



• SOLOMON ISLANDS •

ENVIRONMENTAL
CRIME MANUAL

INTRODUCTION

This manual has been written to assist members of the Royal Solomon Islands Police Force (**RSIPF**) with identifying and enforcing environmental crimes. It may also be useful for various Solomon Islands ministries and government agencies when they are exercising their powers and carrying out their functions.

The main environmental crimes that are committed in Solomon Islands relate to:

- (1) **Developments:** For example carrying out logging and mining operations without carrying out an environmental impact assessment and/or without obtaining a “development consent”.
- (2) **Forestry:** For example felling and milling trees without the necessary licence, or felling or milling trees not in accordance with a licence.
- (3) **Mining:** For example extracting minerals such as gold, nickel and bauxite without the necessary licence, or not in accordance with a licence.
- (4) **Fishing:** For example taking fish without a licence, taking too many fish or fish that are too small, or using fishing methods that are illegal.
- (5) **Protected Areas:** For example carrying out certain activities such as logging and mining, or taking species from an area that has been declared as a “protected area”.
- (6) **Protected Wildlife:** For example importing or exporting certain prohibited plants and animals, and importing and exporting other restricted plants and animals without the necessary permission.
- (7) **Nuisance and Pollution:** For example causing pollution to water or air, and causing pollution from certain premises without the necessary permissions, or in breach of permissions.

By outlining the relevant law, powers and duties, it is hoped that this manual will foster knowledge sharing and cooperation between the RSIPF, ministries and government agencies in the effective enforcement of environmental crime in Solomon Islands.

Part One of the manual provides an introduction to environmental crime, the powers of the RSIPF, different types of offenders, procedure for commencing proceedings, and some information about evidence and its use.

Part Two then examines broad categories of environmental crimes, such as forestry, fisheries and wildlife trade offences, and examines in detail the law, the roles of the various ministries, and specific powers with respect to enforcement. Each of these chapters contains a case study, a checklist of things to consider when determining whether an offence has been committed, and ‘draft charges’ for the main environmental offence.

Part Three then considers other crimes that might relate to an environmental offence, such as immigration law, corruption and abuse of office, and money laundering and proceeds of crime.

Finally, the **Schedule** to the manual contains a comprehensive list of environmental offences in Solomon Islands and their respective penalties. It can be used as a quick reference guide to identify an environmental offence.

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HOW TO USE THIS MANUAL

When using this manual you should carefully consider the information that you are looking for so that you can find the relevant chapter. The table of contents at the start of the manual provides a list of all the topics covered by the manual and is a good place to start.

Below is a further outline of the manual, which will also help you find the right information.

PART ONE

Chapter 1 of the Manual contains an introduction to environmental law in Solomon Islands. It addresses certain topics such as:

- What is environmental law?
- What are the main types of environmental crime?
- Who regulates environmental crime?
- Who can enforce environmental law?

Chapter 2 then outlines the powers and duties of the RSIPF, including:

- The duty to prevent the commission of an offence
- Inspection powers
- Search and seizure
- Arrests

Chapter 3 examines types of offenders, including:

- Principal offenders
- Procuring an offence
- Joint offenders
- Counseling another to commit an offence
- Accessories after the fact

Chapter 4 outlines the procedure for commencing criminal court proceedings. It provides information in relation to:

- How to identify which Court to use
- Who can prosecute
- Proceedings against foreigners
- Starting proceedings
- Summons'
- Arrest warrants

Chapter 5 looks at the role of evidence, including:

- The standard of proof
- How evidence is given
- Police evidence
- Relevant evidence
- Opinion evidence
- Expert reports

PART TWO

Chapter 6 outlines the environmental law in relation to developments, and discharge offences. It contains a case study, checklist and draft charges relating to the offence of logging without a development consent. You will find this chapter and Table 1 of the Schedule useful if you are interested in understanding more about:

- The role and powers of the Ministry of Environment, Climate Change, Disaster Management and Meteorology
- Offences relating to:
 - Commencing or continuing to carry out a prescribed development, such as logging or mining, without a development consent
 - Failing to comply with the conditions of a development consent
 - Discharging waste, or emitting noise, odour or electromagnetic radiation from a prescribed premises except in accordance with a discharge licence
 - Failing to comply with the terms of a discharge licence
 - General pollution offences relating to discharges and emissions
- Pollution abatement notices
- Stop notices

Chapter 7 outlines the main offences relating to forestry, which includes both logging and milling of timber. You will find this chapter and Table 2 of the Schedule useful if you would like to know more about:

- The role and powers of the Ministry of Forestry and Research

- Offences relating to:
 - Logging without a Felling Licence
 - Failing to comply with the terms of a Felling Licence
 - Failing to comply with the Felling Regulations
 - Milling without a Milling Licence
 - Failing to comply with the terms of a Milling Licence
 - Failing to comply with the Milling Regulations
 - State Forest Offences
 - Forest Reserve Offences
 - National Park Offences
 - Protected Species Offences
 - Cancellation and suspension of forestry licences and permits
 - Search and arrest powers
 - Seizure of property used in committing a forestry offence, such as bulldozers and other machinery
 - Disposal of seized property
- Chapter 8** provides you with information about mining law, and the relevant offences. You should read this chapter and Table 3 of the Schedule if you would like more information about:
- The roles and powers of the Ministry of Mines, Energy and Rural Electrification
 - Offences relating to:
 - Carrying out reconnaissance, prospecting or mining operations except in accordance with the relevant law
 - Carrying out reconnaissance, prospecting or mining in a reserved area and other certain restricted areas, such as tambu sites and cultivated land
 - A prospect licence holder failing to comply with a number of conditions, including notification of commercial discoveries, backfilling and removing equipment and making good damage
 - A mining leaseholder failing to pay surface rental and compensation for damage
 - A mining leaseholder failing to carry out a mining plan in accordance with sound conservation, technical and engineering practices generally used in the mining industry
 - General alluvial mining offences, including

- prohibition on using mechanised earthmoving equipment and explosives and not polluting, interrupting or adversely affecting the flow of any water
 - General building materials permit offences, including failing to pay surface access fees, compensation for damage and royalties
 - Exporting minerals
 - Stealing minerals
- Non-criminal liabilities and remedies
- Chapter 9** looks at the main fisheries offences. You should read this chapter and Table 4 of the Schedule if you are interested in obtaining a greater understanding about:
- The role and powers of Ministry of Fisheries and Marine Resources
 - Offences relating to:
 - Carrying out a fisheries activity prohibited by an Order made by the Director
 - Carrying out certain fisheries activities without a valid licence, or not in accordance with a licence
 - Using, carrying, placing any chemical, poison or noxious substance, bomb, electrical device, dynamite or explosive substance or device for the purpose of killing, taking, stunning, stupefying or disabling fish
 - Engaging or assisting in drift net fishing activities
 - Using prohibited fishing gear
 - Deploying or maintaining fish aggregating devices without permission
 - Taking, landing, selling dealing in, transporting, receiving, buying, possessing, importing or exporting any fish or fish product declared as protected or endangered
 - Other consequences of committing fisheries offences, such as cancellation and suspension of licences, bans, forfeiture and compensation
 - The role of Provincial Ordinances
- Chapter 10** covers environmental crimes relating to the import and export of plants and animals. You should look at this chapter and Table 5 of the Schedule if you want more information about:
- The different ministries that are responsible for enforcing the trade in certain plants and animals

- The types of plants and animals that will require a permit before they can be exported from Solomon Islands- such as turtles, crocodiles, giant clams, ngali nut and the tubi tree
- The types of permits that people can obtain to legally import and export protected plants and animals
- Offences relating to the import, export and possession of protected species
- Powers relating to boarding boats and aircraft, arrest and seizure
- Forfeiture and confiscation of specimens and objects

Chapter 11 looks at protected areas law. You should read this chapter and Table 6 of the Schedule if you think that an activity took place on or in a protected area. Here you will find more information about:

- Offences relating to:
 - Carrying out a prohibited activity in a Protected Area (for example logging and mining)
 - Carrying out a restricted activity in a Protected Area without the permission of the Management Committee, or authorised by the management plan
 - Carrying out a prohibited activity in a Marine Protected Area
 - Failing to comply with a stop order from the Director relating to pollution of a Marine Protected Area from a land based activity
- The powers of inspectors and rangers
- Infringement notices
- A number of Provincial Ordinances that may be relevant

Chapter 12 provides information about marine pollution offences. You should read this chapter and Table 7 of the Schedule if you are interested in:

- The role and powers of the Solomon Islands Maritime Safety Administration
- The role and powers of the Ministry of Infrastructure Development
- The role and powers of the Ports Authority
- Offences relating to:
 - Failure to report marine incidents
 - Discharging pollutants or harmful

- substances from a vessel, platform or land into Solomon Islands waters
 - Discharging ballast water
 - Scraping hulls or other external surfaces
 - Harmful anti-fouling systems
 - Discharges from vessel repair facilities
 - Dumping waste at sea
 - Spillage and leakage of dangerous goods
 - Discharge of oil relating to petroleum exploration facilities
 - Discharge of oil in the carriage and storage of petroleum
 - Polluting a port

- Powers to stop, board and search vessels
- Taking samples and carrying out tests

Chapter 13 looks at some general nuisance and pollution offences. You should look at this chapter and Table 8 of the Schedule if you want to find out more about:

- The role and powers of the Environmental Health Division within the Ministry of Health and Medical Services
- Offences relating to:
 - Causing a nuisance or allowing to exist on any land or premises any nuisance or other condition liable to be injurious or dangerous to health
 - Failing to obey an order to comply with the requirements of the local authority or health inspector, or otherwise to remove a nuisance
 - Carrying out an offensive trade without consent
 - Pollution of water supply
 - Public sewer and drain offences
 - Refuse and sewage offences relating to watercourses
 - Offences relating to declared rivers

PART THREE

Chapter 14 looks at the role of Customs. You should read this chapter if you are interested in understanding:

- The role and powers of the Ministry of Finance and Treasury, Customs and Immigration
- Offences relating to the export of prohibited or restricted goods

- The powers of Customs officers
- The power to refuse or cancel the clearance of a ship

Chapter 15 briefly outlines the role of Immigration and how it could apply to environment offences. This chapter is useful if you are interested in understanding more about:

- Deportation orders
- Stopping suspects from leaving Solomon Islands

Chapter 16 looks at offences relating to corruption and abuse of office. These may be relevant to environmental crimes, particularly those where a licence or permit is required to do a certain thing. You should look at this chapter if you would like to know more about offences relating to:

- Corruption in the public service
- Extortion by public officers
- Bribery
- Abuse of office

Chapter 17 briefly examines money laundering and proceeds of crimes. You should read this chapter if you are interested in:

- The role of the Anti-Money Laundering Commission
- Offences relating to:
 - Benefiting from a crime, and
 - Money laundering
- Confiscation of property and money

THE SCHEDULE

The Schedule to the manual contains a comprehensive list of environmental offences in Solomon Islands and their respective penalties, including many that are not examined in the main part of the manual. It can be used as a quick reference guide to identify an environmental offence.

The penalties that are provided in this manual are expressed in Solomon Islands dollars. Some laws have fixed monetary penalties and others are expressed in 'penalty units'. At the time of publication one penalty unit was equal to one dollar, however this may change. You should always check to make sure the most recent amount of the fine or term of imprisonment that will apply.

