the Ministry.

(2) Any person who contravenes a requirement made under subsection (1), or who contravenes subsections (2) or (3) commits an offence and on conviction is liable to a fine not exceeding the maximum amount described in the First Schedule or to a term of imprisonment not exceeding two years, or to both, and in addition any fish or fish products that were taken in violation of subsection (1), (2) or (3) shall be forfeited to the State.

### **35 Prohibited fishing methods – large-scale driftnets**

(1) For the purposes of this section:

- (a) “large-scale driftnets” means gillnets or other nets or a combination of nets that are more than two and a half kilometers in length whose purpose is to enmesh, entrap, or entangle fish by drifting on the surface of, or in, the water column;
- (b) “configured” to use large-scale drift-nets means having on board assembled gear that collectively would allow the vessel to deploy and retrieve large-scale driftnets.

(2) The operator of any vessel in Somali waters, or of any Somali vessel within the area of competence of a relevant regional fisheries management organization or otherwise beyond areas of national jurisdiction shall not use large-scale driftnets.

(3) An operator of a vessel shall be presumed to have used large-scale driftnets if it is found operating in Somali waters or in the area of competence of a relevant regional fisheries management organization and the vessel is configured to use large-scale driftnets.

(4) The operator of a vessel subject to this Act that is configured to use large-scale driftnets shall ensure that such driftnets and related fishing equipment are stowed or secured in such a manner that they are not readily available to be used for fishing.

(5) Any operator who does not comply with any requirement in subsections (2), (3) or (4) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or to a term of imprisonment not exceeding five years, or to both, and in addition, the prohibited gear shall be forfeited to the State and any other penalty provided under this Act.

### **36 Prohibited to use aircraft and unmanned aerial vehicles**

(1) The operator any vessel, including support, supply and auxiliary vessels, in Somali waters or any Somali vessel within the area of competence of a relevant regional fisheries management organization shall not use aircraft, including unmanned aerial vehicles, as fishing aids unless authorized by the Minister.

(2) Aircraft and unmanned aerial vehicles used for scientific or monitoring, control or surveillance purposes are not subject to the prohibition set out in subsection (1).

(3) Any operator who does not comply with any requirement in subsection (1), unless excepted under subsection (2), commits an offence and upon conviction shall be liable to a fine provided in the First Schedule and any other penalty provided under this Act.

### **37 Prohibited to use artificial lights to attract fish in purse seine, longline fisheries**

(1) The operator of any:

- (a) vessel in Somali waters equipped with purse seine or longline gear;
- (b) support, supply or auxiliary vessel in Somali waters; or

- (c) Somali vessel in areas beyond national jurisdiction within the area of competence of a relevant regional fisheries management organization;

engaged in fishing for tuna or tuna-like species is prohibited from using, installing or operating surface or submerged artificial lights, including on drifting fish aggregating devices, for the purpose of aggregating or that are likely to aggregate any fish species.

(2) Navigation lights and lights necessary to ensure safe working conditions and artisanal fishing vessels operating within the Fisheries Restricted Zone that do not fall within the requirements of paragraph (1) are not affected by this section.

(3) Any operator who does not comply with any requirement in subsection (1) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule and any other penalty provided under this Act.

### **38 Prohibited to tamper with or destroy property of another in Somali waters**

(1) No person shall, within Somali waters, remove any fish from any gear unless he or she is the owner of the gear or is acting with the express permission of the owner.

(2) No person shall tamper with, destroy, damage or knowingly or intentionally impair the functioning of any gear, aquaculture facility or other property which belongs to another person or the Government without the express permission of the owner or government or removal is necessary because the safety and health of a reef would otherwise be under imminent threat and removal is promptly reported to the Ministry.

(3) Nothing in this section shall limit the powers of an authorized person to remove objects for purposes or marine environmental quality, or a fishery officer, or prevent the disposal of unauthorized gear or equipment in accordance with this Act.

(4) Any person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or to a term of imprisonment not exceeding one year, or to both.

### **39 Prohibited to use, possess on a vessel, import, purchase, sell prohibited gear**

(1) The Minister may by regulation prohibit the use, possession on a vessel, import, purchase or sale of prohibited gear.

(2) No person shall use, possess on a vessel, import, purchase or sell gear that is prohibited under this Act or by the Minister in accordance with subsection (1).

(3) No person shall use or arrange or permit to be used, and no operator shall carry on board a vessel gear unless it is expressly permitted or authorized under the relevant licence, authorization or permit, except that prohibited gear may be carried on board a vessel where the operator has declared such gear to the Director General prior to entering Somali waters and keeps the gear stowed at all times while in Somali waters.

(4) Any person who contravenes subsection (2) or (3) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or to a term of imprisonment not exceeding three years, or to both, and in addition, the prohibited gear shall be forfeited to the State.

### **40 Prohibition on abandoning or discarding gear, fish or fish product**

(1) No person shall in areas under Somalia jurisdiction, or being a citizen of Somalia or associated with a Somali vessel in areas beyond national jurisdiction, with or without intention, abandon or discard any gear, fish or fish product.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or to a term of imprisonment not exceeding three years, or to both, and in addition, the prohibited gear shall be forfeited to the State.

#### **41 Prohibition of interference with inspected fish and fish products**

(1) No person shall, except with the written permission of the Director General:

(a) remove, alter or interfere with a trade description, seal, stamp or other mark applied to a container or a container system unit containing any fish or fish product that has been inspected by an authorized fisheries officer;

(b) add to, remove from, or otherwise change the composition of any consignment of fish that has been certified as inspected by an authorized person or alter the relevant certificate; or

(c) unseal or leave unsealed any boxes that have been inspected by an authorized fisheries officer.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or to a term of imprisonment not exceeding two years, or to both, and in addition any fish or fish products shall be forfeited to the State.

#### **42 Prohibition of possession, trade, export etc. of fish, fish products taken or obtained in contravention of Act or international conservation and management measure**

(1) No person shall buy, sell, possess, export or otherwise trade in fish or fish products taken or obtained in contravention of this Act or an international conservation and management measure, except where such fish or fish products have become the property of the Government after forfeiture.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or to a term of imprisonment not exceeding three years, or to both, and in addition, all fish and fish products shall be forfeited to the State.

(3) Where a person is charged with an offence under subsection (1), the burden of proof shall be on such person to prove that the fish bought, sold, possessed, exported or otherwise in accordance with this Act or an international conservation and management measure.

#### **43 Prohibition of trade, etc. in fish and fish products taken or obtained in contravention of the laws of another State**

(1) No person shall, on their own account or in any other capacity:

(a) cause or permit a person acting on their behalf to take, buy, sell, import, export, land, tranship, transport, trade, receive or acquire any fish or fish product that was caught in contravention of the laws of another State or of any international conservation and management measure, but does not include fish taken on the high seas contrary to the laws of

another State where Somalia does not recognise the jurisdiction of that State over those fish;  
or

(b) use or permit a vessel to be used to engage in fishing or related activities for a purpose referred to in paragraph (a).

(2) Notwithstanding any provision in this section, where fish or fish products subject to this section has become the property of Government through forfeiture, Court Order or other judicial process, they may be sold, processed exported or otherwise dealt with in the same manner as other government property and shall not be considered as a product of illegal, unreported or unregulated fishing or related activities.

(3) Any person who contravenes any requirement of subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule, or to a term of imprisonment not exceeding three years, or to both and the fish and fish products shall be forfeited to the State.

(4) Notwithstanding any other legislation of Somalia, mistake of fact is not a defence to a prosecution for an offence under this section.

#### **44 Prohibitions in relation to vessels on a list of illegal, unreported and unregulated vessels maintained by a regional fisheries management organization**

(1) For the purposes of this section, “listed vessel” means a vessel that is included on a list of illegal, unreported and unregulated vessels maintained by a regional fisheries management organization.

(2) No person shall, being the operator of a Somali vessel, including any fishing vessel, support vessel, refuelling (supply) vessel, mothership or cargo vessel:

- (a) provide, cause to be provided or arrange assistance to a listed vessel in any way except for the purpose of rendering assistance where such vessel, or any person on that vessel, is in danger or distress;
- (b) engage in fish processing operations with a listed vessel;
- (c) participate, cause participation in or arrange for participation in transshipment or joint fishing operations with a listed vessel; or
- (d) charter or be associated in any way with the chartering of a listed vessel.

(3) No person shall control, arrange, cause to be controlled or arranged or participate in the import, landing or transshipment of any species from the listed vessel over which the relevant regional fisheries management organization has competence.

(4) No person shall:

- (a) sell a listed vessel or otherwise change legal or beneficial ownership and/or purchase another vessel with the apparent aim of continuing to maintain control of the listed vessel and/or the new vessel and continuing illegal, unreported or unregulated operations for fishing or related activities; or
- (b) operate a listed vessel which has been sold or where the legal or beneficial ownership has been changed as described in paragraph (a).

(5) A listed vessel shall not be:

- (a) approved for or granted registration in Somalia except if the vessel has changed owner and the new owner has provided sufficient information demonstrating the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel, or having taken into account and documented all relevant facts, it is determined that granting the vessel its flag will not result in IUU fishing; or
- (b) authorized to enter any port in Somalia except in case of force majeure or where the vessel, or any person on that vessel, is in danger or distress, unless it is allowed entry into port for the exclusive purpose of inspection and effective enforcement action.

(6) Any person who contravenes any requirement of subsection (2), (3) or (4) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule, or to a term of imprisonment not exceeding five years, or to both, and in addition the vessel including its gear and fish or fish products on board shall be forfeited to the State and the vessel shall not be issued a licence or authorization under this Act for a minimum period of five years and a Somali vessel shall be deregistered.

#### **45 Prohibitions in relation to vessels without nationality**

(1) For the purposes of this Act, a “vessel without nationality” is a vessel used for fishing or related activities that is not entitled to fly the flag of any State or sails under the flag of two or more States, using them according to convenience.

(2) Where any vessel without nationality engages in fishing or related activities in the area of competence of a relevant regional fisheries management organization, and such organization has adopted an applicable international conservation and management measure that considers fishing or related activities by such vessel to be illegal, unreported and unregulated, such vessel:

- (a) shall be prohibited from landing or transshipping fish or fish products within areas under the jurisdiction of Somalia, or in areas beyond national jurisdiction involving a Somali vessel;
- (b) shall be denied access to, and use of any port within Somalia;
- (c) notwithstanding subsection (b), may be allowed access where it is essential to the safety or health of the crew or safety of the vessel and shall be allowed exclusively for that purpose and not for any other activity or use of port.

(3) Any operator, person on board or other person acting in association with or support of a vessel without nationality who lands, transships or uses a port in contravention of subsection (2)(a) or (b) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or to a term of imprisonment not exceeding three years or both, and to any other penalty provided under this Act, and an applicable licence or authorization of the vessel may be cancelled and any fish or fish products shall be forfeited.

### **5. GENERAL REQUIREMENTS FOR FISHING, AQUACULTURE AND OTHER ACTIVITIES**

#### **46 Compliance by holders of licences, authorizations or other permission**

(1) The holder of a licence, authorization or other permission issued under this Act shall:

- (a) comply with the terms and conditions of the licence, authorization or other permission;

- (b) comply with this Act, all other legislation of Somalia, any applicable international agreement, including an agreement for fisheries access, and any applicable international conservation and management measure;
- (c) not engage in any activities under the scope of this Act, except in accordance with the licence, authorization or other permission.

(2) Any person who contravenes subsection (1), (a) (b) or (c) commits an offence and, unless the same offence is otherwise provided in this Act, is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or to a term of imprisonment for a period not exceeding five years, or to both and the person's licence may be suspended or cancelled.

#### **47 Reporting requirements**

(1) Where any person, including the operator of any vessel, is required to make any report pursuant to this Act or an international conservation and management measure, such reports shall be:

- (a) true, correct and complete in every respect;
- (b) prepared by the person or vessel licensed or authorized under this Act or an accredited agent;
- (c) submitted in the required form and format;
- (d) submitted at the required time or times;
- (e) submitted to the designated person or body;
- (f) certified, verified or otherwise validated as may be required.

(2) No person shall falsify, forge, tamper with or submit any report that is false, inaccurate, misleading or incomplete in any way.

(3) No person shall provide sales receipts as documentation instead of the catch documentation required pursuant to this Act.

(4) Where estimates for any aspect of the catch may be made pursuant to this Act, no person shall submit an estimate unless:

- (a) an estimation process officially recognized by the Ministry is used; and
- (b) any standard of proof that may be required by the Ministry is satisfied.

(5) Any person that contravenes the provisions or subsection (1)(a), (b), (c), (d), (e) or (f), (2), (3) or (4) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or to a term of imprisonment not exceeding three years or both, and to any other penalty provided under this Act, and the relevant licence, authorization or permit may be cancelled.

#### **48 Responsibilities of Federal Member States for aquaculture management**

The Federal Member States, in discharging their duties to manage, develop and license aquaculture pursuant to this Act, shall, to the extent possible:

- (a) ensure that aquaculture development is ecologically sustainable;



- (b) adopt an aquaculture development plan;
- (c) issue licenses for commercial aquaculture which are subject to such sanitary, inspection and other conditions as may be appropriate for the operation;
- (d) foster collaboration with District and Local government bodies, including for purposes of monitoring commercial and non-commercial aquaculture activities;
- (e) ensure that the livelihood, culture and traditions of local communities and their access to fishing grounds are not adversely affected by aquaculture development;
- (f) require prevention of escapement and prescribe actions to be taken where escapement occurs;
- (g) require aquaculture operators to ensure that aquaculture waste does not cause an unsightly or offensive condition at the licence area, and is secured or treated in a manner designed to prevent it being blown, washed or swept off the area;
- (h) prohibit use in a commercial aquaculture facility of any drug, pharmaceutical, antibiotic or other chemical for the treatment of fish diseases or for the enhancement of fish growth without the written approval of the relevant Ministry of the Federal Member State;
- (i) prohibit interference with or destruction to an aquaculture facility;
- (j) have the authority to collect information and data on wild and genetically modified species for the purpose of assessing the impact of aquaculture;
- (k) cooperate with the Ministry and other Federal Member States as appropriate, including where the aquaculture operations have transboundary impact; and
- (l) undertake such other measures and actions as may be necessary to discharge their responsibilities.

#### **49 Introduction, transfer, import, export, release, of live fish**

- (1) No person shall carry out the following activities in relation to commercial aquaculture without authorization in writing by the Director General:
  - (a) place or, by act of omission or otherwise, cause to be placed any species of live fish in any place in the Fisheries Waters, except where:
    - (i) the fish species being so placed previously occurred in the same body of water prior to being fished there from; or
    - (ii) a fish farmer is stocking his/her pond with fish obtained from another fish farmer with whom he/she shares the same water catchment area;
  - (b) introduce or cause to be introduced into Somalia or the Fisheries Waters any species of fish;
  - (c) transfer any eggs, fingerlings or seed of exotic or genetically modified species or such adult species of fish from one aquaculture establishment in Somalia to another or from any location in Somalia to another;
  - (d) import or export live fish for the purpose of commercial aquaculture; or

(e) release into the fishery waters any fish except for indigenous wild fish caught in Somalia.

(2) A person who contravenes Subsection (1) (a), (b), (c), (d) or (e) commits an offence and shall be liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or a term of imprisonment not exceeding five years or both.

## **50 Authority to inspect, seize fish designated for import or export that are diseased, highly invasive fish or fish species**

1) The Director General may inspect or cause to be inspected any fish before or after they are imported for the purpose of aquaculture and inspect or cause to be inspected any fish produced by aquaculture operations that are destined for export.

2) The Director General may seize, hold, quarantine, disinfect or destroy any live fish that have been imported or that are destined for import or export for purposes of aquaculture, and shall take such measures where it is determined that the fish or fish species are diseased or highly invasive.

## **51 Gear stowage**

(1) The operator of a:

(a) vessel in Somali waters in any place or at any time where it is not licensed or authorized for fishing or related activities; or

(b) Somali vessel in areas beyond national jurisdiction where it has not been authorized for fishing or related activities pursuant to this Act,

shall ensure that all gear on board is at all times stowed or secured in such a manner that it is not readily available for fishing.

(2) The operator of a vessel that contravenes the provisions or subsection (1)(a) or (b) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or to a term of imprisonment not exceeding three years or both, and to any other penalty provided under this Act, and an applicable licence or authorization of the vessel may be cancelled.

## **52 Requirements for citizens and Somali vessels in areas beyond national jurisdiction**

(1) No person shall use a Somali vessel:

(a) in areas under the national jurisdiction of other States except in accordance with the laws of that State; or

(b) to engage in any activity on the high seas or in areas of national jurisdiction of other States that:

(i) does not comply with an applicable access agreement; or

(ii) undermines the effectiveness of applicable international conservation and management measures.

(2) All Somali citizens and the operators of Somali vessels in areas beyond national jurisdiction shall comply with:

- (a) applicable international conservation and management measures; and
- (b) the laws of other States, when in areas under the jurisdiction of such States.

(3) Where any Somali vessel is used in contravention of any requirement of subsection (1) or (2), the operator of such vessel commits an offence, and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or to a term of imprisonment not exceeding five years, or to both.

(4) Where any Somali citizen contravenes subsection (2) he or she commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or to a term of imprisonment not exceeding five years, or to both.

### **53 Requirements for labour conditions of personnel on board certain vessels**

(1) The operator of any:

(a) Somali vessel, at all times while within or beyond Somali waters:

- (i) of twenty four meters in length overall or above; or
- (ii) of less than twenty four meters in length overall that remain at sea for three days or more or navigate beyond Somali waters; and

(b) foreign vessel carrying a valid and applicable license, authorization or other permission granted for any activity within the scope of this Act,

shall comply with all applicable requirements of Somalia legislation, fisheries access agreements and such international standards as may be prescribed or required by the Minister by public notice relating to employment of personnel on board, including the standards in the International Labor Organization Work in Fishing Convention, 2007 (No. 188)

(2) Any person who contravenes any requirement that may be made pursuant to this Article commits an offence and is liable on conviction to a fine not exceeding the amount described in the Second Schedule or to a term of imprisonment not exceeding ten years, or to both and the license, authorization or other permission may be revoked, and in the case of committing assault, bodily harm or loss of life such person shall not be issued with a licence, authorization or other permission for any activity within the scope of this Act, or be employed in any capacity in or in relation to the Somalia fishery sector for a minimum period of five years from the time that the contravention was established.

### **54 Prohibitions on individuals in or associated with a transnational criminal group to engage in any activity under the scope of this Act**

(1) No person, being a member of or associated with a transnational criminal group shall be permitted to engage in any activity under the scope of this Act, and any license, authorization or other permission issued without knowledge of such association shall be immediately cancelled upon reasonable proof of such membership or association.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or to a term of imprisonment not exceeding ten years, or to both, and such person shall not be issued with a licence, authorization or other permission for any activity within the scope of this Act for a minimum period of ten years from the time that the contravention was established.

