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MALAITA PROVINCE FISHERIES ORDINANCE 2015**Table of provisions**

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MALAITA PROVINCE FISHERIES ORDINANCE 2015**AN ORDINANCE TO REGULATE FISHERIES IN
MALAITA PROVINCE, AND FOR RELATED PURPOSES**

ENACTED BY THE MALAITA PROVINCIAL ASSEMBLY UNDER THE
PROVINCIAL GOVERNMENT ACT 1997.

Part 1 Preliminary matters**1 Short title**

This Ordinance may be cited as the Malaita Province Fisheries Ordinance 2015.

2 Commencement

This Ordinance commences on the day appointed by the Minister by Gazette notice.

3 Definitionss

In this Ordinance:

“Advisory Committee” means the Fisheries Advisory Committee established by section 4;

“approved form” means a form approved by the Chief Fisheries Office under section 34;

“aquaculture”:

- (a) means the cultivation, propagation or farming of fish or other living aquatic resources, including cultivation, propagation or farming:
 - (i) from eggs, spawn, spat or seed; or
 - (ii) by rearing fish or aquatic resourcess lawfully taken from the wild or lawfully imported into Solomon Islands; or
 - (iii) by other similar process; and

- (b) includes the collecting and holding of live fish;

“Chief Fisheries Officer” means the Chief Fisheries Officer appointed under section 30(a);

“civil society organisation” means a non-state, not-for-profit organisation that is not a political party;

“Community Fisheries Management Plan” has the meaning given in the Act;

“customary rights holder”, has the meaning given in the Act;

“Executive” means the Provincial Executive of the Malaita Provincial Government established by section 19 of the *Provincial Government Act 1997*;

“fish” means any water-dwelling aquatic or marine animal or plant, alive or dead, and includes their eggs, spawn, spat and juvenile stages and any of their parts;

“fisheries activity” means any of the following activities, including an activity conducted for a research purpose:

- (a) extracting, harvesting, catching, taking or killing fish by any method;
- (b) attempting to do anything mentioned in paragraph (a);
- (c) engaging in any other activity which can reasonably be expected to result in anything mentioned in paragraph (a);
- (d) placing, searching for or recovering fish aggregating devices or associated equipment;
- (e) any operation in support of, or in preparation for, anything mentioned in paragraphs (a) to (d);
- (f) aquaculture;

“fisheries area” means any area of provincial waters, whether saltwater or freshwater, including any adjacent foreshore;

“fisheries officer” means a person appointed under section 30 and includes the Chief Fisheries Officer;

“Minister” means the Provincial Minister responsible for fisheries;

“Member” means a member of the Advisory Committee appointed under section 6;

“permit” means a permit to conduct fisheries activities issued under section 22;

“provincial waters” means waters within the boundary of the Province as described by section 3(3) and (4) of the Provincial Government Act 1997, and includes any fisheries area located on customary land;

“Secretary” means the Provincial Secretary of Malaita Provincial Government;

“the Act” means the Fisheries Management Act 2015;

“the Province” means Malaita Province.

Part 2 Fisheries Advisory Committee

Division 1 Establishment and functions

4 Establishment

The Fisheries Advisory Committee is established.

5 Functions

The functions of the Advisory Committee are as follows:

- (a) to advise the Executive on the implementation of this Ordinance;
- (b) to assist the Executive to develop, implement, monitor and review fisheries management policy in the Province;

- (c) to advise the Minister on matters relating to the implementation of national laws on fisheries so far as they relate to the Province and any other matter relating to this Ordinance;
- (d) whenever relevant, to work with the national Fisheries Advisory Council established by the Act for the purpose of implementing this Ordinance;
- (e) if requested by the Minister, to carry out any inquiry and make a report to the Minister on any matter relating to this Ordinance;
- (f) to advise the Minister in relation to permit applications;
- (g) to advise the Executive in relation to Community Fisheries Management Plans;
- (h) to perform other functions given to it under this Ordinance or any other written law.

Dvision 2 Membership

6 Membership

The Advisory Committee consists of the following members appointed by the Minister by Gazette notice:

- (a) the Chief Fisheries Officer, as chairperson;
- (b) a deputy chairperson;
- (c) 5 members nominated by civil society organisations;
- (d) 2 other members

7 Term of office

- (1) A member holds office for 2 years or the shorter period specified in the instrument of appointment and is eligible for reappointment.
- (2) However, a member may not hold office for more than 3 consecutive terms.

8 Vacation of office

A person who is a member ceases to be a member if:

- (a) the person resigns by giving written notice to the Minister; or
- (b) the person's term of office comes to an end and the person is not reappointed; or
- (c) the person is convicted of an offence for which the available penalty includes a term of imprisonment; or
- (d) the person's appointment is terminated under section 9.