HELPFUL WEBSITES AND OTHER RESOURCES

There are a number of websites that you might find useful when using this manual and considering environmental offences:

The Company Haus website is a good place to start if you want to find out the name of a company, or the people who are the directors or shareholders of the company:

<http://www.companyhaus.gov.sb/how-to-search/searching-for-a-company-1>

The following website contains links to most (but not all legislation) referred to in this manual:

<http://www.paclii.org/countries/sb.html>

If you cannot find the legislation that you need, then the Landowners' Advocacy and Legal Support Unit at the Public Solicitor's Office has a good website, with many links to useful resources:

<http://www.pso.gov.sb/index.php/lalsu-resources>

Useful books include:

Evidence Law and Advocacy in the Solomon Islands, by Robert Cavanagh (Public Solicitor's Office, 2012)

Environmental Law in Solomon Islands, by Stephanie Price, Adam Beeson, Joe Fardin and Jennifer Radford (Public Solicitor's Office, 2015)

Mining Law and Agreement Making in Solomon Islands, by Joe Fardin (Public Solicitor's Office)

The Landowners' Advocacy and Legal Support Unit at the Public Solicitor's Office should be able to tell you how to obtain copies.

DON'T FORGET:

At the end of each chapter in Part 2 of this manual, there are some case studies, checklists and draft charges for certain offences.

The Schedule contains a table of all the environmental offences, including many that are not mentioned in the main part of the manual.



PART ONE

01

INTRODUCTION TO ENVIRONMENTAL LAW IN THE SOLOMON ISLANDS

WHAT IS THE “ENVIRONMENT”?

The word “environment” is commonly used to refer to four main things:

- (1) Land,
- (2) Water,
- (3) Air, and
- (4) Animals.

Examples of the “environment” include trees, forests, minerals, rivers, lakes, oceans, fish, birds and humans.

WHAT IS “ENVIRONMENTAL LAW”?

“Environmental laws” are the rules and regulations that:

- (1) say when and how environmental resources such as trees, minerals and fish can be taken, and who can take them; and
- (2) make it illegal to “harm” the environment.

In many cases taking an environmental resource or carrying out a development without permission from the government will be a criminal offence. Examples of this include felling trees and taking minerals or fish without the proper licences and development consents.

It is also sometimes a criminal offence to cause “harm” to the environment, for example by causing pollution.

WHO CAN COMMIT AN ENVIRONMENTAL CRIME?

The relevant law will describe the type of person who can commit the environmental crime. Usually the law is broad and refers to “any person” committing an offence. Under Solomon Islands law, a “person” includes any “public body,

company or association, and any body of persons corporate or unincorporate”. Therefore where the legislation only refers to a “person”, a company can also be guilty of an environmental crime.

Some legislation also specifically provides for situations where an offence can also be committed by a “company” or “body corporate”, and in such situations the penalty is sometimes higher for the company committing the offence, than for an individual person.

In other cases, the law will refer to a “developer”, or an “owner”, “occupier” or “operator”. The relevant legislation needs to be read carefully so that the right person is identified as the offender.

Company Haus (<http://www.companyhaus.gov.sb/>) has an online search function that allows people to search for a registered company. Information is available about the name of the company and its directors and shareholders. This information is important in determining who the correct defendant might be in an environmental prosecution.

WHAT HAPPENS IF SOMEONE BREAKS AN ENVIRONMENTAL LAW?

Generally, if a person breaks an environmental law then he or she commits a crime and might have to pay a fine and/or go to prison.

In other cases the person might also be issued with a stop notice, have their licence or permit cancelled or suspended, have their equipment confiscated, have to fix the harm that they have caused, or they might have to pay money to the Solomon Island government for the costs of fixing the problem.

Any person convicted of an offence may also be ordered to make compensation to any person injured by the offence, and such compensation may be either in addition to or in substitution for any other punishment (Section 27 Penal Code).

WHAT ARE THE MAIN TYPES OF ENVIRONMENTAL CRIMES IN SOLOMON ISLANDS?