## **55 Transhipment in Somali ports, Somali waters, areas beyond national jurisdiction**

- (1) No person shall engage in, support or be associated with transhipment activities:
  - (a) in respect of a foreign vessel, in Somali waters except at a port designated for such purposes by the Minister responsible for Ports and Marine Transport, except where:
    - (i) the Director General declares the unavailability of a designated port during a reasonable time period, based on advice from the Harbour Master's Office;
    - (ii) the transhipment operations are monitored by such authorized fisheries officer or observer as may be required; or
  - (b) in respect of a Somali vessel, in Somali waters except at a port designated for such purposes by the Minister responsible for Ports and Marine Transport, except:
    - (i) where the vessel has a valid and applicable authorization to tranship in Somali waters or at such other port that may be issued pursuant to this Act;
    - (ii) in areas beyond national jurisdiction except in accordance with any applicable international conservation and management measure.
- (2) Any person who contravenes subsection (1) (a) or (b) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or to a term of imprisonment not exceeding three years, or to both.

## **6. REQUIREMENTS FOR FISHERIES ACCESS**

### **56 Requirements for all foreign fishing vessels to enter and remain in Somali waters**

- (1) The operator of a foreign fishing vessel shall not enter Somali waters unless:
  - (a) the vessel holds a valid and applicable licence issued under this Act; or
  - (b) the vessel enters for the purpose of obtaining a licence and has a valid and applicable entry permit issued by the Ministry.
- (2) The operator of every foreign fishing vessel that holds a licence or entry permit as required under subsection (1), and such other foreign fishing vessels that the Minister may designate by public notice, shall report the vessel position and other information required by the Minister directly to the Ministry using a Vessel Monitoring System and Automatic Identification System or as necessary by email:
  - (a) 24 hours prior to entry or exit from Somali waters; and
  - (b) continuously at all times while in Somali waters at intervals determined by the Minister.
- (3) The operator of every foreign vessel shall ensure that the vessel does not engage in fishing any area that may be prohibited under this Act or the laws of Somalia.
- (4) The operator of a foreign fishing vessel that does not comply with subsection (1) (a) or (b), (2)(a) or (b) or (3) commits an offence and shall be liable on conviction to a fine not exceeding the

maximum amount described in the First Schedule and in addition any applicable licence(s) shall be suspended for such period as the Minister thinks fit but not less than one month.

## **57 Fisheries access**

(1) The Minister may, on the recommendation of the Director General and in accordance with this Act and any applicable Fisheries Management Plan, international agreement, national law, policy or plan, and taking into account relevant international guidelines, enter into a written agreement to authorise access to Somali waters for fishing and related activities by foreign vessels.

(2) The written agreement required in subsection (1) may be in the form of an international agreement, joint venture agreement, charter agreement or other written agreement or arrangement with any:

- (a) State;
- (b) regional economic integration organization;
- (c) fishers or boatowners association or a similar body;
- (d) publicly incorporated company; or
- (e) such other persons or bodies as the Minister, on the recommendation of the Director General, considers appropriate.

(3) The Minister, prior to entering into a fisheries access agreement, shall ensure that:

- (a) the terms of the agreement comply with this Act and each international agreement and fisheries management agreement or arrangement to which Somalia is party;
- (b) any vessel subject to the agreement and its operator, master and beneficial owner:
  - (i) have not engaged in or are reasonably suspected to have engaged in illegal, unreported or unregulated fishing activities in any place during the five year period prior to conclusion of the agreement; and
  - (ii) where judicial or administrative proceedings have determined that illegal, unreported or unregulated fishing activities took place, there has been compliance with a relevant judgment or determination;
- (c) the fishing or related activities of the vessel would not result in any direct or indirect adverse impact to the sustainability of Somalia fisheries resources or the marine ecosystem; and
- (d) there are clear benefits to Somalia for entering into the agreement.

(4) The Minister shall not enter into an agreement or permit licenses, authorizations or other permissions to be issued unless the agreement conforms to requirements under this section.

(5) The Minister shall, as appropriate on the advice of the Director General, determine in respect of each proposed agreement for access:

- (a) the estimated economic value of the access to the other party; and

- (b) the value of the designated fee and other required benefits for Somalia, excluding development assistance or benefits that are unrelated to the value of the access.
- (6) Access shall be permitted solely for purposes of fishing or related activities in Somali waters or at a designated port.
- (7) As appropriate, the Minister shall inform and consult with relevant agencies of the Federal Government, the Federal Member States and other stakeholders in matters concerning the development, conclusion and implementation of the agreement.
- (8) No licence or other authorization for fishing or related activities shall be issued for any foreign vessel unless fisheries access has been granted in accordance with this Act and is valid during the full pendency of the licence or authorization and where such validity ceases prior to the expiration of the such pendency, the licence or authorization shall be terminated at the same time.

## **58 Fisheries access – terms and conditions**

In addition to any other terms or conditions for fisheries access that may be prescribed or required, each agreement entered into by the Minister shall require that:

- (a) the other party to the agreement and the operator of all vessels subject to the agreement must comply with this Act and all other applicable legislation of Somalia;
- (b) the operator of any vessel subject to the agreement must hold, in respect of their vessel, a valid and applicable licence or authorization from the State in which the vessel is registered to carry out fishing or related activities in areas beyond national jurisdiction including in Somali waters;
- (c) all vessels subject to the agreement must have good standing on an authorized vessel list of an applicable regional fisheries management organization or a register maintained under any applicable fisheries management agreement, and the agreement will automatically terminate should the vessel's good standing on any such register be withdrawn;
- (d) no vessel subject to the agreement is on a list of illegal, unreported or unregulated vessels maintained by a regional fisheries management organization, and the agreement and license issued thereunder will automatically terminate should any vessel be included on any such list;
- (e) the other party to the agreement and all operators of vessels subject to the agreement must take all necessary measures required to ensure compliance with the agreement and this Act;
- (f) any vessel or operator that does not comply fully with the agreement, this Act or any applicable international conservation and management measure shall be denied renewal or issuance of any licence, authorization or other permission under the access agreement for a period of up to ten years;
- (g) in the case of an agreement entered into with a corporation, association or other body acting on behalf of its members or other persons, that the corporation, association or other body is liable for the undischarged liabilities of its members or other persons arising out of any operations under the agreement and the agreement itself, including fees;
- (h) fees, levies and other charges be fully paid at the required time, and the agreement will automatically terminate on non-payment or late payment;

- (i) the other party to the agreement shall provide agreed benefits to the Somalia economy and citizens such as investment, procuring goods and services, training, employing qualified citizens as crew members and other benefits as may be specified by the Minister;
- (j) in the case of an agreement with a term of more than one year, the agreement is subject to an annual review and termination or suspension in accordance with section 61; and
- (k) any other relevant minimum terms and conditions for fisheries access in an applicable fisheries management agreement shall be included.

## **59 Requirements for joint venture and charter agreements**

(1) No agreement governing joint ventures, or the chartering of any foreign vessel for fishing or fishing related activities within or beyond Somali waters shall be valid unless and until it is approved by the Minister.

(2) A joint venture or charter agreement may be approved or accredited only where the following requirements are fully met:

- (a) the joint venture or charter agreement provides clearly identifiable benefits with no adverse effects to Somalia, its fisheries or its marine environment, including:
  - (i) development of Somalia fishing industry;
  - (ii) training of Somali citizens;
  - (iii) foreign exchange earnings for Somalia;
  - (iv) investment in Somalia;
  - (v) landing and domestic distribution activities; and
  - (vi) development of export activities;
- (b) establishment of a company under Somalia law with specified ownership, control and equity by Somali citizens;
- (c) the joint venture or charter agreement approved under this Act shall:
  - (i) be registered in Somalia;
  - (ii) comply with all applicable laws in Somalia;
- (d) a legally binding undertaking is submitted that all financial obligations of the foreign vessel will be met promptly and effectively, including payment of all taxes, fees and any applicable fine, penalty or other determination which may result from the vessel's activities; and
- (e) in respect of a charter agreement, that the flag State is responsible for exercising full and effective control over the vessel when it is in areas beyond the national jurisdiction of Somalia.

(3) Any vessel fishing under an approved joint venture or charter agreement shall be subject to all requirements of this Act in respect of foreign vessels.

## 60 Chartering of vessels to comply with international conservation and management measures

- (1) For the purposes of this section,
  - (a) “chartering of vessels” means an agreement or an arrangement by which a vessel flying the flag of a contracting party or cooperating non-contracting party of a regional fisheries management organization is contracted for a defined period of time by an operator in another member without the change of flag;
  - (b) “chartering member” refers to the member of a relevant regional fisheries management organization that holds the quota allocation or fishing possibilities; and
  - (c) “flag member” refers to the member in which the chartered vessel is registered.
- (2) Any chartering of vessels shall comply with the provisions of this Act and any applicable international conservation and management measure.
- (3) The chartering agreement shall contain the following conditions, in addition to any other condition required under this Act:
  - (a) the flag member has consented in writing to the chartering agreement;
  - (b) the duration of the fishing operations under the chartering agreement does not exceed 12 months cumulatively in any calendar year;
  - (c) vessels to be chartered shall be registered to responsible members and cooperating non-members of the relevant regional fisheries management organization, which shall:
    - (i) explicitly agree to apply international conservation and management measures of the relevant regional fisheries management organization and enforce them on their vessels; and
    - (ii) effectively exercise their duty to control their vessels to ensure compliance with international conservation and management measures;
  - (d) vessels to be chartered shall be on the applicable record of authorized vessels of the relevant regional fisheries management organization;
  - (e) without prejudice to the duties of the chartering member, the flag member shall ensure that the chartered vessel complies with both the chartering member and the flag member or cooperating non-member with international conservation and management measures;
  - (f) where the chartering member allows the chartered vessel to engage in fishing in the high seas, the flag member shall be responsible for controlling the high seas fishing conducted pursuant to the charter arrangement, and the chartered vessel shall report Vessel Monitoring System and catch data to both the chartering member and flag member and to the Secretariat of the relevant regional fisheries management organization;
  - (g) all catches (historic and future), including bycatch and discards, taken pursuant to the chartering agreement, as well as the observer coverage shall be counted against the quota or fishing possibilities of the chartering member;
  - (h) the chartering member shall report to the Secretariat of the relevant regional fisheries management organization all catches, including bycatch and discards and all fish caught in Somali Waters, and other information required under any Charter Notification Scheme adopted by the relevant regional fisheries management organization.



- (i) a vessel monitoring system and, as appropriate, tools for the differentiation of fishing areas, such as fish tags or marks, shall be used for effective fisheries management in accordance with relevant international conservation and management measures;
- (j) all chartered vessels shall be subject to observer coverage of at least 5% of fishing effort, as measured in accordance with the manner specified in an applicable international conservation and management measure;
- (k) all chartered vessels shall have a fishing license issued by the chartering member, and shall not be on the an IUU Vessel List maintained by any regional fisheries management organization;
- (l) when operating under charter agreements, the chartered vessels shall not, to the extent possible, be authorized to use the quota (if any) or entitlement of the flag members or cooperating non-members;
- (m) no chartered vessel shall be authorized to fish under more than one chartering agreement at the same time;
- (n) unless specifically provided in the chartering agreement, and consistent with relevant domestic law and regulation, the catches of the chartered vessels shall be unloaded exclusively in the ports of the chartering member or under its direct supervision in order to assure that the activities of the chartered vessels do not undermine international conservation and management measures;
- (o) the chartered vessel shall at all times be required to carry a copy of the following documentation:
  - (i) the name (in both native and Latin alphabets) and registration of the chartered vessel, and International Maritime Organization (IMO) ship identification number (if eligible);
  - (ii) the name and contact address of the beneficial owner(s) of the vessel;
  - (iii) the description of the vessel, including the length overall, type of vessel and the type of fishing method(s) to be used under the charter;
  - (iv) a copy of the chartering agreement and any fishing authorization or license it has issued to the vessel, including in particular the quota allocation(s) or fishing possibility assigned to the vessel; and the duration of the chartering arrangement;
  - (v) its consent to the chartering agreement; and
  - (vi) the measures adopted to implement these provisions.

(4) Any chartering of a vessel or chartering agreement that does not comply with subsection (2) or (3) shall be deemed to have no legal effect and be null and void.

## **61 Fisheries access – review**

(9) Where the term of an access agreement is more than one year, the Minister shall review the agreement annually to assess compliance with the terms and conditions of the agreement, including:

- (a) the compliance by the other party with the laws of Somalia and the terms of the agreement;
- (b) the realised benefits to Somalia under the agreement for the preceding year;
- (c) the estimated value of the continuing fisheries access provided under the agreement; and

(d) such other matters as may be prescribed or required by the Minister in accordance with this Act.

(10) The Minister may, on the advice of the Director General, terminate or suspend an agreement at any time according to its terms or upon material non-compliance by the other party with this Act or any other condition of the agreement. The Minister must give the other party reasonable notice of the termination or suspension to ensure the prompt termination of fishing and/or related activities.

(11) The Minister may suspend or otherwise limit an agreement:

(a) upon the advice of the Director General that continued fishing at current levels would pose a risk to the sustainability of any fish stocks based on a precautionary approach; or

(b) on such other ground as may be specified in this Act.

(12) Suspension of an agreement under subsection (2) or (3) may be for such time or until such conditions are met, as the Minister may require and based on the recommendation of the Director General.

(13) Where an agreement is suspended or limited under subsection (3)(a), such portion of the access fees as may be determined by the Minister on the recommendation of the Director General may be refunded on a pro rata basis for suspended fishing opportunities.

## **62 Fisheries Management Agreement**

The Minister may, upon the recommendation of the Director General, enter into a fisheries management agreement with States, intergovernmental organizations or international non-governmental organizations for purposes of cooperation or coordination in matters of fisheries management or related matters under this Act.

## **63 Agents**

(1) The operator of each foreign fishing vessel that applies for a license pursuant to this Act shall designate a corporate or natural person as an agent in Somalia that is authorized to accept on behalf of such vessel to accept service of process and any notices required to be served on the vessel and to provide such information as may be required under this Act with respect to the vessel and its activities, operator, master and crew members.

(2) A corporate person may be designated as agent only where it has been established pursuant to the laws of Somalia, and has provided full and correct information to the Director General in relation to the following:

(a) the full physical street address of the registered or principal office of the company and the principal place of business in Somalia;

(b) the present name and any former forename or surname, physical street address, fixed line telephone, email and occupation of the person authorized to manage the company in Somalia;

(c) a list of the Director Generals of the company, containing such particulars with respect to the Director Generals as are required to be furnished in the register of the Director Generals of a company; and

(d) the names and physical street addresses, fixed line telephone and email of one or more persons continuously resident in Somalia and liable to pay taxes to Somalia authorized to

accept on behalf of the company service of process and any notices required to be served on the company and to provide such information as may be required under this Act with respect to the vessel and its activities, operator, master and crew members;

- (e) the corporate registration number and Somalia Tax Identification Number, and in the event of any alteration being made in the instrument or in the address or in the Director Generals or managers or in the names, addresses, fixed line telephone and email address of such persons, the company shall promptly deliver to the Director General a notice of the alteration in writing.

(3) Each natural person designated pursuant to subsection (1), each person identified pursuant to subsection (2)(d) and, in respect of subparagraphs (c) through (i) each company identified pursuant to subsection (2) shall:

- (a) be continuously resident in Somalia;
- (b) be liable for taxes on income in Somalia and submit a Tax Identification Number;
- (c) have no record of conviction;
- (d) have no record of association with illegal, unreported or unregulated fishing activities that take place within or beyond areas under the national jurisdiction of Somalia;
- (e) carry out duties as required pursuant to the laws pertaining to relevant and applicable legislation in Somalia relating to agents and, as appropriate, companies;
- (f) provide such information as may be required pursuant to this Act in relation to the relevant foreign vessel;
- (g) receive and respond to legal process with respect to the vessel and its activities, operator, master and crew members;
- (h) assume full liability for the vessel and its actions under this Act;
- (i) comply with all laws of Somalia;
- (j) not exceed his/her Ministry as an agent, including dealing on his/her own account; or
- (k) not engage in any activity that constitutes or is likely to constitute a conflict of interest under this Act.

(4) Each agent designated pursuant to subsection (1) and each company established pursuant to subsection (2) shall not have legal standing as agent or otherwise as representative in relation to any foreign vessel unless s/he/it has applied for and been granted a valid and applicable accreditation by the Ministry.

(5) The operator of each foreign vessel shall ensure that its accredited agent:

- (a) has full legal Ministry and is sufficiently informed at all times in order to carry out his/her/its responsibilities pursuant to this Act including the requirements in subsection (3); and
- (b) complies with all requirements in subsection (3).

(6) No licence shall be issued to a foreign vessel unless an agent has been designated and holds a valid and applicable accreditation in accordance with this Act and meets all requirements of this section.

(7) Where there is clear evidence of a violation of subsections (1), (2) or (3), the accreditation of the agent shall be suspended or revoked, and notification shall be given to the operator of the relevant foreign vessel and agent of such suspension or revocation shall be immediately given.

(8) Where notification of revocation of accreditation is given pursuant to subsection (7), such agent or company shall be permanently prohibited from representing any foreign vessel in relation to fishing or related activities in Somalia.

(9) The operator of a foreign vessel shall appoint a new agent within a time period specified in the notification given pursuant to subsection (7), and until such appointment is made, the operator shall be directly responsible to communicate with the Government and comply with requirements under this Act and other legislation of Somalia.

(10) A person who contravenes any requirement set out in subsections (1), (2), (3) or (9) commits an offence and shall be liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or a term of imprisonment not exceeding five years or both.

(11) A person who represents himself/herself /itself as an agent or performs activities as an agent in relation to a foreign vessel without valid and applicable accreditation required pursuant to subsection (4) commits an offence and shall be liable on conviction to a fine not exceeding the maximum amount described in the First Schedule or a term of imprisonment not exceeding five years or both, and shall be permanently prohibited from receiving accreditation as an agent in Somalia in relation to any foreign vessel.

(12) Where any operator does not comply with subsection (5), he/she/it commits an offence and shall be liable on conviction to a fine not exceeding the maximum amount described in the First Schedule and in addition:

- (a) the applicable licence(s) shall be suspended for such period as the Director General thinks fit but not less than one month; or
- (b) the applicable licence(s) may be revoked; and

such operator shall fully disclose information regarding the agreement between the operator and the agent in addition to the any other requirements in this Act.

#### **64 Preference for products of Somalia**

(1) The holder of a licence, authorization or other permission issued for purposes of fisheries access pursuant to this Part shall, as appropriate, give preference to:

- (a) materials and products made in Somalia;
- (b) service agencies located in Somalia and owned by:
  - (i) Somali citizens;
  - (ii) companies or partnerships incorporated or registered in Somalia; and
  - (iii) public corporations.

(2) Any review of the performance of licence holders described under this Part may note whether, and if so the extent to which, preference was given to materials, products and service agencies in Somalia, and the evaluation may be considered when recommending any licence re-issuance or renewal.