9. Termination of appointment

- (1) The Minister may terminate the appointment of a person who is a member:
 - (a) on the ground of misbehaviour or misconduct; or
 - (b) on the ground of physical or mental inability to satisfactorily perform the duties of the office; or
 - (c) if the Minister is satisfied the person has failed to comply with section 16; or
 - (d) if the person is absent from 3 consecutive meetings of the Advisory Committee without leave granted by the chairperson; or
 - (e) if the person becomes bankrupt.

- (2) A termination of appointment must be made in writing.

Division 3 Procedures of Advisory Committee

10 Procedures

Subject to this Ordinance, the Advisory Committee may determine its own procedures.

11 Meetings

- (1) The chairperson may convene a meeting of the Advisory Committee at any time.
- (2) However, the chairperson must convene a meeting of the Committee at least 4 times each year.

12 Quorum at meetings

Subject to section 17(1)(c), the quorum for a meeting of the Advisory Committee is 4 members.

13 Presiding member at meetings

A meeting of the Advisory Committee must be presided over by:

- (a) the chairperson; or
- (b) in the absence of the chairperson, the deputy chairperson; or
- (c) in the absence of the chairperson and the deputy chairperson, another Committee member elected by the members present.

14 Voting at meetings

- (1) A decision at a meeting of the Advisory Committee must be determined by the majority vote of Committee members present and voting.
- (2) If there is an equality of votes, the person presiding at the meeting has a casting vote.

15 Records of meetings

- (1) The Advisory Committee must keep accurate records of each of its meetings.
- (2) The records must:
 - (a) include any matters prescribed by the regulations; and
 - (b) be certified by the member presiding over the meeting.

16 Disclosure of interest

- (1) This section applies if a member has a personal interest in a matter being considered, or about to be considered, by the Advisory Committee.
- (2) The member must disclose the following to the other members at the meeting at which the matter is to be considered:
 - (a) the nature and extent of the interest;
 - (b) how the interest relates to the matter mentioned in subsection (1).
- (3) The disclosure must be recorded in the minutes of the meeting.
- (4) The member need not disclose an interest if the interest is an interest shared with the public generally or a section of the public.
- (5) For this section, a member has a personal interest in a matter if the member:
 - (a) has a direct or indirect financial interest in the matter; or
 - (b) has a personal, professional, commercial or other relationship with a person and the nature of the relationship is likely to, or may reasonably be regarded as likely to, inhibit or prevent the member from exercising independent judgment about the matter.

17 Effect of personal interest

- (1) If a member has a personal interest in a matter that is required to be disclosed under section 16:
 - (a) the member must not take part in any deliberation or decision of the Advisory Committee about the matter; and
 - (b) the member must be disregarded for the purpose of constituting the quorum of the Committee for the deliberation or decision; and
 - (c) the quorum for the deliberation or decision is a majority of members entitled to participate in the deliberation or decision.
- (2) However, a failure by the member to disclose the interest in the matter does not, on its own, invalidate any decision of the Committee about the matter.

18 Fees and allowances for members

Each member is entitled to be paid the sitting fee and allowances prescribed by the regulations for attending a meeting of the Advisory Committee.

Part 3 Permits**19 Conducting fisheries activity without a permit**

- (1) A person commits an offence if the person conducts a fisheries activity in provincial waters otherwise than in accordance with a permit.

Maximum penalty: 5,000 penalty units
- (2) Subsection (1) does not apply to a person who is a customary rights holder for the fisheries area in which the activity is conducted.

20 Application for permit

- (1) A person may apply to the Chief Fisheries Officer for a permit to conduct fisheries activities in provincial waters.
- (2) The application must be:
 - (a) made in the approved form; and
 - (b) accompanied by the fee prescribed by regulation; and
 - (c) accompanied by evidence (in the approved form) that any customary rights holder of the fisheries area in which the activity is to be conducted consents to the grant of the permit.

21 Referral of application to Advisory Committee

- (1) On receipt of the application, the Chief Fisheries Officer must refer it to the Advisory Committee.
- (2) The Advisory Committee must publicise the application as widely as reasonably practicable among persons who may have an interest in the application.
- (3) In publicising the application, the Advisory Committee must invite the public to make written or oral submissions in response to the application within a specified time.
- (4) The Advisory Committee must consider any submissions received and give the Chief Fisheries Officer a written recommendation about:
 - (a) whether or not the permit should be granted; and
 - (b) if the Committee recommends that the permit be granted, any conditions or limitations that should be imposed under the permit.