The main environmental crimes that are committed in Solomon Islands relate to:

- (1) **Developments:** For example carrying out logging and mining operations without carrying out an environmental impact assessment and/or without obtaining a “development consent”.
- (2) **Forestry:** For example felling and milling trees without the necessary licence, or felling or milling trees not in accordance with a licence.
- (3) **Mining:** For example extracting minerals such as gold, nickel and bauxite without the necessary licence, or not in accordance with a licence.
- (4) **Fishing:** For example taking fish without a licence, taking too many fish or fish that are too small, or using fishing methods that are illegal.
- (5) **Protected Areas:** For example carrying out certain activities such as logging and mining, or taking species from an area that has been declared as a “protected area”.
- (6) **Protected Wildlife:** For example importing or exporting certain prohibited plants and animals, and importing and exporting other restricted plants and animals without the necessary permission.
- (7) **Nuisance and Pollution:** For example causing pollution to water or air, and causing pollution from certain premises without the necessary permissions, or in breach of permissions.

WHO REGULATES ENVIRONMENTAL LAW IN SOLOMON ISLANDS?

(1) The Ministry of Environment, Conservation, Climate Change and Disaster Management.

This Ministry is responsible for the following environmental laws:

- a. Environment Act 1998
- b. Environmental Regulations 2008
- c. Protected Areas Act 2010
- d. Protected Areas Regulations 2012
- e. Wildlife Protection and Management Act 1998
- f. Wildlife Protection and Management Regulations 2008

(2) The Ministry of Forestry and Research.

This Ministry is responsible for the following environmental laws:

- a. Forest Resources and Timber Utilisation Act (Cap 40)
- b. Forest Resources and Timber (Prescribed Forms) Regulations
- c. Forest Resources and Timber Utilisation (Felling Licences) Regulations 2005
- d. Forest Resources and Timber Utilisation (Protected Species) Regulations 2012
- e. Timber (Levy and Mill Licensing) Regulations 2005
- f. The Revised Solomon Islands Code of Logging Practice 2002

(3) The Ministry of Mines, Energy and Rural Electrification.

This Ministry is responsible for the following environmental laws:

- a. Mines and Minerals Act 1996
- b. Mines and Minerals Regulations 1996

(4) The Ministry of Fisheries and Marine Resources.

This Ministry is responsible for the following environmental laws:

- a. Fisheries Management Act 2015

(5) The Ministry of Health and Medical Services.

This Ministry is responsible for the following environmental laws:

- a. Environmental Health Act (Cap 99)
- b. Environmental Health (Public Health Act) Regulations 1980

(6) Solomon Islands Maritime Safety Administration.

The Administration is responsible for the following laws which contain environmental offences:

- a. Maritime Administration Act 2009
- b. Shipping Act 1998
- c. Shipping (Marine Pollution) Regulations 2011
- d. Shipping (Dangerous Goods and IMDG Code) Regulations 2011

(7) Provincial Government.

Many activities that involve the extraction or use of environmental resources will also require permissions from the relevant Provincial Government, such as the requirement to obtain a business licence. Some provinces also have specific provincial ordinances that relate to environmental crime. These are usually in relation to marine protected areas and fisheries law.

Each authority may have other legislation for which is it responsible, however they are not listed here because they are not relevant to the main environmental offences examined in this manual.

WHO CAN ENFORCE ENVIRONMENTAL CRIMES IN SOLOMON ISLANDS?

The Royal Solomon Islands Police Force has general duties and powers to prevent the commission of and enforce crimes in Solomon Islands. This includes environmental crimes.

Environmental crimes in the Solomon Islands can also be enforced by a number of government bodies and agencies. The Ministries listed earlier all have specific enforcement powers relating to crimes committed under their jurisdiction.

The relevant Ministry usually has the power to appoint specific authorised officers for the purposes of enforcing their legislation. In addition, the Protected Areas Act 2010 gives enforcement powers to “rangers”, who are members of the local community.

RSIPF and Ministry officers are usually given certain powers with respect to the enforcement of environmental crime. The nature of these powers depends on the relevant law, but generally the powers include the power to inspect, search and seize, and in some cases the power of arrest.

WHO CAN PROSECUTE ENVIRONMENTAL CRIMES?