## **65 Performance Bonds**

(1) The Minister may require either as a precondition of issuing a licence to any foreign vessel, or at any time during the licensing period, that a performance bond be provided by the applicant or licensee in accordance with such procedures and in such form as may be prescribed or required by the Minister, in consultation with the Attorney General, taking into account, *inter alia*:

- (a) the level of compliance by the vessel, its operator and as appropriate an associated fleet of vessels with requirements of the flag State, other coastal States, relevant regional fisheries management organizations and international law;
- (b) any risk of non-compliance with this Act or any other legislation of Somalia; and/or
- (c) other criteria that may be identified by the Minister.

(2) Performance bonds prescribed under subsection (1) shall serve as a financial assurance for the fulfilment of all obligations arising out of the licence and this Act, including potential costs relating to rescue, recovery of other costs and fines, penalties or compensation for violations against this Act, and shall be drawn upon in accordance with this Act.

(3) The amount of financial assurance provided under this section shall be determined by the Minister on the recommendation of the Director General and considering criteria that may be prescribed or established by the Minister, and having regard to any applicable fishery management plan, the value of the relevant fishery and the maximum amount of a fine provided under this Act for any potential offence taking into account risks identified under subsection (1).

(4) The forms of financial assurance acceptable under this section may be any or a combination of the following:

- (a) surety bond;
- (b) letter of credit;
- (c) trust fund with pay-in period;
- (d) insurance policy;
- (e) cash deposit;
- (f) annuities.

(5) Where a licence holder is obligated to provide a financial assurance under this section and fails to do so within the required time, a license shall not be issued, or if issued shall be cancelled.

(6) Additional requirements and procedures for issuing and drawing on performance bonds may be prescribed.

## **7. INFORMATION, DATA AND STATISTICS**

### **66 Establishment of information system**

(1) There shall be established and maintained a centralised information system in the Ministry with the objectives of:

- (a) promoting and harmonizing data collection by the Ministry and Federal Member States necessary for the conservation, management and sustainable use of fisheries resources;
- (b) providing coordination in data collection and sharing among different levels of government, coastal communities and fishing cooperatives;
- (c) developing analytical and predictive tools for stock assessment in consultation with fisheries ministries of Federal Member States;
- (d) meeting national, regional and international requirements relating to information and data collection and exchange; and
- (e) supporting the objectives and principles of this Act.

(2) The information system, or such components thereof as may be designated by the Director General, shall be available on the official website of the Ministry and subject to designated confidentiality requirements that are determined in accordance with this Act, taking into account best international practices for transparency and accountability.

(3) The information system shall include such information that supports implementation of this Act and international conservation and management measures, including such information as the Director General may require in relation to fisheries management, fishing and related activities, monitoring, control and surveillance, legal and administrative matters, statistical and economic aspects and other information consistent with the objective and principles of this Act.

(4) The Director General shall ensure that, as appropriate, information is released from the database and communicated to other national agencies, States and regional and international organizations in a timely manner to ensure the discharge of national, regional and international obligations of Somalia, including as a flag State and as a member of any relevant regional fisheries management organization.

## **67 Information may be required, inspected**

(1) Each person carrying out activities within the scope of this Act shall keep and maintain such records and information and supply them to the Ministry in such form and manner as the Minister may require or as may be required pursuant to this Act, other Somalia legislation or any applicable conservation and management measure or international agreement.

(2) The Director General shall ensure the collection and analysis of statistical data and other information in relation to activities and persons within the scope of this Act and the provision of data and information to a relevant regional fisheries management organization as may be required by an applicable international conservation and management measure.

(3) The Director General may, for the purposes of verifying accounts, records, documents and other information required to be kept, furnished or communicated under subsection (1) direct:

- (a) the audit or inspection of any accounts, records, documents, data and other information or place where such information may be kept;
- (b) the audit or inspection of any vessel, processing plant or other facility to which this Act applies; and

- (c) that any person provide further information regarding any accounts, records, documents, data and other information kept, furnished or communicated under this Act in accordance with such time limits as may be specified or prescribed.
- (4) Any person who:
- (a) fails to keep, furnish or communicate any accounts, records, documents, data and other information as required under subsection (1); or
  - (b) does not facilitate, assist or comply with the requirements for an audit or inspection undertaken under subsection (3),

commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or imprisonment to a term not exceeding three years, or to both, and in addition the applicable licence, authorization or registration may be revoked.

## **68 Information to be true, complete and correct and destruction etc of documents prohibited**

- (1) All persons shall keep records and provide information, data and statistics as required pursuant to this Act and such records, information, data and statistics shall at all times be true, complete and correct and shall not be false, misleading or inaccurate.
- (2) No person shall alter, destroy, erase or obliterate any:
  - (a) declaration, certificate, or other documents, information, data or statistics made or required to be made or issued under this Act;
  - (b) label subject to this Act; or
  - (c) required markings on vessels or gear.
- (3) No person shall submit to the Ministry, the Ministry or any person, court, body or government Ministry in Somalia or other relevant State or relevant regional fisheries management organization, international organization or other body or person any information or documents that are fraudulent or, in the case of written information or documents, forged.
- (4) The requirements of this section shall apply to any records, information, data and statistics required under the scope of this Act without regard to whether they are submitted to the Ministry, Federal Member State, relevant regional fisheries management organization or other body or person.
- (5) Any person who does not comply with any requirement in subsection (1), (2) or (3) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or imprisonment for a term not exceeding five years, or both, and any other penalty provided under this Act.

## **69 Information sharing bilaterally, regionally, internationally**

- (1) The Director General may share information that falls within the scope of this Act with any international or regional organization in which Somalia is member or pursuant to an international agreement, taking into account any confidentiality requirements, and shall do so where required by international agreement or a regional fisheries management organization.

## **70 Confidential Information**

- (1) For the purposes of this Act, “confidential information” means:
  - (a) information that the Minister declares to be confidential;
  - (b) information under subsection (3); and
  - (c) the information referred to in subsection (5).
- (2) A person carrying out duties or responsibilities under this Act, including the Minister and Director General, shall not, unless authorized under this Act or in accordance with data confidentiality policy and procedures of a relevant regional fisheries management organization, reveal confidential information acquired by virtue of their duties and responsibilities to any person not having such duties and responsibilities.
- (3) The Minister may by written notice:
  - (a) declare any information to be confidential information; and
  - (b) declare that certain general summaries of such information are not confidential information.
- (4) The Minister may in writing authorise any person to:
  - (a) receive or access confidential information;
  - (b) access such premises holding confidential information as he or she may designate or restrict access to such premises.
- (5) The following information shall be confidential information unless otherwise provided by notice in the Official Bulletin:
  - (a) any information or data of a commercial nature provided in records, returns, or other documents required to be kept, furnished or communicated under this Act;
  - (b) any information or other data supplied by a mobile transceiver unit in accordance with this Act; and
  - (c) raw data from scientific research.
- (6) Confidential information may be disclosed:
  - (a) to the extent:
    - (i) that disclosure is authorized or required under this Act or any other law; or
    - (ii) that the person providing the confidential information authorized its disclosure; or
  - (b) as may be necessary to:
    - (i) enable the Director General to publish statistical information relating to the fisheries sector;
    - (ii) enable other agencies of the Government to enforce laws of Somalia;



- (iii) promote cooperation and coordination between the Ministry and Federal Member States and with other Ministries and levels of government and at sub-regional, regional and international levels in the monitoring, control and surveillance of fisheries-related and other relevant activities; or
  - (iv) enable advice to be given to the Director General or Minister consistent with the objective of this Act.
- (7) The Director General may authorise the release of confidential information:
- (a) relating to the real-time or other position of any vessel, upon request, to any Ministry for the purposes of assisting with surveillance, search and rescue and other emergency responses; and
  - (b) for purposes that the Director General believes are supportive of the objective and enforcement of this Act, including reasonable transparency in decision-making.
- (8) Confidential information shall maintain its classification for a period of three years from the date that it is declared to be confidential information under subsection (3).
- (9) The Minister may extend the classification of confidential information at the expiry of the 3-year period referred to in subsection (8) for one or more periods of up to three years, as the Minister may deem necessary to achieve the objectives of this Act and assist with its enforcement.
- (10) Any person who receives confidential information pursuant to this Act shall not use or disclose such information except for the purposes of this Act and in accordance with any international conservation and management measure.
- (11) Any person who does not comply with any requirement in subsection (2) or (10) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule and any other penalty provided under this Act.

## **71 Confidentiality of information in relation to Fisheries Monitoring Center**

- (1) Information received and recorded by the equipment in the Fisheries Monitoring Center shall be treated as confidential and may only be revealed:
- (a) to a person who is authorized to gather information in order to decide whether criminal proceedings should be instituted against any person;
  - (b) to a prosecutor or authorized legal representative who requires such information for the purpose of prosecuting or defending criminal proceedings;
  - (c) to a person who is empowered to ensure compliance with this Act, other Somalia legislation or obligations under international law;
  - (d) to a relevant regional fisheries management organization, in accordance with its international conservation and management measures and any applicable policy on confidentiality and may be subject to a reservation by the Ministry;
  - (e) to a body or organization, including an international organization, in which Somalia is a member or cooperates for the purposes of fisheries monitoring, control and surveillance and in accordance with any applicable confidentiality requirements, and may be subject to a reservation by the Ministry;

- (f) when the revealing of such information is necessary in order to conduct search or rescue operations in relation to any vessel; and
- (g) in aggregated form for purposes of research as approved by the Director General, or
- (h) in accordance with official policy.

(2) Any person who obtains information for a purpose referred in subsection (1) shall use that information for such purpose and may reveal such information to any other person for the same purpose.

(3) Any person who reveals or uses information contrary to subsections (1) or (2) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule and any other penalty provided under this Act.

## **72 Ownership of information**

Ownership of all information required to be reported, notified or otherwise given to the Government and all information generated by mobile transceiver units or similar device that is part of a vessel monitoring system or Automatic Identification System under this Act is vested in the Government.

## **73 Public access to information**

- (1) The public shall have access to information not designated as confidential under this Act.
- (2) The minister may in writing determine and publicize an administrative fee for categories of information that is not readily available, which shall be charged for public access to such information.

# **8. LICENSES, AUTHORIZATIONS, OTHER PERMISSIONS AND REGISTRATION**

## **Division 1 – Requirements and conditions for licences, authorizations, other permissions and registrations issued under the mandate of the Ministry**

### **74 Licences, authorizations, other permissions, registration required**

- (1) No person shall engage in any of the following activities without a valid and applicable licence, authorization or permit or registration issued in accordance with this Act:
  - (a) use of a Somali or foreign vessel for fishing or related activities in Somali waters, except as provided in subsection (3);
  - (b) use of a Somali vessel for fishing or related activities in areas beyond Somali waters, including on the high seas and in waters under the jurisdiction of another State;
  - (c) have on board, deploy, maintain or retrieve any fish aggregating device in Somali waters or, being a Somali vessel, in areas beyond national jurisdiction in the area of competence of a relevant regional fisheries management organization;
  - (d) import or export of fish or fish products, including fish for purposes of aquaculture;
  - (e) commercial traders and vendors of fish or fish products;
  - (f) fish processors to ensure seafood safety;

- (g) test fishing for purposes of researching species, techniques or gear;
  - (h) research;
  - (i) marine bioprospecting;
  - (j) transshipment;
  - (k) commercial sport fishing;
  - (l) alteration of a coral reef and/or trade in coral;
  - (m) commercial collection and trade in sea shells;
  - (n) commercial development of a coastal area;
  - (o) such other activity or requirement as the Minister may prescribe or publish in the Official Bulletin or official website of the Ministry, including for management purposes where limitations are required for:
    - (i) licences, authorizations, permissions or registrations;
    - (ii) special licenses or taxes; and
    - (iii) preferential licenses
- (2) Registration by the Ministry shall be required for:
- (a) the use of any MTU by a licensed vessel in Somali waters or a Somali vessel in areas beyond national jurisdiction; and
  - (b) any agent accredited under this Act.
- (3) The following types of fishing vessels shall be exempt from licensing requirements under subsection (1) unless otherwise prescribed:
- (a) non-motorized vessels;
  - (b) motorized vessels, but with a length overall of not more than 4 meters; and
  - (c) vessels used exclusively for non-commercial recreational fishing.
- (4) Any operator who does not comply with any requirement in subsection (1) or (2) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or imprisonment to a term not exceeding five years, or to both.

## **75 Terms and conditions of licences, authorizations, other permissions, registrations**

- (1) A licence, authorization, other permission or registration granted under this Act by the Ministry:
- (a) shall be subject to the terms and conditions provided in this Act or as may be prescribed, and to such other terms and conditions as may be specified in writing by the Minister or provided in any applicable international conservation and management measure;

- (b) may, upon reasonable notice determined by the Minister, be subject to any varied, amended or additional terms and conditions consistent with the objective and principles of this Act as may be:
    - (i) prescribed; or
    - (ii) specified by the Minister in the Official Bulletin and official website of the Ministry where it is expedient for the management of a fishery;
  - (c) enters into force on the date specified in it; and
  - (d) remains in force until the date on which it expires in accordance with the period approved by the Minister for the class of licence to which it belongs, unless sooner suspended, cancelled or revoked in accordance with this Act.
- (2) The operator of any vessel having a wheelhouse, including any semi-industrial or industrial vessel, holding a licence, authorization, other permission or registration issued under this Act shall ensure that the original or a certified scanned electronic version or certified copy of it is on board the vessel at all times during the period of validity, except where the vessel was at sea when such document was issued and has not entered port since issuance in which case an electronic copy shall suffice, and the master shall, upon request, produce it to an authorized fisheries officer or other person authorized under this Act.
- (3) The holder of a license or authorization for any activity licensed in accordance with this Act other than activities concerning vessels shall display the license or authorization or a certified copy thereof in the registered business office, and upon request produce it to an authorized fisheries officer or other person authorized under this Act to inspect it.
- (4) The operator of a Somali vessel shall:
- (a) carry on board at all times such documents issued and certified by the Ministry as may be prescribed or required by the Minister or an international conservation and management measure, and upon request produce them to an authorized fisheries officer or other person authorized under this Act, other applicable legislation or who is carrying out duties pursuant to a relevant regional fisheries management organization;
  - (b) while in areas under the national jurisdiction of any other State comply with all legislation of that State; and
  - (c) while in an area of competence of a relevant regional fisheries management organization, comply with all applicable conservation and management measures.
- (5) The operator of a vessel that holds a licence, authorization or other permission for fishing or related activities shall, as a condition of licence or authorization maintain log books and make such reports relating to fishing or related activities at such times, containing such information and in such format as may be prescribed or required by the Director General in writing or required by an applicable international conservation and management measure.
- (6) The holder of any licence, authorization, other permission or registration shall report to the Director General:
- (a) the sale or transfer of any vessel company or item that is subject to or operating under the licence, authorization, other permission or registration, upon such sale or transfer;

- (b) any other change of information that was provided in the application form, registration form or other process or requirement to obtain the licence, authorization, other permission or registration,

within fourteen days of such sale, transfer or change.

(7) The holder of any licence, authorization, other permission or registration shall report to the Director General any change of information from that submitted in the application form within a maximum of 14 days or the licence, authorization, other permission or registration shall be deemed to have expired on the 15th day.

(8) All licences, authorizations and registrations granted under this Act are not transferable, and no person shall:

- (a) transfer, or attempt to transfer such licence, authorization or registration to another person or vessel; or
- (b) use or attempt to use a transferred licence or authorization as Ministry for fishing or related activities.

(9) Any person who contravenes any terms and conditions required under subsection (1)(a) or (b), subsection (2), (3), (4) (a) (b) or (c), (5), (6)(a) or (b), (7) or (8)(a) or (b) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or imprisonment to a term not exceeding three years, or to both, and the relevant licence may be suspended or cancelled, and in the case of contravention of subsection (6) (a) or (b) the relevant licence, authorization, other permission or registration shall be deemed invalid immediately after the expiry of the fourteen day period.

## **76 Conditions for transshipment**

(1) Each authorization for transshipment shall include the following conditions:

- (a) for transshipments in Somali waters, the operator of the vessel shall:
  - (i) transmit electronically a prior request to the Director General to land or tranship any or all of the fish or fish products on board, at such advance time and including such information as may be required;
  - (ii) carry out transshipment at any place designated by the Director General;
  - (iii) comply with such procedures as may be prescribed or required;
  - (iv) pay in full all costs of transport, accommodation and subsistence relating to the performance of the duties of an authorized fisheries officer or other person designated to conduct supervision of a transshipment of fisheries resources outside a Somali port;
  - (v) submit such Declaration of Transshipment as may be required by the Ministry or an international conservation and management measure;
  - (vi) during transshipment, comply with all applicable laws relating to protection of the marine environment.
- (b) for transshipment in the high seas area of a relevant regional fisheries management organization of catch from Somali waters or by Somali vessels, the operator of the vessel shall:

- (i) comply with the requirements of an applicable international conservation and management measure; and
  - (ii) pay in full all costs for observers or other person designated to monitor a transshipment of fisheries resources;
- (c) Fresh shark fins shall not be transhipped without the carcass and vice versa, and where sharks are landed frozen, up to the first point of landing vessels shall not have on board shark fins that total more than 5% of the weight of sharks on board.
- (2) Any person who contravenes any requirement in subsections (1)(a), (b) or (c) commits an offence and upon conviction shall be liable for a fine provided in the First Schedule or a term of imprisonment not exceeding five years or both, and any other penalty that may be provided under this Act.

## **77 Conditions for research**

- (1) Each authorization for research to conduct research in Somali waters in relation to any matter under the scope of this Act shall include the following conditions:
- (a) an application to conduct research in Somali waters shall:
    - (i) be made in writing to the Ministry not less than one month in advance of the expected starting date of such research, or such other advance time approved by the Director General;
    - (ii) include a research plan;
  - (b) the holder of the authorization shall:
    - (i) provide the Ministry the right to participate or be represented in research project, without obligation to contribute towards the costs of the project;
    - (ii) provide the Ministry with preliminary reports as soon as practicable and with the final results and conclusions upon the completion of the research;
    - (iii) undertake to provide access for the Ministry, upon request, to all data and samples derived from the research project and likewise to furnish it with data which may be copied and samples which may be divided without detriment to their scientific value;
    - (iv) upon a request by the Director General, provide the Ministry with an assessment of such data, samples and research results or provide assistance in their assessment or interpretation;
    - (v) inform the Director General immediately of any major change in the research programme;
    - (vi) unless otherwise agreed, remove any research installations and equipment once the research is completed;
    - (vii) inform the Ministry promptly of the results of the research;
    - (viii) notify the Ministry in advance of the publication of the research.

(2) Any person who does not comply with subsection (1) (a) or (b), or any other condition that may be required by the Director General or under this Act commits an offence and upon conviction shall be liable for a fine provided in the First Schedule or a term of imprisonment not exceeding three years or both, and any other penalty that may be provided under this Act, and the person's research authorization may be suspended or cancelled.