22 Decision on application

- (1) The Chief Fisheries Officer must consider the application and the recommendation of the Advisory Committee given under section 21 and decide whether to grant or refuse to grant the permit.
- (2) The Chief Fisheries Officer must give written notice to the applicant for the permit of:
 - (a) the Chief Fisheries Officer's decision; and
 - (b) if the Chief Fisheries Officer refuses the application:
 - (i) the reasons for the refusal; and
 - (ii) the procedures for review under section 26.

23 Conditionss of permit

A permit is subject to the conditions and limitations:

- (a) prescribed by the regulations; and
- (b) any other conditions and limitations specified in it by the Chief Fisheries Officer, which may include limitations on any of the following:
 - (i) the fisheries activities permitted under the permit;
 - (ii) the purpose for which the activities may be conducted;
 - (iii) the methods by which the activities may be conducted.

24 Variation of conditions of permit

- (1) The Chief Fisheries Officer may vary the conditions of a permit:
 - (a) on application of the permit holder; or
 - (b) with the consent of any customary rights holder for the fisheries area to which the permit applies – on the Chief Fisheries Officer's initiative.

- (2) An application for variation must be:
 - (a) made in the approved form; and
 - (b) accompanied by the fee prescribed by regulation; and
 - (c) accompanied by evidence (in the approved form) that any customary rights holder for the fisheries area to which the permit applies consents to the variation.
- (3) The Chief Fisheries Officer must consider the application and decide whether to vary the conditions of the permit in accordance with the application.
- (4) The Chief Fisheries Officer must give written notice to the applicant for the variation of:
 - (a) the Chief Fisheries Officer's decision; and
 - (b) if the Chief Fisheries Officer refuses the application:
 - (i) the reasons for the refusal; and
 - (ii) the procedures for review under section 26.
- (5) Before varying the conditions on the Chief Fisheries Officer's initiative, the Chief Fisheries Officer must give the permit holder written notice:
 - (a) stating the proposed variation; and
 - (b) stating the reasons for the proposed variation; and
 - (c) inviting the permit holder to submit, within the period of not less than 28 days stated in the notice, reasons why the variation should not be made.
- (6) The Chief Fisheries Officer may, having considered any submissions of the permit holder, vary the conditions of the permit as proposed in the notice or in another way the Chief Fisheries Officer considers appropriate by giving written notice to the permit holder of:
 - (a) the variation; and
 - (b) the reasons for the variation; and
 - (c) the procedures for review under section 26.

- (7) A variation of conditions of a permit takes effect on the later of the following:
- (a) the date on which the permit holder receives notice of the variation;
 - (b) the date stated in the notice.
- (8) Subsections (2) to (7) do not apply if the variation is for a formal or clerical reason that does not alter the effect of the permit.

25 Cancellation of permit

- (1) The Chief Fisheries Officer may cancel a permit:
- (a) if the permit holder contravenes a condition of the permit; or
 - (b) if the permit holder is found guilty of an offence against this Ordinance or the Act.
- (2) Before cancelling the permit, the Chief Fisheries Officer must give written notice to the permit holder:
- (a) stating that the Chief Fisheries Officer proposes to cancel the permit; and
 - (b) stating the reasons for the proposed cancellation; and
 - (c) inviting the permit holder to submit, within the period of not less than 28 days stated in the notice, reasons why the cancellation should not be occur.
- (3) If, having considered any submissions of the permit holder, the Chief Fisheries Officer continues to consider the permit should be cancelled, the Chief Fisheries Officer may cancel the permit by written notice to the permit holder of:
- (a) the cancellation; and
 - (b) the reasons for the cancellation; and
 - (c) the procedures for review under section 26.

- (4) The cancellation takes effect on the later of the following:
 - (a) the date on which the permit holder receives the notice of the cancellation;
 - (b) the date stated in the notice.

26 Review of decisions on permits

- (1) In this section:

“reviewable decision” means a decision stated in the Schedule;

“affected person”, for a reviewable decision, means a person stated in the Schedule opposite the decision.
- (2) An affected person for a reviewable decision may request the Minister to review the merits of the decision.
- (3) The person must request the review within 28 days after the person receives notice of the decision.
- (4) The request must:
 - (a) be in the approved form; and
 - (b) be accompanied by the fee prescribed by regulation; and
 - (c) state the grounds on which it is made and the facts relied on to establish the grounds.
- (5) The Minister must:
 - (a) conduct the review in a way that is fair and expenditures; and
 - (b) give proper consideration to the issues.
- (6) After reviewing the merits of the decision, the Minister must:
 - (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) revoke the decision; or
 - (d) substitute another decision for the decision.