Public Prosecutors from the Office of the Director of Public Prosecutions can prosecute environmental crimes in Solomon Islands. In addition, police officers and private individuals can also bring prosecutions for environmental offences.

WHICH ENVIRONMENTAL LAW TO ENFORCE?

For many actions that lead to environmental harm, there may be a number of offences that have been committed. An example of this is pollution law, where an offence may have been committed in relation to breaching a permit, as well as a general pollution offence.

Solomon Islands law provides that where an act constitutes an offence under two or more laws then an offender is liable to be prosecuted and punished under any of those laws, but cannot be punished twice for the same offence.

Therefore careful consideration needs to be given to which offence should be prosecuted, taking into consideration factors such as the penalties available, whether evidence is available to meet all elements of the offence, and the likelihood of success.

IGNORANCE OF LAW

The fact that somebody does not know that a law exists, or is not aware of the specific elements of a criminal offence is not an excuse, unless knowledge of the law by the offender is expressly declared to be an element of the offence (Section 7 Penal Code).

OTHER RELATED GOVERNMENT AGENCIES AND BODIES

When an environmental crime is committed, a number of other laws may also be relevant to consider. These include laws relating to companies, customs, immigration, money laundering and proceeds of crime.

It is therefore also important to consider whether any other government ministry should be consulted such as the Ministry of Finance and Treasury, Customs and Immigration. It might also be necessary to consult with the Central Bank of the Solomon Islands and the Registrar of Companies. More information in relation to these agencies and the relevant law can be found at Chapters 14-17.

02

GENERAL POLICE POWERS AND DUTIES

RELEVANT LEGISLATION

Police Act 2013 (Police Act)

Criminal Procedure Code (CPC)

OVERVIEW

The Police Act and the CPC give police officers a number of general powers and duties that are relevant to the enforcement of environmental laws.

Where a law confers a power or imposes a duty on a person such as a police officer then the power may be exercised and the duty must be performed (Section 28(2) of the Interpretation and General Provisions Act).

In order to assist a police officer in carrying out his or her duties, the Police Act and CPC give police officers a number of powers. The most relevant powers are:

- The power to stop and search vehicles and vessels without warrant in certain circumstances
- The power to request identifying information
- The power to inspect a licence, authorization or permit required to perform an activity
- The power to search without warrant in certain circumstances
- The power to apply for and execute a search warrant
- The ability to establish a crime scene, and to preserve evidence at a crime scene
- The power of arrest without warrant in certain circumstances
- Powers conferred by arrest warrants

- Special powers with respect to the Police Maritime division, including exercising any powers that may be exercised by relevant officers under customs, immigration and fisheries law

FUNCTIONS OF THE RSIPF

Section 1 of the Police Act provides that the functions of the RSIPF include:

- maintaining law and order
- preserving the peace
- protecting life and property
- preventing and detecting crime
- apprehension of offenders
- upholding the laws of Solomon Islands
- maintaining national security
- assisting with the service and execution court processes and orders
- maintaining community safety, confidence and support
- fire prevention and suppression
- land and marine search and rescue
- explosive ordinance disposal
- assisting in dispute resolution
- providing assistance during emergencies

GENERAL DUTIES, INCLUDING THE DUTY TO PREVENT THE COMMISSION OF AN OFFENCE

Section 49(1) of the Police Act provides that a police officer may exercise any power conferred on a police officer by the Police Act, or any other law or common law.

Section 49(3) of the Police Act further provides that a police officer has a duty to:

- (a) promptly obey and execute all orders and warrants lawfully issued by any competent authority
- (b) to collect and communicate intelligence affecting the public peace
- (c) prevent the commission of offences and public nuisances
- (d) detect offenders and bring them to justice, and
- (e) apprehend all persons whom he or she is legally authorised to apprehend provided that sufficient grounds for apprehension exist.

Section 49 of the CPC provides that every police officer may interpose for the purpose of preventing, and shall to the best of his ability prevent, the commission of any offence.