## **78 Conditions for fish aggregating devices**

- (1) The operator of each vessel that holds a valid and applicable authorization for the use of fish aggregating devices (FADs) shall:
- (a) maintain and keep on board the vessel at all times a FAD logbook which includes information that may be prescribed and any other information on all activities relating to the FADs as may be required by the Director General or by an international conservation and management measure;
  - (b) not use any FADs unless they are marked in accordance with such specifications that may be prescribed or required by the Director General, this Act or an international conservation and management measure;
  - (c) at all times track the vessel's deployed FADs and associated items;
  - (d) not abandon any FADs in Somali waters or on any land, reef or beach in Somalia;
  - (e) report to the Ministry full details of registration for all companies under which FADs are registered;
  - (f) not carry, deploy or collect more FADs than the total number permitted under the authorization;
  - (g) ensure that the FADs are designed and deployed in accordance with the following specifications:
    - (i) the surface structure of the FAD is not covered, or only covered with non-meshed material;
    - (ii) if a sub-surface component is used, it is not made from netting but from non-meshed materials such as ropes or canvas sheets; and
    - (iii) the use of synthetic marine debris in FADs shall be reduced and eliminated at the direction of the Director General, and natural or biodegradable materials such as hessian canvas or hemp ropes shall be used for drifting FADs;
  - (h) not assemble, construct, cause or allow to be assembled or constructed any FAD at sea;
  - (i) declare any purchases of FADs, and provide to the Ministry the purchase orders for all FADS purchased in any year or licensing period as the Director General may require;
  - (j) provide full access to the Ministry of direct live satellite transmissions from all FADs in real time;
  - (k) not deploy FADS in such a way as to hinder or block marine traffic or be a hazard to navigation at sea;

- (1) make such reports as may be required by the Director General, this Act or any applicable international conservation and management measure.
- (2) The Director General may attach any further conditions to an authorization to use fish aggregating devices as he or she sees fit.
- (3) A person who does not comply with conditions in subsection (1) (a), (b), (c), (d), (e), (f), (g), (h), (i) (j), (k) or (l) or with any other conditions that may be required under engages in fishing or related activities without a valid and applicable registration pursuant to subsection (3) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or to a term of imprisonment not exceeding three years or both, and to any other penalty provided under this Act, and the person's authorization may be suspended or cancelled.

## **79 Conditions for vessel monitoring system registration**

- (1) The operator of each vessel licensed to carry out fishing or related activities in Somali waters or of any Somali vessel authorized to carry out fishing or related activities in the area of competence of a relevant regional fisheries management organization shall, as a condition of licence or authorization, comply with requirements under section 117 of this Act and register with the Ministry the mobile transceiver unit required to be carried on board pursuant to this Act, in accordance with further requirements that may be prescribed or required by the Minister in the Official Bulletin or on the official website of the Ministry.
- (2) A person who engages in fishing or related activities without a valid and applicable registration pursuant to subsection (1) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or to a term of imprisonment not exceeding one year or both, and to any other penalty provided under this Act, and the person's licence may be suspended or cancelled.

## **Division 2 – Process for Licenses, authorizations, registrations and other permissions issued under the mandate of the Ministry**

### **80 Procedures and responsibilities for the licensing process**

- (1) The Minister shall approve transparent and accountable procedures and responsibilities for the process to issue licences, authorizations, registrations and other permissions, including designating officials of the Ministry responsible for receiving and reviewing applications and making recommendations for the Minister's decision on the grant, denial, suspension or revocation.
- (2) The Director General shall be responsible for implementing the procedures and responsibilities approved by the Minister and shall, after undertaking consultations as appropriate, make recommendations to the Minister for decision.
- (3) Information on licensing procedures, a list of current licences and fees shall be made available on the official website of the Ministry.

### **81 Application for licence, authorization, other permission, registration**

- (1) An application for a licence, authorization, other permission or registration under this Act shall be in such form, contain such information, be accompanied by such documentation and be submitted according to such requirements and procedures as may be prescribed or required by the Minister and posted on the official website of the Ministry.
- (2) An application made under this Act shall not be considered unless:



- (a) where the application is for a vessel to engage in fishing or related activities, it is accompanied by a Certificate of Registry, a certificate of Seaworthiness and Safety and an Insurance Certificate;
  - (b) the applicant is the natural or legal person to whom a vessel is registered in the Certificate of Registry;
  - (c) any application fee that may be prescribed or required by the Ministry is paid in full;
  - (d) where the applicant is a company registered in Somalia and any legal or beneficial owner is not a Somali citizen, the application is accompanied by a Certificate of Authorization stating the legal and beneficial ownership of such company and that the applicant is the natural or legal person who is named in the certificate of registry of a vessel;
  - (e) in the case of a foreign vessel, it is accompanied by a certified copy of a valid and applicable authorization for fishing or related activities in Somalia waters issued by the flag State;
  - (f) in the case of a foreign vessel, joint venture vessel or Somali vessel, the applicant declares that there is no participation by or association with a transnational criminal group in the relevant activities and guarantees that there shall be no such participation or association during the period of validity of the licence.
- (3) An application made under this Act shall not be considered where:
- (a) there are reasonable grounds to believe that any owner, operator or other person to be involved in fishing or related activities is associated with any transnational criminal group;
  - (b) true, correct and complete information is not provided on the application form or information is found to be false, inaccurate misleading or incomplete;
  - (c) a Certificate of Registry for the relevant vessel has been issued in Somalia but the Director General has not pre-approved the registration in accordance with this Act and established procedures;
- (4) The Ministry may carry out any investigations to verify information submitted under this section, and all persons associated with an application for a licence, authorization, other permission or registration shall give full cooperation and compliance with such investigation.
- (5) A person who does not provide full cooperation or compliance with investigations pursuant to subsection (4) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or to a term of imprisonment not exceeding three years or both, and to any other penalty provided under this Act, and the person shall not be issued with a licence, authorization, other permission or registration.
- (6) Where, after issuance of the licence, authorization, other permission or registration it is found that any information, declaration or documentation required under this section is false, forged or misleading, the licence, authorization, other permission or registration shall be deemed invalid and shall be revoked immediately.

## **82 Standards for endorsement of vessel registration**

- (1) Any application for registration made by a vessel that is equipped or is likely to carry out fishing or related activities in Somali waters, including foreign vessels, charter vessels and joint

venture vessels, shall not be granted by the Ministry of Ports and Marine Transport unless the Director General first endorses such registration.

(2) Registration of a foreign vessel in Somalia shall be considered invalid for purposes of issuance of licences, authorizations or other permissions for fishing or related activities under the scope of this Act unless the application has been endorsed prior to issuance by the Director General in accordance with subsection (1).

(3) In considering the endorsement of applications for registration by vessels, the Director General shall take into account the activities of the vessel and relevant standards, *inter alia*:

(a) the activities of the vessel and its operators, including:

- (i) whether such vessel is or has been on a list of illegal, unreported and unregulated vessels maintained by a regional fisheries management organization;
- (ii) whether such vessel or the operator of the vessel has been involved in any form of non-compliance with national fisheries laws or international conservation and management measures over the preceding ten years;
- (iii) whether such vessel, the operator of the vessel or its crew members have been involved in transnational criminal activities or an organized criminal group within the past ten years;
- (iv) such other activities that may indicate the likelihood of future non-compliance with this Act; and

(b) whether the following internationally agreed standards are met::

- (i) applicable international standards and requirements for vessel marking and identification;
- (ii) full information on vessel owners and operators is given which identifies effective beneficial owners and operators;
- (iii) full information on the history of the vessel is given and verified, including identification of prior flag and name changes;
- (iv) the vessel is not changing its flag for the purposes of circumventing international conservation and management measures or any other legal requirements or of facilitating non-compliance with such measures or requirements;
- (v) the characteristics of the vessel and whether it is fit for the purpose of fishing or related activities and compliance with this Act;
- (vi) whether the vessel is included on a Record of Authorized Vessels or equivalent maintained by a relevant regional fisheries management organization; and
- (vii) any other internationally agreed standards, including those in the 2014 FAO Voluntary Guidelines on Flag State Performance.

and shall not endorse the vessel for registration where any activity indicates a history of non-compliance by the vessel or vessel operator, unless the ownership of the vessel has subsequently changed and the new owner demonstrates that the previous owner has no interest in or control, or the vessel does not meet required standards or other requirements under this Act.

(4) Vessels that are registered in two or more States shall not be endorsed for registration except in cases of temporary parallel registration in accordance with law.

(5) Notwithstanding subsection (3), vessels with a history of non-compliance shall not be endorsed for registration, except where the ownership of the vessel has subsequently changed and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel.

(6) Endorsement of registration shall be valid for a period of up to two years.

(7) Where pre-approval for registration is given based on the standards and procedures in subsections (1) and (2), and there is any material change in facts or circumstances during the pendency of the registration that results in non-compliance with the standard or it is discovered that the information on which the pre-approval was based was false, inaccurate or incomplete, the Director General shall notify the Ministry responsible for registration and the vessel shall be deregistered immediately, and any applicable licence, authorization, other permission or other registration issued under this Act shall be considered invalid and revoked upon notification to the holder.

### **83 Pre-licensing and pre-registration inspection and other requirements**

(1) The operator of a vessel in respect of which an application has been made for a licence, authorization or other permission in accordance with this Act or a vessel registration in accordance with Somalia law shall, prior to the issuance of any licence, authorization or other permission or the endorsement of registration:

(a) at the direction of the Director General, avail the vessel intended to be used for fishing or related activities for inspection, survey or other requirement at a port approved by the Director General at such time and under such conditions as the Director General may determine; and

(b) fulfil pre-licensing and pre-registration criteria required under this Act or as may be prescribed or required by the Minister and published on the official website of the Ministry;

(2) Subject to paragraph (a) of subsection (1) the operator shall provide not less than forty-eight hours advance notice of the vessel's estimated time of arrival, weight by fish species catch onboard and port of call to the Ministry.

(3) An authorized fisheries officer shall undertake and verify the pre-licensing or pre-registration inspection of any vessel in accordance with this Act and such criteria as may be approved Minister, and in addition the Director General may designate a survey inspector to undertake such inspections.

(4) The Ministry shall review all relevant documentation required for the consideration and issuance of a registration, licence, authorization or other permission.

(5) The operator of the vessel subject to the requirements in this section shall:

(a) allow and assist any authorized fisheries officer and survey inspector to board and inspect the vessel and otherwise exercise his or her powers and responsibilities under this Act; and

(b) provide to the Ministry all documentation and information required for consideration and issuance of a registration, licence, authorization or other permission.

(6) The Director General may, notwithstanding subsection (1), provide a time within which inspection must be made after issuance of a relevant license where exceptional circumstances exist, not to exceed two weeks.

(7) Any operator who does not comply with any requirement in subsection (1), (2), (3) or (6)(a) or (b) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule and any other penalty provided under this Act, and in addition where the conditions under (1)(a) or (b) are not met the operator shall not be granted a license, authorization or other permission pursuant to this Act.

#### **84 Standards for grant or renewal of licences, authorizations, other permissions or registrations**

(1) The Minister shall, within a reasonable time and taking into account the recommendations of the Director General, grant or deny an application for any licence, authorization, other permission or registration made under this Act, except that issuance shall be denied where so recommended.

(2) In recommending the grant or renewal of licences, authorizations, other permissions or registrations under this Act, the Director General shall take into account the extent to which any relevant State, operator, owner, charterer of the vessel or other relevant person or company, or the vessel, as appropriate, has:

- (a) complied with this Act, other relevant laws of Somalia, applicable licensing terms and conditions and any applicable access agreement;
- (b) complied with any applicable requirements concerning the appointment of agents and the agent(s) has complied with this Act and other relevant laws of Somalia;
- (c) complied with requirements for seaworthiness and safety;
- (d) provided all required data and information and vessel attributes promptly and accurately, including any applicable vessel monitoring system requirements;
- (e) complied with all applicable international conservation and management measures and such other regional and international standards as may be applicable;
- (f) been included in the record of authorized vessels of any relevant regional fisheries management organization;
- (g) not been, or is not associated with a vessel that is on a list of any relevant regional fisheries management organization designating vessels that have engaged in illegal, unreported or unregulated fishing or related activities;
- (h) is fit for the purpose for which the application has been made; and
- (i) the ability to comply with this Act.

(3) In this section, “vessel attributes” includes the type, construction, capacity, machinery and other attributes of a vessel, and specifications and other information in relation to its gear, equipment, aircraft and instrumentation.

#### **85 Grounds for denial or non-renewal of licences, authorizations, registrations**

(1) Issuance or renewal of any licence, authorization, other permission or registration under this Act shall be denied where the Director General determines that:

- (a) the standards set out in section 84 are not been met at all or any times;
- (b) the exploitation of the fisheries is unsustainable;
- (c) the operator of the vessel has not complied with or fulfilled pre-licensing requirements in accordance with section 83;
- (d) the operator of the vessel has been convicted of an offence involving dishonesty or fraud;
- (e) notwithstanding any other provision in this Act, the operator of the vessel or the vessel is subject to an access agreement and has not fully complied with the agreement, this Act or any applicable international conservation and management measure;
- (f) there is sufficient evidence that the operator or any person associated with the vessel has engaged in any IUU fishing or related activity or any other relevant illegal activity and has not satisfied any relevant judgement or determination or been involved in an organized criminal group or transnational crime;
- (g) the operator of a vessel has committed an offence in Somali waters, or the vessel has been used for such an offence and any consequent process has not been concluded;
- (h) the operator of the vessel is associated with a vessel that is on a list maintained by a relevant regional fisheries management organization of vessels that have engaged in illegal, unreported or unregulated fishing;
- (i) the vessel is registered under a flag that is reasonably considered to be a “flag of non-compliance” because of the failure of the flag State to exercise effective flag State responsibility based, *inter alia*, on criteria set out in paragraph 2 of the FAO Voluntary Guidelines for Flag State Performance;
- (j) the vessel is not fit for the purpose for which application has been made;
- (k) port State measures have been taken against the vessel under an applicable conservation and management measure, there is reasonable evidence that the vessel had engaged in illegal, unreported and unregulated fishing and the operator or vessel has not submitted to such legal or other process as may be demanded by a relevant port State, coastal State or flag State in relation to such evidence;
- (l) any or all of the applicant, owner or operator has not:
  - (i) complied with the terms of an existing or previous licence or any other requirement under this Act;
  - (ii) complied with any law of Somalia; and
  - (iii) submitted to due process under this Act in respect of the non-compliance or fully satisfied any applicable judgment or determination.

(2) If the information in an application for a licence, authorization, registration or renewal thereof is found to be false, misleading or inaccurate in any material sense, the Director General may recommend that the licence, authorization or registration not be granted or renewed.

(3) A licence, authorization, other permission or registration shall not be granted or renewed unless all applicable fees, charges or levies required pursuant to this Act may be required have been paid.

(4) A licence, authorization, other permission or registration shall not be granted or renewed in relation to any foreign vessel previously licensed for fishing or related activities by a foreign State if that vessel undermined the effectiveness of applicable international conservation and management measures and:

- (a) the foreign State suspended the previous licence, and the suspension has not expired; or
- (b) the foreign State, within the last three years preceding the application for a licence under this Act, withdrew the previous licence.

(5) The restriction in subsection (4) does not apply if:

- (a) the ownership of the vessel has changed since the vessel undermined the effectiveness of applicable international conservation and management measures; and
- (b) the new owner has provided evidence to the Director General that, in his or her opinion, demonstrates that the previous owner has no further legal, beneficial or financial interest in the vessel.

(6) The Director General shall notify in writing the applicant of the refusal to grant or renew a licence, authorization, other permission or registration and the reasons for the refusal.

## **86 Appeals**

(1) The Minister shall, in consultation with the Minister of Justice, establish an Appeals Committee of not more than three persons having knowledge of fisheries or legal matters, which shall include, where possible, at least one government official and one person from civil society.

(2) The appeals committee shall have a mandate of hear and determine appeals from the decisions of the Minister in relation to decisions concerning licences, authorizations, other permissions and registrations, and the agreed terms of establishment of the Appeals Committee will state whether its decisions are final.

(3) The Appeals Committee shall determine its procedures and shall give written notice to the appellants of its decisions and the reasons therefor.

## **87 Fees, charges and levies**

(1) All fees, charges and levies that are prescribed or required in writing by the Minister pursuant to this section shall be posted on the official website of the Ministry or specified in an agreement for fisheries access.

(2) The Minister may prescribe or require in writing fees, charges and levies in relation to any requirement or activity under the scope of this Act, including *inter alia*:

- (a) licenses, authorizations, other permissions and registrations;
- (b) endorsement of vessel registration;
- (c) agents;

- (d) transshipment;
- (e) landing;
- (f) management of a VMS electronic reporting system and electronic monitoring system;
- (g) observers; and
- (h) such other charges as may be required for matters within the scope of this Act.

(3) A licence, authorization, other permission or registration granted or renewed under this Act shall be subject to payment of the following, in such amount as may be prescribed or required in writing by the Minister:

- (a) an application fee;
- (b) an issuing fee;
- (c) a renewal fee; and
- (d) such other fees, charges or levies as are set out in this Act, or as may be prescribed or approved by the Minister.

(4) Payments shall not be refundable except where *pro rata* refunds are given in accordance with this Act.

(5) Where a person to whom a licence, authorization, other permission or registration has been issued under this Act satisfies the Director General that the licence has been lost, destroyed or defaced, the Director General may, on payment of a fee of thirty percent of the value of the licence or such other amount that may be prescribed or approved by the Minister, issue a duplicate licence including any particulars endorsed or entered upon the licence lost, destroyed or defaced and the duplicate so issued shall have the same effect as the original licence.

(6) A licence, authorization, other permission or registration which has been altered without lawful Ministry or has been defaced or mutilated shall be deemed as an invalid licence for the purpose of this Act.

## **88 Duration of licenses, authorizations, other permissions and registrations**

All licences, authorizations, other permissions and registrations issued pursuant to this Act shall, unless suspended, revoked or otherwise cancelled, have a maximum duration of one year from the date of issuance, and may have a shorter duration as prescribed or required by the Minister.

## **89 Suspension, cancellation, surrender or termination of a licence, authorization, other permission or registration**

(1) The Minister may suspend or cancel a licence, authorization, other permission or registration, in accordance with such procedures as may be prescribed for any of the following reasons:

- (a) the holder has contravened:
  - (i) this Act or the terms and conditions specified in the licence or authorization;
  - (ii) any applicable access agreement; or

- (iii) any applicable international conservation and management measure;
  - (b) the holder had provided false, misleading or incomplete information in the application;
  - (c) the holder has not submitted to the required legal, judicial or administrative process, discharged an applicable fine or penalty or complied with the requirements of an applicable judicial order or administrative determination;
  - (d) another State suspends or cancels the licence or authorization of a Somalia vessel that has been issued a licence or authorization to fish in that State's waters for reasons related to illegal, unreported or unregulated fishing or related activities or violation of legislation;
  - (e) there has been a change in circumstances affecting the eligibility criteria required for the licence, authorization or registration;
  - (f) there has been a material change since the grant of the licence, authorization or registration under such conditions as may be prescribed or the Minister may determine on the recommendation of the Director Genral;
  - (g) it is necessary to do so to ensure the sustainable use of the fisheries resource or to implement any international conservation and management measure;
  - (h) such seaworthiness, safety and labour standards as may be required are not met at all times;
  - (i) there is sufficient evidence that the owner, operator or master has engaged in any IUU fishing or related activity not otherwise addressed under this section or any other illegal activity or is associated with any organized criminal group or transnational criminal activity;
  - (j) information included in the application for the grant or renewal of the licence is found to be false, misleading or inaccurate; or
  - (k) for such other reasons as may be prescribed.
- (2) The Minister shall suspend or cancel a licence or authorization, in accordance with such procedures as may be prescribed, where:
- (a) this Act, or any applicable access agreement or applicable international conservation and management measure so requires;
  - (b) judicial or administrative procedures taken in relation to the licence holder pursuant to this Act so require;
  - (c) in the case of a foreign vessel, the licence issued by the flag State has been suspended or revoked.
- (3) The suspension or cancellation of any licence or authorization shall be promptly communicated by the Director General to the licence holder by way of a written notice.
- (4) Where a relevant access agreement terminates during the period of validity of the licence, the licence shall terminate on the same date as the access agreement and shall no longer be valid.
- (5) No person whose licence or authorization is suspended or cancelled under subsection (1) or (2) is entitled to the refund of any fee, levy, or other charge paid in respect of the licence.
- (6) Notwithstanding subsection (4), a *pro rata* refund, based on the duration of the suspension, shall be made in respect of a licence or authorization suspended or cancelled under subsection (1)(g).