- (7) The Minister must, as soon as practicable after making a decision on the review, give the affected person written notice of the decision, including the reasons for the decision.

Part 4 Community Fisheries Management Plans

27 Application of Part

This Part applies to a draft Community Fisheries Management Plan drawn up by customary rights holders under section 18 of the *Fisheries Management Act 2015*.

28 Process for approval of Plan

- (1) The customary rights holders that draw up the draft Plan must submit it to the Chief Fisheries Officer for consideration.
- (2) The Chief Fisheries Officer must review the draft Plan and:
- (a) if the draft Plan does not meet the requirements of section 18 of the Act, return the draft Plan to the customary rights holders with written instructions to amend it in a specified way so that it meets the requirements of the Act; or
 - (b) if the draft Plan meets the requirements of section 18 of the Act, submit the draft Plan to the Advisory Committee for consideration.
- (3) Having considered the draft Plan, the Advisory Committee must recommend to the Minister in writing that the Executive approve or refuse to approve the draft Plan.

Note for section 28

Under section 18 of the Act, a Community Fisheries Management Plan must meet the following requirements:

- *it must be consistent with Provincial Ordinances and by-laws and the Act;*
- *it must be consistent with any Fisheries Management Plans made under section 17 of the Act.*
- *it must be drawn up in accordance with the requirements of the Third Schedule to the Act.*

Part 5 Enforcement**29 Forfeiture**

If person is convicted of an offence against this Ordinance, the Court may, in addition to any other penalty imposed, order that any of the following are forfeited to the Province.

- (a) fish caught in the commission of the offence;
- (b) fishing gear used in the commission of the offence;
- (c) any vessel (together with its fishing gear, stores and cargo) used in the commission of the offence.

30 Appointment of fisheries officers

The Minister may, by Gazette notice, appoint:

- (a) a person to be the Chief Fisheries Officer; and
- (b) persons to be other fisheries officers.

31 Powers and functions of fisheries officers

(1) A fisheries officer has the following functions:

- (a) to ensure this Ordinance is being complied with;
- (b) the other functions imposed on the officer by this Ordinance.

(2) For the performance of a fisheries officer's functions under this Ordinance, the officer may do any of the following within the Province (including provincial waters):

- (a) require a person to produce a permit;
- (b) stop, board and search any vessel;
- (c) stop and search any person or vehicle transporting, or reasonably suspected of transporting, fish;
- (d) seize anything found as a result of a search conducted under paragraph (b) or (c) that the officer reasonably suspects has been used in the commission of an offence under this Ordinance.

- (3) A fisheries officer other than the Chief Fisheries Officer is subject to the directions of the Chief Fisheries Officer.

32 Identity cards

- (1) In exercising a power or performing a function under this Ordinance, a fisheries officer must carry an identity card that:
- (a) states the officer's name and that the person is a fisheries officer; and
 - (b) shows a recent photograph of the officer.
- (2) The Chief Fisheries Officer is responsible for ensuring each fisheries officer has an identity card.

33 Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function a fisheries officer.
- (2) Subsection (1) does not affect any liability the Province would, apart from that subsection, have for the act or omission.

Part 6 Administrative matters

34 Approved forms

The Chief Fisheries Officer may approve forms for use under this Ordinance.

35 Regulations

- (1) The Minister may make regulations under this Ordinance that are:
- (a) required or permitted to be prescribed by this Ordinance; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

- (2) Without limiting subsection (1), the regulations may provide for the following:
- (a) the procedures fisheries officers must follow when performing functions and exercising powers under this Ordinance;
 - (b) penalties not exceeding 1000 penalty units or 3 months imprisonment for breach of the regulations.

Schedule Reviewable decisions and affected persons
Section 26

Reviewable decision	Affected person
Section 22 – refusal to grant permit	Application for the permit
Section 24(3) – refusal to vary permit condition on application	Permit holder
Section 24(6) – variation of permit condition	Permit holder
Section 25 – cancellation of permit	Permit holder

Passed by the Malaita Provincial Assembly this thirty first day of March, 2015.

HON. PETER CHANEL RAMOHIA
Honourable Premier
Malaita Province

This printed impression has been carefully compared by me with the Ordinance passed by the Malaita Provincial Assembly and found by me to be true and correct copy of the said Ordinance.

MATHEW E MAEFAI MBE
Clerk to Assembly

Assented to by the Honourable Minister for Provincial Government and Institutional Strengthening this fifteen day of April, 2015.

HON. DUDDLEY KOPU
Minister of Provincial Government & Institutional Strengthening

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