(7) Any holder of a licence, authorization, other permission or registration issued under this Act shall surrender it to the Ministry after ceasing fishing operations, suspension or revocation, as may be required by the Director General, without prejudice to any liability or obligations which have accrued on the holder prior to the date of surrender.

(8) Any person who finds a licence, authorization, other permission or registration issued under this Act shall surrender it to the Ministry or the nearest police station.

(9) Any person who:

(a) engages in any activity for which the licence, authorization, other permission or registration was granted after receiving notice of suspension or cancellation pursuant to this Act; or

(b) having found a licence, authorization or registration issued under this Act purports to use it as the holder,

commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or imprisonment to a term not exceeding five years, or to both, and any other penalty provided under this Act.

## **9. MONITORING, CONTROL AND SURVEILLANCE**

### **Division 1 - Administration**

#### **90 Monitoring, Control and Surveillance responsibilities and cooperation**

(1) The Minister shall designate a Department which shall have lead responsibility in Somalia for fisheries monitoring, control, surveillance and enforcement of this Act under the general direction of the Minister.

(2) The Department shall, in carrying out the mandate and responsibilities of the Ministry, promote effective cooperation and coordination with:

(a) Federal Member States;

(b) other national Ministries, agencies, organizations and others as appropriate; and

(c) relevant regional and international organizations or arrangements,

in monitoring, control, surveillance and enforcement operations concerning matters under the scope of this Act.

### **Division 2 – Authorized fisheries officers, inspectors, observers**

#### **91 Appointment of authorized fisheries officers**

(1) The Director General shall in writing appoint among the officers of the Ministry authorized fisheries officers in accordance with such guidelines, terms and qualifications as may be approved by the Minister.

(2) The following persons are deemed to be authorized fisheries officers for the purposes of this Act:

(a) the Director General;

(b) public officers employed by the Ministry who are appointed in writing by the Director General as authorized fisheries officers;

- (c) such members or class of members of the Somali Coast Guard, the Somali Police Force, the Coastal Police Unit and such other Somali public service officers carrying out duties as enforcement officers or inspectors as the Minister and the Ministers responsible for such service may both approve in writing and the Director General appoints in writing;

## **92 Appointment of inspectors**

- (1) The Minister may promulgate regulations that provide for the appointment, functions, responsibilities and other requirements of inspectors for any activity under the scope of this Act, including fish inspectors for purposes of inspecting the quality of fish and fish products.
- (2) The Director General shall in writing appoint any person or category of persons as fisheries inspectors for the purpose of making inspections and reports of activities under the scope of this Act and related duties as may be provided by regulation adopted under subsection (1) in accordance with such guidelines, terms and qualifications as may be approved by the Minister.

## **93 Appointment and functions of observers**

- (1) The Director General may, in writing, appoint any person or category of persons as an observer for the purpose of observing, collecting, recording and reporting reliable and accurate information and data for scientific, monitoring, management and compliance purposes under the scope of this Act, in accordance with such guidelines, terms and qualifications as may be approved by the Minister.
- (2) The Director General shall not appoint as observer any person who has a direct or indirect interest or association with the vessel, activity or persons being observed, such as an operator, crew member or other person associated with the vessel owner or operator, and no such person shall be permitted serve as an observer on any vessel or for any activity under the scope of this Act.

## **94 Exercise of powers and functions by authorized fisheries officers, inspectors and observers**

- (1) Authorized fisheries officers, inspectors and observers shall exercise monitoring, control, surveillance and compliance functions in accordance with this Act in areas to which this Act applies, including:
  - (a) areas under the national jurisdiction of Somalia; and
  - (b) areas beyond the national jurisdiction of Somalia to which this Act applies under section 3, in accordance with requirements of this Act and any international conservation and management measure, international agreement or international law, and in relation to any Somali vessel, vessel without nationality or other circumstance that falls within such requirements.
- (2) Where authorized fisheries officers, inspectors and observers exercise their functions pursuant to subsection (1)(b), the provisions of this Act are applicable as if the duties were performed in areas under national jurisdiction.
- (3) Each authorized fisheries officer, inspector and observer shall, in the course of discharging his or her duties, carry identification issued by the Ministry in such form as may be prescribed or approved by the Ministry and shall produce it on request for purposes of identification, and the production of identification shall, unless the contrary is proved, be sufficient for the exercise of powers and functions under this Act.

## **95 General powers of authorized fisheries officers**

- (1) An authorized fisheries officer may do such acts and things and give such directives as are reasonably necessary for the purposes of performing or exercising his or her functions, powers and duties under this Act.
- (2) An authorized fisheries officer may use such force as is reasonably necessary to exercise his or her powers and duties under this Act.
- (3) An authorized fisheries officer may require any persons to assist him or her:
  - (a) to bring a vessel to a place in Somalia in accordance with this Act; or
  - (b) in circumstances where the need for assistance in enforcing this Act is immediate and urgent, and that person is deemed to have the powers of an authorized fisheries officer for the purposes for which, and time during which, he or she is required to act, except for the power of arrest.
- (4) Subsection (3) shall apply where a person or persons are duly appointed by another State with powers and Ministry similar to those of an authorized fisheries officer under this Act, and in addition the Director General may, in consultation with authorities of such other State, declare such person or persons to have the Ministry and powers of an authorized fisheries officer under this Act for a specified purpose, area or time except for the power of arrest.

## **96 Power of entry and search**

- (1) The application of this section extends to all activities falling within the scope of this Act and areas to which this Act applies.
- (2) An authorized fisheries officer may, for purposes and activities falling within the scope of this Act, without a warrant:
  - (a) stop, board, stay on board, enter and search any vessel, vehicle or aircraft, including:
    - (i) any vessel which he/she has reason to believe has been used, is being used or is intended to be used for fishing or a related activity;
    - (ii) any Somali vessel beyond Somali waters;
    - (iii) any vessel without nationality on the high seas; and
    - (iv) any other vessel to which this Act, any international law, international agreement or applicable international conservation and management measure applies,

and such search may include the breaking open of any hold or compartment, container or other receptacle upon a boarded vessel that the authorized fisheries officer has reasonable grounds to believe may contain evidence of an offence under this Act;
  - (b) enter, examine and search any premises or place, other than premises used exclusively as a dwelling house, including premises that are part of or attached to a dwelling house which he/she reasonably suspects are used for activities falling within the scope of this Act:
    - (i) in or on which he/she has reason to suspect that evidence of an offence against this Act may be found; or

- (ii) that it is necessary or expedient to enter or search to ascertain whether this Act is being or has been complied with;
- (c) stop any person and examine any record, article, container, gear, apparatus, device or fish in the possession of that person;
- (d) pass across any land;
- (e) monitor landing and transshipment operations and take samples, photographs, videos and relevant documentation;
- (f) require a person engaged or apparently engaged in any activity for which a license, authorization or other permission is required under this Act or an applicable international agreement or international conservation and management measure to:
  - (i) give information about the relevant activity;
  - (ii) state whether he/she holds a license, endorsement or other authorization under this Act and, if so, to produce the license, endorsement or other authorization;
  - (iii) state his or her name, date of birth and place of abode;
- (g) make an entry dated and signed by her/him in a vessel's log, and require the master to sign the entry, or to indicate on a chart or other document the position of the vessel at that time and initial such chart or other document accordingly;
- (h) require any person associated or apparently associated with a vessel, vehicle, aircraft, premises, facility, or other place or activity falling within the scope of this Act, to provide such information as may be reasonably required for the enforcement of this Act;
- (i) examine any gear, equipment, record or other document that is found in or on any vessel, vehicle, aircraft, premises, facility or place, that he/she has reason to believe has been used, is being used or is intended to be used for or in relation to any activity requiring a license or authorization under this Act;
- (j) examine and/or test or cause to be examined and/or tested any electronic equipment required to be on board any vessel or used for the any purpose that falls within the scope of this Act,

and may examine and search any document, record, article, gear, equipment, apparatus, device, container, fish and contents of any kind found therein or thereon.

(3) An authorized fisheries officer may, in respect of premises used exclusively as a dwelling house, only conduct searches and seizures in accordance with this Act and with a warrant issued by any court of competent jurisdiction, and the provisions of this section shall apply mutatis mutandis.

## **97 Power to investigate or request investigations of persons for activities beyond areas under national jurisdiction**

An authorized fisheries officer may:

- (a) investigate any person where there are reasonable grounds for believing that such person, natural or legal, is associated directly or indirectly with any vessel or activity that may not be complying with this Act in areas beyond national jurisdiction;

- (b) request another State to carry out investigations of any vessel or person, natural or legal, where there are reasonable grounds to believe that such vessel or person has been involved in illegal, unreported or unregulated fishing in violation of this Act, any international conservation and management measures or international agreement.

## **98 Power to take, detain, remove and secure information, evidence**

(1) An authorized fisheries officer may, for purposes and activities falling within the scope of this Act:

- (a) inspect, take, detain and secure samples, documents, logbooks including electronic logbooks or other information, or copies thereof, from any vessel, premises, facilities or other place, other than premises used exclusively as a dwelling house, but including premises that are part of or attached to a dwelling house used for activities falling within the scope of this Act;
- (b) make or take copies of any record, and for this purpose may take possession of and remove any records from the place where they are kept, for such period of time as is reasonable in the circumstances;
- (c) if necessary, require a person to reproduce, or assist the authorized fisheries officer to produce in a useable form, information recorded or stored in a document; and
- (d) require any person associated or apparently associated with a vessel, premises, facilities or other place or activity falling within the scope of this Act to provide such information as may be reasonably required for the monitoring or enforcement of this Act.

(2) Where an authorized fisheries officer is questioning a person for the purposes of subsection (1)(d), he or she may:

- (a) require the person being questioned to provide answers including any explanation or information concerning any vessel or any place or thing or fishing method, gear, apparatus, record, document, article, device, or thing relating to the taking, sale, purchase, or possession of any fish; and
- (b) require that person or any other person to produce any permit, Ministry, approval, permission, licence, certificate or other document issued in respect of any vessel or person.

## **99 Power to detain persons, vessels, gear, etc.**

(1) An authorized fisheries officer may detain any person, vessel, vehicle, parcel, package, record, document, article, gear, equipment, apparatus, device, container, fish or thing for such period as is reasonably necessary to enable an examination or search under this Act.

(2) Where a vessel or vehicle is detained, including any of its gear and equipment, a Notice of Detention in such form as may be approved by the Director General or prescribed shall be provided to the operator of a relevant vessel or vehicle and a copy of such Notice shall be promptly transmitted to any relevant government Ministry of Somalia.

(3) Where a foreign vessel is detained, the Director General shall ensure that the flag State is notified.

## **100 Power of arrest**

(1) An authorized fisheries officer who has legal authority to make arrests, may, if he or she believes on reasonable grounds that a person is committing or has committed an offence against this Act:

- (a) order that person to immediately cease and desist;
- (b) request that person to supply to the authorized fisheries officer their name, date of birth, residential address and occupation and request such verification of those details as it is reasonable in the circumstances; and
- (c) arrest that person without warrant.

(2) Where a person associated with a foreign vessel is arrested, the Director General shall ensure that the flag State is notified.

### **101 Power to order a vessel to port**

(1) An authorized fisheries officer may order a vessel to port for inspection concerning compliance with this Act, any international conservation and management measure or an international agreement.

(2) The operator of any vessel that does not immediately comply with the order to port or submit to any inspection procedures in port commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or to a term of imprisonment not exceeding five years or both, and to any other penalty provided under this Act.

### **102 Power to give direction**

(1) An authorized fisheries officer who reasonably believes that a vessel, including its gear or equipment, is being or has been used in contravention of this Act, an applicable licence, authorization or other permission, an international conservation and management measure or any agreement entered into under this Act:

- (a) may take the vessel as soon as reasonably practicable to the nearest available port in Somalia for purposes related to inspection or such port or place that will facilitate inspection, having due regard for the safety of the vessel and crew;
- (b) may remain in control of the vessel at such port for such period as is reasonably necessary to enable the authorized fisheries officer to exercise any other powers under this Act, until the vessel is permitted to depart from the port.

(2) The vessel shall be permitted to depart within a reasonable time after arrival in port where, after full inspection of the vessel and all relevant evidence, the Ministry, in consultation with the Attorney General and relevant government officials and regional fisheries management organization, determines there are no reasonable grounds to suspect a contravention described in subsection (1).

### **103 Seizure of vessels, aircraft, items**

(1) For the purposes of this section, a vessel's equipment, gear, furniture, appurtenances, stores, and cargo are deemed to form part of the vessel.

(2) An authorized fisheries officer may seize:

- (a) any vessel or other conveyance, gear, implement, appliance, material, container, goods, equipment or thing which the authorized fisheries officer believes on reasonable grounds is being, has been or is intended to be used in the commission of an offence against this Act;
- (b) any fish or fish product (and any other fish with which such fish are intermixed) that the authorized fisheries officer believes on reasonable grounds are being or have been taken, killed, transported, bought or sold or have been found in the possession of any person in contravention of this Act or are found to be diseased or unfit for human consumption;
- (c) any item, article, record or thing that the authorized fisheries officer believes on reasonable grounds may provide evidence of an offence against this Act or contravention of an applicable international conservation and management measure;
- (d) any passport and seaman's record book:
  - (i) of the master and crew of a vessel directed to return to and remain in port pursuant to this Act until the vessel is permitted to depart;
  - (ii) of any person arrested, until that person is brought before a court; or
  - (iii) pursuant to any order of the Court; and
- (e) any other item which the authorized fisheries officer has reasonable grounds to believe:
  - (i) has been or is being used to commit an offence against this Act;
  - (ii) has been forfeited under this Act; or
  - (iii) has been unlawfully removed from custody under this Act.

(3) An authorized fisheries officer shall deliver anything seized under subsection (2) into the custody of the Ministry for safekeeping under such procedures and protections as may be prescribed or the Director General may require.

(4) A written notice of the seizure shall be given to the person from whom any article or thing was seized or to any other person whom the authorized fisheries officer believes is the owner or person otherwise entitled to possession of the article or thing seized, and the grounds for such seizure shall be stated in the notice.

(5) The Director General shall, upon seizure of a foreign vessel, ensure that the flag State is promptly notified of any action taken and penalties imposed.

#### **104 Removal of parts from seized vessels**

(1) An authorized fisheries officer may remove or cause to be removed any part from the vessel seized pursuant to this Act for the purpose of immobilising that vessel.

(2) Any part or parts removed under subsection (1) shall be kept safely and returned to the vessel upon its release.

(3) No person, otherwise than acting in accordance with a written direction from the Director General, shall:

- (a) possess or arrange to obtain any part or parts removed under subsection (1);

(b) possess or arrange to obtain or make any replacement or substitute part or parts for those removed under subsection (1); or

(c) fit or attempt to fit any part or parts or any replacement or substitute part or parts to a vessel immobilised pursuant to this Act.

(4) Any person who contravenes subsection (3) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or to a term of imprisonment not exceeding five years or both, and to any other penalty provided under this Act.

### **105 Hot pursuit**

(1) An authorized fisheries officer who suspects on reasonable grounds that a foreign vessel has contravened this Act, an applicable international conservation and management measure or international agreement, may undertake hot pursuit of a foreign vessel in accordance with conditions recognized under international law, including those required in Article 111 of the United Nations Convention on the Law of the Sea.

(2) Any authorized fisheries officer exercising powers described in subsection (1) shall inform the Director General, who shall, through the ministry responsible for foreign affairs, inform the flag State.

(3) The operator any vessel who does not comply with the order to stop or with any powers exercised by a fisheries inspector or authorized fisheries officer commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or to a term of imprisonment not exceeding five years or both, and to any other penalty provided under this Act, and an applicable licence or authorization of the vessel may be cancelled and all fish or fish products on board shall be forfeited.

### **106 Responsibilities of observers**

(1) The responsibilities of observers shall include:

(a) observing, monitoring, collecting, recording, assessing, verifying and reporting information that may be required for purposes of this Act including *inter alia* on any activity under the scope of this Act, the effect of such activity on the fisheries or aquaculture resources and their environment and all aspects of such activities related to compliance;

(b) taking samples or photographs of fish harvested or anything on board a vessel;

(c) monitoring the implementation of conservation and management measures taken pursuant to this Act, applicable international conservation and management measures and international agreements; and

(d) such other responsibilities under this Act as may be required to discharge the observer's functions.

(2) The responsibilities of observers shall include performing:

(a) such other activities to implement applicable international conservation and management measures as may be assigned by the Director General;

(b) such activities that may assist the Director General to obtain, analyse or verify information for fisheries scientific, conservation, management and compliance purposes, and as may be assigned by the Director General.



(3) Observers may be deployed, as may be directed by the Director General in accordance with this Act, any international agreement or applicable international conservation and management measure, on or in relation to any vessel used for fishing, transshipment, transportation or landing of fish or in relation to any other activity within the scope of this Act, within and beyond areas under the national jurisdiction of Somalia.

### **107 Observer costs**

(1) The costs for observers performing duties pursuant to this Act shall be charged as a separate “observers levy” in addition to all other charges including the fees relating to licences, authorizations, other permissions and registrations, in such amount and manner as the Minister may require or as may be prescribed.

(2) The costs referred to in subsection (1) shall include, *inter alia*:

- (a) full insurance coverage;
- (b) salary;
- (c) allowances;
- (d) equipment;
- (e) training;
- (f) all travel and associated expenses to and from the vessel or other place to which the observer is assigned; and
- (g) other costs associated with the management and administration of the observer programme at a level to be prescribed or approved by the Board.

(3) Where payment required pursuant to subsection (1) is not made as required, the applicable license or authorization shall not be issued, or if issued be deemed to be suspended and without legal force or effect until payment in full has been made and acknowledged in writing by the Director General.

### **108 Duty of operators, and crew members to assist observers**

(1) The operator and each crew member of any vessel on which an observer is placed shall, at all times within and beyond areas under the national jurisdiction of Somalia, allow and assist the observer, in the performance of his or her duties, to:

- (a) board such vessel;
- (b) provide the observer with appropriate working space, access to all spaces and communication equipment;
- (c) receive and transmit messages and communicate with the shore and other vessels by means of the vessel’s communications equipment;
- (d) ensure that accommodation, meals and treatment of the observer is at the same standard as officers on board the vessel;

- (e) take photographs of the fishing operations, including fish, gear, equipment, documents, charts and records, and remove from the vessel such photographs or film as the observer may have taken or used on board the vessel;
- (f) gather such other information relating to fisheries as may be required for purposes of carrying out the objectives of this Act or any applicable conservation and management measure; and
- (g) disembark at such time and place as the Director General may require, provided that such disembarkation is in accordance with the safe operation of the vessel.

(2) An operator or a crew member of any vessel on which an observer is placed in accordance with this Act commits an offence if he or she contravenes any part of subsection (1), and each part shall be considered as a separate offence, and upon conviction shall be liable to a fine provided in the First Schedule or to a term of imprisonment not exceeding five years or both, and to any other penalty provided under this Act.

### **109 Notice of intention to place observer**

(1) Before placing any observer on a vessel, the Director General shall give the operator or holder of the licence, authorization or other permission reasonable notice of his or her intention to place an observer on the vessel.

(2) Any operator who fails to board the observer at the time and place notified by the Director General commits an offence and upon conviction shall be liable to a fine provided in the First Schedule and in addition the applicable licence, authorization or other permission may be suspended or cancelled.

### **110 Observers and field inspectors under a regional fisheries management organization observer scheme**

(1) This Act applies to activities under the observer scheme of a relevant regional fisheries management organization and the collection of verified catch data and other scientific data related to the fisheries for species and the area of competence over which such regional fisheries management organization has a mandate.

(2) For purposes of this section, “observer” refers to a person whose duties are on board vessels and “field inspector” refers to a person who collects information on land during the unloading of vessels.

(3) An observer shall, *inter alia*:

- (a) record and report fishing activities, verify positions of the vessel;
- (b) observe and estimate catches as far as possible with a view to identifying catch composition and monitoring discards, bycatches and size frequency;
- (c) record the gear type, mesh size and attachments employed by the master;
- (d) collect information to enable the cross-checking of entries made to the logbooks (species composition and quantities, live and processed weight and location, where available); and
- (e) carry out such other scientific work as requested by the Scientific Committee of the relevant regional fisheries management organization.

(4) A field inspector shall monitor catches at the landing place with a view to estimating catch-at-size by type of boat, gear and species, or carry out such scientific work as requested by the Scientific Committee of a relevant regional fisheries management organization.

(5) The confidentiality rules, policy and procedures for fine-scale data set out in any applicable international conservation and management measure shall be applicable and have the force of law in Somalia.

### **Division 3 - Protection and obstruction of authorized persons**

#### **111 Definition of authorized person**

For the purposes of this Division, “authorized person” includes authorized fisheries officers, inspectors and observers appointed in accordance with this Act or under an observer programme of a relevant regional fisheries management organization.

#### **112 Protection of authorized persons from liability**

(1) Authorized persons and any person assisting an authorized fisheries officer pursuant to section 95(3) who act or omit to act while performing or exercising functions, powers or duties under this Act are not subject to any action, liability, claim or demand for anything done or omitted to be done in good faith, whether negligently or not, in the performance or exercise, or purported performance or exercise, of such functions, powers, or duties under this Act.

(2) Where a vessel is being brought to a place in Somalia as ordered in accordance with this Act:

- (a) if required to remain in control of the vessel, the master shall be responsible for the safety of the vessel and of each person on board until the vessel arrives at the designated place; and
- (b) no claim may be made against an authorized person in respect of any death, injury, loss or damage that occurs while the vessel is being brought to such place.

#### **113 Obstruction of, failure to comply with authorized persons**

(1) For the purposes of this Act, “fails” includes any effort which does not result in meeting the specified requirement.

(2) A person commits an offence who:

- (a) interferes with, intimidates, threatens or obstructs an authorized person in the performance of his or her duties;
- (b) fails or refuses:
  - (i) to allow an authorized person to carry out his or her duties safely; or
  - (ii) to take all reasonable measures to ensure the safety of an authorized person as appropriate in the performance of his or her functions or duties;
- (c) is the operator or a crew member of a vessel, and fails or refuses to allow and assist an authorized person to perform or exercise his or her functions, powers or duties, including to:
  - (i) safely board the vessel;

- (ii) have full access to and use of such places, facilities, fish, gear and equipment on board, including navigational and communications equipment;
  - (iii) have full access to the vessel's electronic and hardcopy records including its logbook, charts, documentation and other information relating to fishing;
  - (iv) take, measure, store on or remove from the vessel and retain, such reasonable samples or whole specimens of any fish as may be required for scientific purposes; and
  - (v) safely disembark from the vessel;
- (d) obstructs or refuses to allow an audit, inspection, examination or search that is authorized under this Act;
- (e) fails or refuses to facilitate by all reasonable means an authorized person's entry into and any inspection of:
- (i) any premises, including import, export, aquaculture or other facility, including storage areas and suspected storage areas, or locations;
  - (ii) any fish or fish products, gear, equipment or records;
- (f) fails or refuses to comply with a lawful instruction or direction or denies a request given by an authorized person in the course of exercising his or her functions, powers and duties, including any request to provide information;
- (g) when lawfully required to give information to an authorized person, gives information which is false, incorrect or misleading in any material respect;
- (h) resists lawful arrest for any act prohibited by this Act;
- (i) interferes with, delays or prevents by any means, the apprehension or arrest of another person by an authorized person, if the authorized person has reasonable grounds to believe that the person has committed an offence under this Act;
- (j) impersonates an authorized fisheries officer or inspector or falsely represents himself or herself to be an authorized fisheries officer;
- (k) impersonates or falsely represents himself or herself to be or not to be the operator, master or an officer of a vessel;
- (l) if requested by an authorized fisheries officer, fails to sail a vessel to a place in Somalia designated by the authorized fisheries officer and to ensure the safety of all those on board;
- (m) bribes or attempts to bribe an authorized person;
- (n) kidnaps, causes bodily harm to or assaults:
- (i) an authorized person who is carrying out his or her duties or exercising his or her powers under this Act or as a consequence of his or her having done so; or
  - (ii) any person lawfully acting under an authorized fisheries officer's instructions or in his or her aid or as a consequence of his or her having done so,
- or aids, incites, or encourages another person or persons to do so.

- (3) Any person who commits an offence described in:
- (a) any of subsections (2)(a) to (m), and upon conviction shall be liable to a fine provided in the First Schedule or to a term of imprisonment not exceeding three years or both, and to any other penalty provided under this Act; or
  - (b) subsection (2)(n), and upon conviction shall be liable to a fine provided in the First Schedule or to a term of imprisonment not exceeding ten years or both, and to any other penalty provided under this Act.

#### **Division 4 - Inspection procedures**

##### **114 Pre-licensing and unloading inspection procedures**

An authorized fisheries officer or inspector shall, for the purposes of pre-licensing or unloading inspection, perform such inspections, carry out such procedures and apply such standards that may be prescribed by an applicable international conservation and management measure, relevant regional fisheries management organization or international agreement.

##### **115 Sea inspection procedures**

An authorized fisheries officer shall, for the purpose of at-sea inspection, perform such inspections, carry out such procedures and apply such standards that may be prescribed or required by the Director General under this Act, or by an applicable international conservation and management measure, relevant regional fisheries management organization or international agreement.

#### **Division 5 - Vessel Monitoring System and Automatic Identification System**

##### **116 Monitoring Systems - technical requirements**

- (1) The Director General shall approve the technology to be used in relation to any monitoring system applicable to vessels which is required pursuant to this Act, which include:
- (a) vessel monitoring system;
  - (b) electronic monitoring system;
  - (c) electronic reporting system;
  - (d) any other system or technology adopted by the Director General for purposes of monitoring, control or surveillance under this Act.
- (2) Technical requirements for mobile transceiver units, including installation, may be prescribed or required by the Director General.
- (3) Any operator who does not comply with the technology or technical requirements designated by the Director General, including installation, pursuant to subsection (1) or (2) in respect of any mobile transceiver unit used by the vessel shall, where a licence, authorization, other permission or registration:
- (a) has not yet been issued shall be denied such issuance, and
  - (b) has been issued, commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or to a term of imprisonment not exceeding one year or both, and to any other penalty provided under this Act, and the Director General may suspend or cancel the Certificate of Registration and/or licence, authorization or other permission where he or she is satisfied on reasonable grounds that the operator failed to comply.

##### **117 Vessel monitoring system – requirements of operators**

(1) The operator of any vessel required to be licensed by the Ministry that holds a valid and applicable licence or authorization pursuant to this Act shall, unless the vessel falls within a category of vessels excepted by the Ministry and unless otherwise prescribed:

- (a) install and maintain a mobile transceiver unit in accordance with requirements in this Act or as may be prescribed or required by the Director General, on board the vessel and ensure it is fully operational at all times;
- (b) register the mobile transceiver unit in accordance with section 79(1) of this Act;
- (c) ensure that the mobile transceiver unit is tamper resistant and of a type and configuration that prevent the input or output of false positions, and not capable of being over-ridden, whether manually, electronically or otherwise, and is:
  - (i) located within a sealed unit; and
  - (ii) protected by official seals (or mechanisms) of a type that will indicate whether the unit has been accessed or tampered with.
- (d) transmit the following information directly to the Ministry at least once every hour, or such other time as may be prescribed or required under the applicable licence or authorization:
  - (i) the vessel identification;
  - (ii) the current geographical position of the vessel (longitude, latitude) with a position error which shall be less than 500 metres, at a confidence level of 99% or such other requirements as may be prescribed or required under the applicable licence or authorization; and
  - (iii) the date and time (expressed in UTC) of the fixing of the said position of the vessel;
- (e) ensure that:
  - (i) VMS reports and messages are not altered in any way;
  - (ii) the antennae connected to the mobile transceiver unit(s) are not obstructed in any way;
  - (iii) the power supply of the satellite monitoring device(s) is not interrupted in any way; and
  - (iv) the mobile transceiver unit(s) are not removed from the vessel.

(2) In the event of technical failure or non-functioning of the mobile transceiver unit, the operator shall inform the Ministry immediately and no later than one hour after failure, and:

- (a) where the vessel has not begun a trip the operator shall not cause the vessel to depart;
- (b) where the vessel is at sea the operator shall cause the vessel to travel to a port approved by the Ministry within twenty-four hours and during that period shall report every half hour and shall comply with such other requirements as may be prescribed;

(c) shall repair or replace the unit within one month after which the operator shall not be authorized to commence a fishing trip without the unit having been repaired or replaced.

(3) The operator shall comply, and ensure compliance by all persons associated with the vessel, with any conditions or other requirements that may be prescribed or required by the Director General or any applicable international conservation and management measure.

(4) Any operator who does not comply with the requirements of subsections (1)(a), (b), (c) (d) or (e), (2)(a), (b) or (c) or (3) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or to a term of imprisonment not exceeding three years or both, and to any other penalty provided under this Act.

(5) Any person who, without lawful excuse, renders inoperative or otherwise interferes or tampers with a mobile transceiver unit so that it does not operate automatically or accurately or in accordance with any licence conditions or otherwise in accordance with this Act commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or to a term of imprisonment not exceeding three years or both, and to any other penalty provided under this Act.

### **118 Automatic identification system**

(1) The operator of a vessel that operates under a licence, authorization or other permission issued by the Ministry shall maintain an Automatic Identification System on board in accordance with the specifications in Chapter V, Regulation 19 of the International Convention for the Safety of Life at Sea, and that the vessel continually reports directly to the Fisheries Monitoring Center.

(2) A person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or to a term of imprisonment not exceeding one year or both, and to any other penalty provided under this Act.

### **119 Fisheries Monitoring Center**

(1) The Director General shall establish a Fisheries Monitoring Center equipped with computer hardware and software enabling automatic data processing and electronic data transmission and other equipment for purposes of monitoring the activities of vessels by receiving and recording information *inter alia* through:

(a) a vessel monitoring system, including an electronic monitoring system and an electronic reporting system; and

(b) an Automatic Identification System.

(2) The Fisheries Monitoring Center shall be in a room that is locked in a secured manner.

(3) Any employee of the Ministry authorized to enter the Fisheries Monitoring Center may enter the room.

(4) A list of names of employees authorized to enter the centre shall be displayed on the door of the room of the centre.

(5) The Director General may, in writing, authorise any other person to enter the centre on a specific occasion.

## **Division 6 - Port State Measures**

### **120 Port State Measures - application and implementation**

- (1) This Division applies to:
- (a) foreign vessels and vessels not entitled to fly the flag of Somalia that are seeking entry to a port or are in a port of Somalia, except for container vessels that are not carrying fish or, if carrying fish, only fish that have been previously landed, provided that there are no clear grounds for suspecting that such vessels have engaged in fishing related activities in support of IUU fishing;
  - (b) persons, vessels, aircraft, export facilities or other craft or place engaged in or otherwise connected with any activity falling within the scope of this Act;
  - (c) all fishing and fishing related activities in support of such fishing:
    - (i) in areas over which Somalia exercises jurisdiction or sovereign rights;
    - (ii) in areas beyond national jurisdiction:
      - 1. by Somalia nationals, including vessels and persons and all persons on board such vessels or dealing with them or having any relevant relationship to them or to persons on them, to the extent that it does not conflict with the jurisdiction of another State;
      - 2. as required pursuant to this Act, international agreement, relevant regional fisheries management organization or applicable international conservation and management measures;
      - 3. otherwise in relation to illegal, unreported and unregulated fishing and fishing related activities in support of such fishing consistent with international law.
- (2) The provisions in this Division shall be applied in a fair, transparent and non-discriminatory manner, consistent with international law.
- (3) In implementing this Division, the Director General shall ensure that an electronic Port State Measures system of a relevant regional fisheries management organization is used to the greatest extent possible.

### **121 Designation of ports**

The Minister shall ensure:

- (a) the port or ports to which foreign vessels may request entry are designated and publicised; and
- (b) the list of each port designated pursuant to paragraph (a) is provided to any international organization and to any relevant regional fisheries management organization pursuant to an applicable conservation and management measure.

### **122 Prerequisites for entry or use of port**

The operator of a foreign vessel shall not enter or use a port in Somalia unless:



- (a) where ports have been designated and publicised in accordance with section 110, such port has been so designated and publicized;
- (b) the operator has requested entry into port and provided such information as may be prescribed or required by the Minister, for licensed vessels at least 72 hours in advance of port entry where the vessel holds a licence or authorization to fish in Somali waters and 96 hours in advance where it does not, or such shorter period as may be approved by the Minister, including for purposes of landing or transshipment of any fish or fish product;
- (c) the Director General has authorized entry of such vessel into port and ensured communication of such authorization to the master of the vessel and any agent of the vessel in Somalia; and
- (d) upon the vessel's arrival at port, the master of the vessel or the vessel's representative has presented the authorization for entry into the port to a person authorized to receive it on behalf of the Ministry.

### **123 Denial of entry into port and use of port**

- (1) The Director General, where there is sufficient proof that a vessel seeking entry into a port of Somalia has engaged in IUU fishing or fishing related activities in support of such fishing, in particular where it is an IUU listed vessel:
  - (a) shall cause the vessel not to be authorized to enter port, and shall deny entry to such vessel; or
  - (b) notwithstanding paragraph (a), may allow such vessel to enter a port exclusively for the purpose of inspecting it and taking other appropriate actions in conformity with international law which are at least as effective as denial of port entry in preventing, deterring and eliminating IUU fishing and fishing related activities in support of such fishing; and
  - (c) shall communicate any decision taken pursuant to paragraphs (a) or (b) to:
    - (i) the vessel or its representative; and
    - (ii) the Ministry of Ports and Marine Transport, which shall implement the Director General's decision.
- (2) The Director General may cause entry into and use of port to be denied to any vessel that he/she has reasonable grounds to believe has violated this Act and shall communicate such decision to persons described in subsection (1)(c).
- (3) Where entry or use of port is denied under subsection (1)(a) or (b) or (2), the Director General shall notify the decision to the operator, flag State of the vessel and, as appropriate, to each relevant coastal State, relevant regional fisheries management organization and other international organization.

### **124 Force majeure or distress**

- (1) Nothing in this Act affects the entry of a vessel to port in accordance with the laws of Somalia for reasons of *force majeure* or distress, providing:
  - (a) a claim of force majeure or distress shall not apply where:
    - (i) it is contrived, untrue or otherwise intentionally created; or

- (ii) its objective is to avoid liability,
- and any person who makes an inapplicable claim commits an offence;
- (b) the burden of proof that a claim of force majeure or distress is valid and does not fall within prohibitions in paragraph (a) shall be on the vessel operator;
  - (c) an authorized fisheries officer or other officer with relevant authorities may board and inspect the vessel at any time for the purpose of verifying the claim of force majeure or distress; and
  - (d) a vessel that claims force majeure or distress shall be subject to the direction of the Director General.
- (2) The Director General may grant a vessel that falls within the scope of this Act entry into port for reasons of *force majeure* or distress, provided that:
- (a) the vessel may enter port under its claim of force majeure or distress for such period of time necessary to remedy such claim; and
  - (b) the vessel is permitted entry exclusively for the purpose of rendering assistance to persons or vessels in danger or distress.
- (3) The operator of a foreign vessel that is authorized to enter port pursuant to subsection (2) (a) or (b) shall not allow or cause such vessel to engage in the use of port.
- (4) The operator of a vessel in respect of which an inapplicable claim described in subsection (1)(a) was made or who does not comply with the requirements of subsection (3) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or to a term of imprisonment not exceeding three years or both, and to any other penalty provided under this Act.

### **125 Denial of use of port after entry**

- (1) Where a vessel that has been authorized to enter port pursuant to section 111 (c) and (d) has entered a port, the Director General shall cause the use of port to be denied to such vessel if:
- (a) the vessel does not have a valid and applicable authorization or licence to engage in fishing or fishing related activities required by:
    - (i) its flag State; or
    - (ii) a coastal State in respect of areas under its national jurisdiction;
  - (b) there is clear evidence that the fish on board was taken in contravention of applicable requirements of a coastal State in respect of areas under the national jurisdiction of that State;
  - (c) the flag State does not confirm within a reasonable period of time, on the request of the Director General, that the fish on board was taken in accordance with applicable requirements of a relevant regional fisheries management organization; or
  - (d) there are reasonable grounds to believe that the vessel was otherwise engaged in IUU fishing or fishing related activities in support of IUU fishing unless the operator or charterer of the vessel can establish:

- (i) that it was acting in a manner consistent with relevant conservation and management measures, including international conservation and management measures; or
  - (ii) in the case of provision of personnel, fuel, gear and other supplies at sea, that the vessel that was provisioned was not, at the time of provisioning, a vessel that had engaged in IUU fishing.
- (2) Notwithstanding subsection (1), the Director General shall:
  - (a) not deny a vessel the use of port services:
    - (i) where such services are essential to the safety and health of the crew or the safety of the vessel, provided these needs are duly proven; or
    - (ii) as appropriate, for the scrapping of the vessel; and
  - (b) where the use of port has been denied, notify the decision to the flag State of the vessel and, as appropriate, to each relevant coastal State, any relevant regional fisheries management organization and other international organization.
- (3) Where the use of port has been denied pursuant to this Act, the Director General, as appropriate on the advice of Attorney General shall:
  - (a) withdraw such denial in respect of a vessel only if there is sufficient proof that the grounds on which use was denied were inadequate or erroneous or that such grounds no longer apply; and
  - (b) promptly notify the withdrawal to each person that was notified pursuant to this Act.

## **126 Conduct of inspections of vessels in port**

- (1) The Director General shall ensure that vessel inspections are conducted as necessary to achieve the objectives of this Act, and at least at a level that may be agreed pursuant to an applicable international conservation and management measure.
- (2) The Director General shall prioritize vessel inspections based on:
  - (a) vessels that have been denied entry or use of a port in accordance with an applicable conservation and management measure;
  - (b) a request from another State or regional fisheries management organization to inspect a vessel, particularly where the request is supported by evidence of IUU fishing or fishing-related activities in support of IUU fishing by the vessel in question; and
  - (c) whether there are clear grounds for suspecting that a vessel has engaged in IUU fishing or fishing related activities in support of such fishing.
- (3) The Director General shall, to the extent possible, ensure inspection of a minimum level of vessels as may be required by any applicable conservation and management measure.
- (4) During inspections of a vessel in port, authorized fisheries officers shall carry out inspection in conformity with such procedures as may be prescribed or required by the Ministry, and complete a written report of the inspection in such form as may be required or prescribed and submit it to the Director General.

(5) The operator of the vessel shall, in relation to inspection of the vessel, give authorized fisheries officers all necessary assistance and information, and present relevant material and documents as may be required, or certified copies thereof.

(6) The Director General shall ensure that the results of an inspection under this Act are transmitted to:

- (a) the flag State of the inspected vessel;
- (b) as appropriate, parties to a relevant international agreement;
- (c) relevant coastal State and the State of which the vessel master is a national;
- (d) any relevant regional fisheries management organization; and
- (e) other relevant international organizations.

(7) An operator who does not comply with, or cause compliance with subsection (5) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or to a term of imprisonment not exceeding three years or both, and to any other penalty provided under this Act.

### **127 Denial of use of port after inspection**

(1) Where, following an inspection, there are clear grounds for believing that a vessel has been used for engaging in IUU fishing or fishing related activities in support of such fishing, the Director General shall:

- (a) promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other international organizations, and the State of which the vessel's master is a national of the findings; and
- (b) cause denial of the use of port by the vessel if these actions have not already been taken in respect of the vessel.

(2) Notwithstanding paragraph 1(b), the Director General shall not deny a vessel the use of port services, where such services are essential to the safety and health of the crew or the safety of the vessel, provided these needs are duly proven.

### **128 Prohibited to use or assist, etc in the use of port in absence of authorization or after denial**

(1) Where a vessel:

- (a) is in port in contravention of:
  - (i) requirements for entry specified in section 122;
  - (ii) an applicable denial of authorization to enter port pursuant to section 123(1)(a) or (2);
- (b) has been permitted to enter port exclusively for the purpose of:
  - (i) inspection pursuant to section 123(1)(b);
  - (ii) rendering assistance to persons or vessels in danger or distress pursuant to section 124; or

- (c) has not been permitted or has been denied the use of port pursuant to section 123(1)(b), 124(2)(b), 125(1) or 127(1)(b),

no person, including the operator or crew member of such vessel or any person that is acting directly or indirectly in relation to the vessel, shall:

- (d) cause or allow the vessel in contravention of subparagraph (1)(a) to enter port;
- (e) engage in, facilitate or be associated with the use of such port; or
- (f) allow or assist, directly or indirectly, the use of port by such vessel,

unless permission is given in writing by the competent Ministry for port services to be used for the safety or health of the crew or the safety of the vessel in accordance with this Act and port is used exclusively for such purposes.

(2) Any person who contravenes subsection (1) (d), (e) or (f) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or to a term of imprisonment not exceeding five years or both, and to any other penalty provided under this Act and where a vessel operator commits the offence the licence of the vessel shall be cancelled.

### **129 Requirements for Somali vessels**

(1) The operator of each Somali vessel shall:

- (a) not enter a foreign port without requesting entry into such port at least 72 hours in advance and holding valid and applicable authorizations issued by the Ministry and the competent Ministry in the relevant port State;
- (b) cooperate fully with inspections carried out in the ports of other States in accordance with their laws and procedures; and
- (c) not engage in any use of port, including landing, transshipping, packaging or processing fish or using other port services, in a port State identified by a relevant regional fisheries management organization as not acting in accordance with, or in a manner consistent with, applicable international or regional instruments or international conservation and management measures relating to port State measures.

(2) Where there are clear grounds to believe that a Somali vessel has engaged in IUU fishing or fishing related activities in support of such fishing and is seeking entry to or is in the port of another State, the Director General shall, as appropriate request such State to inspect the vessel or take other measures consistent with applicable international or regional instruments.

(3) Where, following port State inspection in another State, there are clear grounds to believe that a Somali vessel has engaged in IUU fishing or fishing related activities in support of such fishing, the Director General shall cause the matter to be immediately and fully investigated and, upon sufficient evidence shall cause enforcement action to be taken without delay in accordance with this Act.

(4) Any operator of a Somali vessel that contravenes subsection (1)(a), (b) or (c) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or to a term of imprisonment not exceeding five years or both, and to any other penalty provided under this Act, and the authorization of the vessel may be cancelled.

### **Division 7 – Miscellaneous**

### **130 Presumptions of IUU fishing in contravention of international conservation and management measures**

(1) The operator of a vessel is presumed to have engaged in IUU fishing or related activities where such vessel has, in contravention of any international conservation and management measure of a relevant regional fisheries management organization and in relation to its area of competence:

- (a) engaged in fishing or related activities and was not registered on the relevant Record of Vessels authorized to fish for such species or recorded in the Active List of Vessels;
- (b) engaged in fishing or related activities when its flag State was without quota, catch limit or effort allocation under an applicable international conservation and management measures unless flagged to a member or cooperating non-member of such organization;
- (c) failed to record or report its catches in accordance with any applicable conservation and management measure or has made false reports;
- (d) taken or landed undersized fish;
- (e) engaged in fishing or related activities during closed fishing periods or in closed areas;
- (f) used prohibited gear;
- (g) transhipped fish to, or otherwise participated in joint operations with, supported or re-supplied vessels not included on the Record of Authorized Vessels or on the Record of Vessels Authorized to Receive Transshipments At-Sea;
- (h) engaged in fishing or related activities in Somali waters in contravention of this Act or in areas under the jurisdiction of any other coastal State in contravention of the legislation of that State;
- (i) engaged in fishing or related activities while being without nationality;
- (j) engaged in fishing or related activities having intentionally falsified or concealed its markings, identity of registration; or
- (k) engaged in fishing or related activities in contravention of any other applicable international conservation and management measure,

and the Director General shall provide information and evidence to a relevant regional fisheries management organization where any vessel has engaged or is engaging in an activity that is presumed to involve IUU fishing.

(2) The presumption in subsection (1) shall apply to any vessel in Somali waters and any Somali vessel in areas beyond national jurisdiction.

(3) Notwithstanding subsection (2), and where it is presumed that any vessel in Somali waters has engaged in IUU fishing or related activities in any place beyond Somali waters in the area of competence of the relevant regional fisheries management organization, the operator such vessel shall be deemed to have committed an offence under this Act.

(4) An operator of a vessel that is presumed to have engaged in any IUU fishing or related activity as defined in subsection (1) commits an offence and upon conviction shall be liable to a fine provided in the First Schedule or to a term of imprisonment not exceeding five years or both, and to

any other penalty provided under this Act, and an applicable licence, authorization, other permission or registration of the vessel shall be revoked.

## **10. JURISDICTION, PROCEDURE, LIABILITIES**

### **131 Jurisdiction and standing**

(1) Any alleged act or omission to which this Act applies which constitutes a contravention of this Act that is committed in areas over which Somalia exercises sovereignty or sovereign rights may be adjudicated in the competent District, Regional or other Court in accordance with Somali procedures.

(2) Where any alleged act or omission to which this Act applies that which constitutes a contravention of this Act is committed in areas beyond national jurisdiction of Somalia, the Supreme Court shall designate the court that shall try the case.

(3) Where an authorized person appointed under this Act is exercising any powers or performing duties conferred on him or her by this Act in areas beyond Somali waters in connection with any act or omission of any person in contravention of this Act, then that act or omission shall be deemed to have been committed within the jurisdiction of the Supreme Court as described in subsection (1).

(4) Standing in the Federal High Court shall be afforded to any authorized fisheries officer or other person performing duties pursuant to this Act or under a relevant international agreement, international conservation and management measures or in a relevant regional fisheries management organization to provide evidence for any act or omission that:

(a) occurs within the jurisdiction of the Federal High Court as described in subsection (1);

(b) is actionable under this Act or any other law of Somalia; or

(c) is a violation of an access agreement, international agreement or international conservation and management measure adopted by a relevant regional fisheries management organization under or in which the authorized fisheries officer or other person was performing duties,

notwithstanding the nationality or permanent residence of such authorized person.

### **132 Liability for non-payment of pecuniary penalties**

The following amounts may be sued for, determined, enforced and recovered by suit or other appropriate civil proceedings in a court of competent jurisdiction in the name of the State, and all such proceedings shall be deemed to be civil proceedings:

(a) pecuniary penalties not specifically designated as fines;

(b) forfeitures incurred under or imposed pursuant to this Act, and the liability to forfeiture of any article seized under the Ministry of this Act;

(c) all rents, charges, expenses and duties; and

(d) all other sums of money payable under this Act.

### **133 Liability for loss or damage**

A person who commits an offence against this Act may, upon conviction or a pursuant to determination under summary administrative proceedings, be liable to the Government of Somalia for:

- (a) any loss or damage caused by the offence;
- (b) any costs incurred in detecting, apprehending, investigating or prosecuting the offence; and
- (c) any costs incurred in detaining or seizing any property, fish, article or thing in respect of that offence,

and the amount of compensation for such loss, damage or costs may be awarded by the Court or determined in summary administrative proceedings as restitution in addition to, and recovered in the same manner as, a fine or determination.

### **134 Liability of companies and officers of companies**

(1) Except as provided in this section, if an employee, officer or agent of a partnership, corporation, firm, company or any other business enterprise commits an offence under this Act, the partnership, corporation, firm, company or any other business enterprise also commits the same offence if:

- (a) the employee, officer or agent was acting within the scope of his or her employment or Ministry, or apparent employment or Ministry; and
- (b) the partnership, corporation, firm, company or other business enterprise:
  - (i) expressly or impliedly authorized the act or omission that constituted the offence; or
  - (ii) had direct or indirect knowledge of the act or omission that constituted the offence.

(2) Except as provided in subsection (3), every Director or other person concerned with the management of a body corporate, partnership, corporation, firm, company or other business enterprise engaged in activities governed by this Act commits an offence if an offence under this Act is committed by any member, employee or agent of that entity.

(3) It shall be a defence to liability under this section for the Director or other person concerned with the management of the entity to prove that:

- (a) he or she used due diligence to secure compliance with this Act; or
- (b) the offence was committed without his or her knowledge, consent, collusion or collaboration.

### **135 Liability of operators**

(1) In any proceedings under this Act, the act or omission of a crew member of a vessel or a person working in association with a vessel is deemed to be that of the operator of the vessel, unless otherwise expressly provided.

(2) The operation of subsection (1) does not absolve the crew member or other person of any liability he or she may have under this Act.

### **136 Liability of principal for actions of agent**



(1) Where a person (“the principal”) is required by or under this Act to do or refrain from doing anything, every act or omission of any person acting or purporting to act as agent for the principal in respect of any such requirement is deemed for the purposes of this Act to be the act or omission of the principal, unless 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 in carrying out the act or omission.

(2) The operation of subsection (1) does not absolve the principal of any liability he or she may have under this Act.

### **137 Appeals from decisions taken under this Act**

(1) The Minister shall, in consultation with the Minister responsible for Justice, establish an Appeals Committee consisting of at least three persons with knowledge and experience in fisheries administration, law and the fishing industry to hear appeals from decisions taken under this Act, and shall prescribe or provide procedures by public notice on the selection, operation and decisionmaking authority of such Appeals Committee.

## **11. SUMMARY ADMINISTRATIVE PROCEEDINGS – COMPOUNDING**

### **138 Summary administrative proceedings**

(1) The Minister may, in consultation with the Minister responsible for Justice, establish a process to allow administrative hearings to be held and determinations to be made for offences against this Act, except those that involve:

- (a) criminal offences in any applicable legislation in Somalia, notwithstanding that any such offence may also be an offence under this Act; and
- (b) any offences relating to transnational organized crime or individuals in or associated with a transnational criminal group; or
- (c) offences relating to loss of life or obstructing, assaulting or threatening with violence any person including an authorized fisheries officer or an observer.

(2) In establishing a process for summary administrative proceedings pursuant to subsection (1), the following shall be taken into account:

- (a) the qualifications and process for appointment and authorities of any person who shall have authority to make administrative determinations;
- (b) procedures for administrative hearings;
- (c) requirements for notification of a person charged with an offence that he/she may consent to or refuse summary administrative proceedings;
- (d) upon receiving consent refrain from prosecuting the person charged with an offence under this Act while the matter is being dealt with under this Act, unless in the opinion of the Minister responsible for Justice there is a public interest in proceeding with the prosecution
- (e) where consent to administrative proceedings is given the person charged shall be deemed to any seizure that took place in accordance with the Act;

- (f) the person charged shall be prohibited from engaging in any activity in relation to which the charge was laid until an administrative penalty has been paid.
- (3) a compounding agreement shall be drawn up to formalize the terms and conditions upon which the Minister will accept on behalf of Somalia from the person charged an Administrative Penalty, the amount of which:
- (a) shall be determined in accordance with this Act and any report that may be prepared by the Director General or Minister in consultation with the Minister responsible for Justice regarding the details of the offence and applicable fine or penalty levels;
  - (b) unless otherwise provided in this Act, shall not be below any level that may be prescribed or exceed the maximum fine or penalty for the relevant offence, plus the fair market value of any fish caught illegally;
  - (c) includes such amount that may be necessary to deprive the person of monetary benefits acquired or saved by the person as a result of the commission of the offence based on an assessment by an expert that would otherwise be acceptable in a court of law;
  - (d) takes into account that any offence in relation to an unlicensed vessel or a foreign vessel shall be compounded at a significantly high level;
  - (e) shall, for any second or subsequent offence being compounded be significantly greater than the amount determined for the previous offence;
  - (f) may include the costs to the State.
- (4) Summary administrative proceedings shall be null and void if the full amount of the penalty determined under subsection (1) is not paid within 14 days of the notification of such penalty assessment to the charged person, and the matter shall immediately be referred to the Attorney General for prosecution.
- (5) Where the person charged is not a Somali citizen and payment originates from another country, the Embassy representing such country shall verify the payment of the penalty determined under subsection (1).
- (6) On payment of the penalty in full and as appropriate the verification of a relevant Embassy under subsection (3), the Director General may order the release of any item seized under this Act or of the proceeds of sale of such item on such conditions as he or she may determine.
- (7) The Compounding Agreement may provide that any item used or involved in the commission of the offence be confiscated or forfeited.
- (8) Any sum of money received under a Compounding Agreement shall be dealt with as though it were a fine imposed by a court.
- (9) A person who engages in fishing, related activities or other activity which is the subject of the summary administrative proceedings while prohibited from so doing commits an offence and is liable to a fine not exceeding the maximum amount described in the First Schedule and in addition the costs to the State.

## 12. EVIDENCE

### **139 Vessel monitoring system evidence**

(1) All information or data obtained or ascertained by the use of a mobile transceiver unit required under this Act, including use of a camera onboard for observation purposes, shall be presumed, unless the contrary is proved, to:

- (a) come from the vessel so identified;
- (b) be accurately relayed or transferred;
- (c) be given by the operator, including the master, owner and charterer of the vessel,

and evidence may be given of information and data so obtained or ascertained whether from a printout or visual display unit.

(2) The presumption in paragraph (1) applies whether or not the information was stored before or after any transmission or transfer.

(3) A mobile transceiver unit or other monitoring device installed and operated in accordance with this Act shall be judicially recognised as notoriously accurate.

(4) An authorized fisheries officer or other person authorized in writing by the Director General may give a certificate stating:

- (a) his or her name, address and official position;
- (b) that he or she is competent to read the printout or visual display unit of any machine capable of obtaining or ascertaining information from a mobile transceiver unit;
- (c) the date and time the information was obtained or ascertained from the mobile transceiver unit and the details of the information;
- (d) the name and call sign of the vessel on which the mobile transceiver unit is or was located as known to him or her or as ascertained from any official register, record or other document; and
- (e) a declaration that there appeared to be no malfunction in the mobile transceiver unit, its transmissions, or other machines used in obtaining or ascertaining the information.

### **140 Satellite based evidence**

Evidence furnished from satellites with a capacity to provide accurate tracking or other information concerning vessels shall be admissible and presumed to be accurate, whether or not a vessel intentionally transmits through such satellites.

### **141 Presumptions**

(1) All fish found on board any vessel which has been used in the commission of an offence under this Act shall be presumed to have been caught during the commission of that offence, unless the contrary is proved.

(2) Where, in any legal proceedings under this Act:

- (a) the place in which an event is alleged to have taken place is in issue, the place stated in the relevant entry in the logbook or other official record of any enforcement vessel or aircraft as being the place in which the event took place is presumed to be the place in which the event took place; and
  - (b) the production of a written copy or extract of the entry certified by an authorized fisheries officer as a true copy of the accurate extract is prima facie evidence of an entry in a logbook or other official record of an enforcement vessel or aircraft.
- (3) Where in any legal proceedings relating to an offence under this Act:
- (a) an authorized fisheries officer or observer gives evidence of reasonable grounds to believe any fish to which the charge relates were taken in a specified area of Somali waters or the area of competence of a relevant regional fisheries management organization; and
  - (b) the Court considers that, having regard to that evidence the grounds are reasonable,

all the fish shall be presumed to have been so taken, unless the contrary is proved.

- (4) Where in any legal proceedings for an offence under this Act:
- (a) an authorized fisheries officer gives evidence of reasonable grounds to believe that any fish to which the charge relates were taken by the use of driftnets; and
  - (b) the Court considers that, having regard to the evidence, the grounds are reasonable,

all the fish shall be presumed to have been so taken, unless the contrary is proved.

(5) Where any information is given in respect of any fishing or related activity of a vessel, it is presumed to have been given by the operator, including the master, owner and charterer of the vessel concerned, unless it is proved that it was not given or authorized to be given by any of them.

(6) Any entry in writing or other mark in or on a log, chart or other document required to be maintained under this Act or used to record the activities of a vessel is deemed to be that of the operator, including the master, owner and charterer of the vessel.

(7) Any position fixing instrument on board a vessel or aircraft used for the enforcement of this Act is presumed to be accurate.

### **142 Strict liability**

In a prosecution for an offence under this Act, it is not necessary for the prosecution to prove that the defendant intended to commit an offence or to engage in any conduct that comprises the offence.

### **143 Burden of proof**

(1) Where in any proceedings under this Act, a person is charged with having committed an offence involving an act for which a licence is required, the burden is on that person to prove that at the relevant time the requisite licence was held.

(2) Where a person is charged with the contravention of section 68, the burden is on the person to prove that the information given was true, complete and correct.

### **144 Interfering with evidence**

- (1) No person shall interfere with evidence which may be related to an offence under this Act.
- (2) Without limiting the generality of subsection (1), no person shall:
  - (a) being on board any vessel being pursued, about to be boarded, being boarded or notified that it will be boarded by an authorized fisheries officer, whether within or beyond Somali waters, throw overboard or destroy any fish, fish product, equipment, document, explosive, noxious substance or other thing with intent to avoid its seizure or the detection of any offence against this Act;
  - (b) remove from custody any vessel, fish, fish product, equipment or other item held in custody under this Act, or act or omit to act so that a vessel, fish, fish product, equipment or other item held in custody under this Act may be removed from custody, whether or not he or she knew that the vessel, fish, fish product, equipment or other item was being held in custody;
  - (c) destroy, damage, render inoperative or otherwise interfere with any premises or facilities licensed under this Act; or
  - (d) where a mobile transceiver unit is required under this Act, whether within or beyond Somali waters, destroy, damage, render inoperative or otherwise interfere with any part of such mobile transceiver unit aboard a vessel, or feed or input into a mobile transceiver unit or an applicable vessel monitoring system information or data which is not officially required or is meaningless.
- (3) Any person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the First Schedule, or to a term of imprisonment not exceeding three years, or to both.

### **13. OFFENCES, FINES AND PENALTIES**

#### **145 Offences, fines and penalties**

- (1) Unless otherwise provided in this Act, the maximum fines for contraventions of this Act are described in Part A of the First Schedule, and requirements for the minimum fines are specified in Part B of the First Schedule.
- (2) The First Schedule may be amended by Regulation.
- (3) Where an offence in this Act or the First Schedule refers to a section or subsection of the Act which has multiple parts, contravention of each part of such section or subsection shall be considered to constitute a separate offence.
- (4) In setting the amount of any fine or determination under this Act, the guidelines in section 146 shall be applied.
- (5) All fines are expressed in Somali Shillings but the option of paying in United States Dollars or Euros shall be available, using the official exchange rate of the Central Bank of Somalia on the date of the judgment or administrative determination.

#### **146 Guidelines for setting a fine or determination**

- (1) The fine or determination in judicial or administrative proceedings taken pursuant to this Act shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities.

(2) In particular, the relevant judicial or administrative proceeding shall take into account, inter alia, the following criteria:

- (a) the seriousness of the offence, taking into consideration the:
  - (i) maximum level of fine;
  - (ii) international and national requirements and best practices in relation to serious offences, including their definition in international fisheries instruments;
  - (iii) degree of impact of the offence on the fishery resources, the environment and the economic and social well-being of citizens of Somalia;
  - (iv) scope of the offence;
  - (v) duration of the offence;
  - (vi) whether personal injury or loss of life was involved; and
  - (vii) associated offences, if multiple offences were committed;
- (b) the situation of the offender, taking into consideration:
  - (i) the material and other benefits received as a result of commission of the offence;
  - (ii) whether it is a first offence;
  - (iii) whether multiple offences are involved;
  - (iv) whether the offender was acting alone or associated with others in committing the offence;
  - (v) the likelihood that the offender will repeat the offence; and
  - (vi) the impact of the level of fine on the offender;
- (c) an aggravated fine or determination shall be imposed for offences involving assault, obstruction or bribery of an authorized inspector or observer or any fisheries officer or person carrying out authorities or responsibilities under the Act, damage to gear or vessels, personal injury, loss of life, illegal fishing, forgery, failure to comply with section 54 or damage to the environment and any licence, authorization or other permission shall be immediately suspended for at least three months or revoked;
- (d) where it appears that any offence against this Act involved transnational criminal activity or was committed in association with other transnational criminal activity, an aggravated fine or determination shall be imposed at a level of no less than ninety per cent of the maximum fine for the relevant offence(s) in the First Schedule.

#### **147 General offence**

(1) Any person who contravenes any provision of this Act for which no specific fine or penalty is provided commits an offence and is liable on conviction to the maximum fine in the First Schedule or twice the economic benefit that the person obtained through the contravention, whichever is greater, and a imprisonment for a term not exceeding three (3) years, and for violations resulting in damage to fish or the marine environment, an additional fine not less than the total cost of restoration of the fisheries resources or the environment or both.

## **148 Forfeiture**

- (1) Where a court convicts a person of an offence against this Act, it may order the forfeiture of any or all of the following:
- (a) any fish, fish product, vessel (including its gear, furniture, accessories, stores, cargo and aircraft) gear, equipment, explosive or noxious substance involved in the commission of the offence;
  - (b) where a vessel was used in the commission of the offence, any fish on board the vessel at the time of the offence;
  - (c) where any fish has been sold as perishable goods, the proceeds of the sale of the fish;
  - (d) other item taken, used or otherwise involved in the commission of the offence, or otherwise as may be provided in this Act.
- (2) Where any fish or fish product which is subject to a prohibition under this Act is seized and confiscated pursuant to this Act, it shall be forfeit and become the property of the State.

## **149 Offering and accepting bribes**

- (1) No person shall attempt to bribe or bribe, directly or indirectly, any person carrying out authorities or responsibilities under this Act whether or not the objective of the bribe is attained.
- (2) No person carrying out authorities or responsibilities under or in relation to this Act shall accept, receive or solicit a bribe on his/her own behalf or for another person, whether or not the objective of the bribe is attained.
- (3) Any person who fails to comply with subsection (1) or (2) commits an offence and upon conviction, shall be liable to a fine not exceeding the maximum amount described in the First Schedule or a term of imprisonment not exceeding five years or both, and in addition any and all profits that accrued to such person as a result of the bribe shall be forfeited and any person that contravened subsection (2) shall be discharged and not permitted to exercise any further Ministry, duties or functions under this Act.

## **150 Deprivation of monetary benefits**

Where a person is convicted of an offence under this Act, and the court is satisfied that as a result of committing the offence the person acquired monetary benefits or monetary benefits accrued to the person, the court may, notwithstanding the maximum amount of any fine, that may otherwise be imposed under this Act, order the person to pay an additional fine in an amount equal to the court's finding of the amount of those monetary benefits, based on an estimation of such amount to be provided by the Ministry.

## **151 Court may order additional penalties and compensation**

In addition to any fine and term of imprisonment described in this Act and unless otherwise provided, the Court may order:

- (a) a term of imprisonment not exceeding twelve months, and where a fine is not paid into court on the terms required may order such term of imprisonment in lieu of payment of the fine;

- (b) forfeiture of the vessel, fish on board and/or gear;
- (c) cancellation or suspension of the relevant licence, authorization or registration;
- (d) compensation to be paid to the owner of any property damaged or destroyed as a direct result of the offence; and
- (e) compensation for the cost of clearing any pollution that may have been caused as a direct result of the offence or removing any objects that continue to cause such pollution.

### **152 Increased maximum fine for body corporate**

If a body corporate is convicted of an offence against this Act, a fine of up to three times the maximum fine specified for the offence may be imposed or determined.

### **153 Continuing offences and repeat offenders**

- (1) Each day of a continuing offence shall be considered a separate offence.
- (2) Any fine and penalty charged or determined for any person convicted of the same offence more than once shall be at a significantly higher level than imposed or determined on the previous occasion and, to the extent possible, shall be double such level, and in addition an applicable license or authorization shall be suspended or revoked and the person may be banned from carrying out activities under the scope of this Act for a stated period.

### **154 Banning Order**

- (1) In addition to any other fine or penalty provided under this Act, the Court or in the case of summary administrative proceedings, the Minister in consultation with the Attorney-General may order any natural person to be banned from engaging in fishing or related activities in Somali waters for a period up to five years if that person has been found to commit or admitted to committing:
  - (a) an offence involving unlicensed fishing; or
  - (b) multiple offences against this Act.

- (2) Any person who has been banned from engaging in fishing or related activities pursuant to subsection (1), and the owner, operator or master of a vessel who knowingly permits a person banned under subsection (1) to go or remain on board a vessel under his or her command or control, commits an offence and shall upon conviction be liable for a fine the maximum amount described in the First Schedule or a term of imprisonment for a period not exceeding three (3) years, or both.

### **155 Imprisonment of non-nationals**

Where an offence under this Act has been committed in the Exclusive Economic Zone by a person who is a national of another State and is associated with a vessel that is not registered in Somalia, penalties shall not include imprisonment, in the absence of any agreement to the contrary between Somalia and the State concerned, or any other form of corporal punishment.

## **14. GENERAL PROVISIONS**

### **156 Relationship with other laws of Somalia**



In the event of a conflict or inconsistency between this Act and any other legislation of Somalia, except for the Constitution, this Act shall take precedence.

### **157 Notifications**

- (1) Any notification required under this Act must be in writing.
- (2) Any notice or document sent by registered post or electronic transmission is deemed to have been given, served or received 3 working days after the date on which delivery was accepted or it was transmitted electronically, unless the person to whom it was posted or transmitted proves that, otherwise than through that person's fault, the notice or document was not received.

### **158 Regulations**

- (1) The Minister may make regulations to carry out and give effect to this Act, including, without limitation:
  - (a) managing, regulating or controlling fishing and related activities for all species of fish and fish habitat and any other activities within the scope of this Act;
  - (b) implementing any provisions of, or giving effect to, any international agreement, management agreement and international conservation and management measures;
  - (c) implementing measures for cooperation and coordination with other Somalia government authorities, the Federal Member States or other entities as appropriate;
  - (d) providing for the establishment, rules and procedures for summary administrative proceedings and compounding agreements;
  - (e) prescribing requirements, processes and other relevant matters for access agreements, licenses, authorizations, other permissions and registration within the scope of this Act;
  - (f) prescribing fees, charges, levies, resource rent, or royalties payable in respect of any matter under this Act;
  - (g) establishing zones, management areas and fishing seasons;
  - (h) declaring and protected endangered species of fish;
  - (i) prescribing forms, schedules and other documentation required under this Act;
  - (j) implementing procedures and other requirements for monitoring, control and surveillance of activities under the scope of this Act;
  - (k) duties, qualifications and appointment of authorized fisheries officers, observers and other personnel authorized to perform monitoring, control, surveillance and enforcement duties under this Act;
  - (l) regulating or prohibiting activities which may have an adverse impact on fisheries resources or the marine environment in which they occur;
  - (m) regulating, controlling and managing research, surveys, education and training regarding fish, fisheries resources and activities and aspects of the marine environment relevant to fisheries management;

- (n) providing for the conditions of use and marking of vessels, gear, equipment including vessel monitoring systems and fish aggregating devices, and other items that may be regulated in accordance with this Act;
  - (o) regulating the disposition of bycatch, possession, processing, and disposal of fish or fish products;
  - (p) fish processing, fish markets, hygiene, general sanitation;
  - (q) import and export of fish and fish products;
  - (r) requiring elements of any account, record, document or information that any person or class of persons may be required to keep or provide for the purposes of this Act, including:
    - (i) the manner and form in which such account, record, document or information is to be kept, furnished or communicated;
    - (ii) the time for or within which such account, record, document or information is to be kept, furnished or communicated;
    - (iii) the person by or to whom such account, record, document or information is to be kept, furnished or communicated; and
    - (iv) the places where such account, record, document or information is to be kept, furnished or communicated;
  - (s) taking necessary measures to combat illegal, unreported and unregulated fishing and related activities;
  - (t) implementation, participation, collaboration and benefit funds allocations for international agreements for marine protection and conservation;
  - (u) amending the First Schedule, prescribing fines to be imposed under summary administrative proceedings and providing for compensation or other payments under the Act; and
  - (v) providing for any other matter under the scope of this Act which is required or otherwise consistent with the objective and principles.
- (2) The Minister may, in consultation with the relevant Somalia government Ministry in respect of each of the following matters, make regulations:
- (a) regulating the construction and import of vessels used for fishing and prescribing construction standards for such vessels;
  - (b) defining required prerequisites for the registration of vessels used for fishing in Somalia;
  - (c) prescribing safety standards and requirements for vessels used for fishing;
  - (d) prescribing conditions for working on vessels used for fishing taking into account agreed international standards; and
  - (e) prescribing manning and competency requirements for vessels used for fishing registered in Somalia.

### **159 Repeal and savings**

- (1) This Law repeals and replaces the Somali Fisheries Law No. of 2014.
- (2) Any other law, ordinance or regulation incompatible with this Law is hereby repealed.

### **160 Final provisions**

This Fisheries Law shall be effective upon being endorsed by the Federal Parliament of Somalia, signed by the President of the Federal Republic of Somalia, issued via decree and published in the Official Bulletin of the State.

**FIRST SCHEDULE**  
**OFFENCES, FINES AND PENALTIES**

**PART A**

**SCHEDULE OF MAXIMUM LEVELS FOR FINES**

- (1) The maximum level of fine for each separate offence that is specified in the relevant section and subsection in the Schedule of Maximum Levels for Fines below is designated and the monetary value to be applied to each level is in Part B of this First Schedule.
- (2) Where artisanal or smaller vessels are used in the commission of the offence, the levels in the schedule below shall not apply and the maximum fine shall not exceed one million Somali Shillings.
- (3) Requirements for minimum fines are in Part C of this Schedule.

<b>Section and subsection</b>	<b>Section Title</b>	<b>Maximum level of fine</b>
12(5)	Conflict of interest	3
13(6)	Conservation and management measures	5
15(4)	Implementation of international conservation and management measures	3
18(5)	Research for effective conservation and management	3
19(4)	Declaration of and prohibitions respecting protected, threatened or endangered species of fish	4
20(3)	Designation of zones or areas	4
21(6), except subsection (1)(a)	Marine environmental quality	6
21(6), subsection (1)(a)	Marine environmental quality- industrial or nuclear waste	7
22(3)	Protection of coastal habitat for fisheries resources – destruction of mangrove or other trees prohibited	5
23(3)	Protection of coastal habitat for fisheries resources – destruction of coral reefs, seashells prohibited	5
24(5)	Management of bycatch	3
26(3)	Marking of gear	3
27(7)	Fish aggregating devices	4
28(2)	Prohibited to fish on data buoys	3
29(8)	Prohibition on commercial whaling and conservation of cetaceans, etc.	4

30(6)	Prohibitions in relation to marine turtles	3
31(5)	Prohibitions on removal of shark fins and sale, etc of illegally removed shark fins	5
32(3)	Prohibited fishing methods – explosives, etc. and sale, etc of fish caught using such methods	3
33(2)	Prohibited fishing methods – trawling	3
34(4)	Prohibited fishing methods – minimum gear size	3
35(5)	Prohibited fishing methods – large-scale driftnets	5
36(3)	Prohibited to use aircraft and unmanned aerial vehicles	3
37(3)	Prohibited to use artificial lights to attract fish in purse seine, longline fisheries	3
38(4)	Prohibited to tamper with or destroy property of another in Somali waters	3
39(4)	Prohibited to use, possess on a vessel, import, purchase, sell prohibited gear	4
40(2)	Prohibition on abandoning or discarding gear, fish or fish product	4
41(2)	Prohibition of interference with inspected fish and fish products	3
42(2)	Prohibition of possession, trade, export etc. of fish, fish products taken or obtained in contravention of Act or international conservation and management measure	4
43(3)	Prohibition of trade, etc. in fish and fish products taken or obtained in contravention of the laws of another State	5
44(6)	Prohibitions in relation to vessels on a list of illegal, unreported and unregulated vessels maintained by a regional fisheries management organization	5
45(3)	Prohibitions in relation to vessels without nationality	6
46(2)	Compliance by holders of licences, authorizations or other permission	5
47(5)	Reporting requirements	4
49(2)	Introduction, transfer, import, export, release, of live fish	4
52(3) and (4)	Requirements for citizens and Somali registered vessels in areas beyond national jurisdiction	6
53(4)	Requirements for labour conditions of personnel on board certain vessels	6
54(2)	Prohibitions on individuals in or associated with a transnational criminal group to engage in any activity under the scope of this Act	6
55(2)	Transshipment in Somali ports, Somali waters, areas beyond national jurisdiction	4

56(4)	Requirements for all foreign fishing vessels to enter and remain in Somali waters	4
63(10), (11), (12)	Agents	5
67(4)	Information may be required, inspected	4
68(5)	Information to be true, complete and correct and destruction etc of documents prohibited	5
70(11)	Confidential Information	2
71(3)	Confidentiality of information in relation to Fisheries Monitoring Center	2
74(4)	Licences, authorizations, other permissions, registration required	5
75(9)	Terms and conditions of licences, authorizations, other permissions, registrations	4
76(2)	Conditions for transshipment	4
77(2)	Conditions for research	3
78(3)	Conditions for fish aggregating devices	4
79(2)	Conditions for vessel monitoring system registration	2
81(5)	Application for licence, authorization, other permission, registration	2
83(7)	Pre-licensing and pre-registration inspection and other requirements	3
89(9)	Suspension, cancellation, surrender or termination of a licence, authorization, other permission or registration	5
101(2)	Power to order a vessel to port	5
104(4)	Removal of parts from seized vessels	4
105(3)	Hot pursuit	5
108(2)	Duty of operators, and crew members to assist observers	5
109(2)	Notice of intention to place observer	1
113(3)	Obstruction of, failure to comply with authorized persons	5
116(3)	Monitoring Systems - technical requirements	2
117(4)	Vessel monitoring system – requirements of operators	3
118(2)	Automatic identification system	3
124(4)	Force majeure or distress	4
126(7)	Conduct of inspections of vessels in port	4
128(2)	Prohibited to use or assist, etc in the use of port in absence of authorization or after denial	5
129(4)	Requirements for Somali vessels	5

130(4)	Presumptions of IUU fishing in contravention of international conservation and management measures	5
138(9)	Summary administrative proceedings	5
144(3)	Interfering with evidence	5
147(1)	General offence	4
149(3)	Offering and accepting bribes	5
154(2)	Banning Order	5

## PART B

### MONETARY VALUES FOR THE LEVELS OF FINES

Level	Maximum fine Somali Shillings <i>Millions</i>
1	110
2	140
3	275
4	420
5	560
6	3,000
7	280,000

## PART C

### GUIDELINES FOR MINIMUM FINES

The following Guidelines for minimum fines may be considered in setting the level of fines or administrative determination for a first offence:

- (1) for operations involving commercial fishing or related activities for tuna and tuna-like species, 60% of the maximum fine;
- (2) notwithstanding paragraph (1), for first offences of a minor nature that do not have a noticeable impact on the fisheries resources or the environment, 5% of the maximum fine.