PREVENTING OFFENCES GENERALLY

If a police officer suspects, on reasonable grounds, that an offence has been committed, or is being committed, or is about to be committed then he or she may take steps that the police officer considers are reasonably necessary to prevent the commission of that offence or the commission of a further offence (section 52 Police Act).

REQUESTING IDENTIFYING INFORMATION

Section 75 of the Police Act provides that a police officer may require a person to state the person's full name, residential address and date of birth if:

- (a) the police officer finds the person committing an offence
- (b) the police officer suspects, on reasonable grounds, that the person has committed an offence
- (c) the police officer suspects, on reasonable grounds that the person may be able to help in the investigation of a vehicle, vessel or aircraft incident or criminal offence because the person was near the place where the incident or offence occurred at or about the time when the incident or offence occurred
- (d) the person is in control of a vehicle, aircraft or vessel
- (e) the police officer is attempting to enforce a court order in relation to a person or to serve a court document on a person, or
- (f) the person is performing an activity that is required by law to be performed under a licence.

The police officer requesting the identifying particulars may require the person to give evidence of the correctness of the name, address or date of birth given by the person if, in the circumstances, it would be reasonable to expect the person to be in possession of such evidence.

A police officer requesting information may detain the person for only as long as is reasonably necessary to obtain and verify the particulars.

DETAINING A PERSON TO OBTAIN IDENTIFYING INFORMATION

A police officer who suspects on reasonable grounds that a person has committed an offence and who intends to bring proceedings against the person in respect of that offence by way of summons, may detain that person at any place in order to take the person's name, residential address and date of birth, and only for the period necessary to take the person's identifying particulars (Section 76 Police Act).

POWER TO INSPECT LICENCE

If any person is required by any law to have a licence to perform an activity, an authorisation or permit to conduct an activity, or a register or other records relating to the activity, a police officer may require the person to produce the item for inspection at a place and time that the police officer reasonably requires (Section 77 Police Act).

STOPPING VEHICLES

A police officer may require any person who is in control of a vehicle, vessel or aircraft to stop the vehicle, vessel or aircraft for enforcing a road transport law or any other law, or to check whether the vehicle, vessel or aircraft or the person is complying with any road transport or any other law (Section 81 Police Act).

ESTABLISHING A CRIME SCENE

A police officer may enter any place that the police officer suspects, on reasonable grounds, is a crime scene and may establish a crime scene (Section 108(1) Police Act). As soon as practicable after the establishment of a crime scene, the police officer must apply for a warrant to search for, and seize, any evidence found at the crime scene (section 108(3) Police Act).

PRESERVING EVIDENCE AT A CRIME SCENE

A police officer responsible for establishing a crime scene, or other nominated officer responsible for the crime scene, must take all steps he or she considers reasonably necessary to protect anything at the crime scene from being damaged, interfered with or destroyed (section 109(1) Police Act).

This includes ensuring that any person whose presence is not essential does not enter the crime scene, preventing unnecessary movement inside the crime scene, establishing a safe walking area to minimise the risk of damaging any evidence, ensuring that nothing is unnecessarily touched or moved, and directing the removal of, or removing any person, animal, vehicle, vessel or object from the crime scene until all necessary forensic and technical examinations are finished (section 109(2) Police Act).

SEARCHES**Search of vehicles without a warrant**

A police officer may stop, detain and search a vehicle, vessel or aircraft without warrant if the police officer suspects on reasonable grounds that the vehicle, vessel or aircraft:

- contains an item
- that may have been used
- is being used
- is intended to be used
- is primarily designed to be used for committing a criminal offence
- or contains any article that is evidence of the commission of a criminal offence or an offence against customs or immigration law (Section 102 (1)(d) and (g) Police Act).

Search, seize and detain without warrant

Any police officer who has reason to suspect that any article stolen or unlawfully obtained, or any article in respect of which a criminal offence or an offence against the customs laws has been, is being, or is about to be, committed, is being conveyed, whether on any person or in any vehicle, package or otherwise, or is concealed or carried on any person in a public place, or is concealed or contained in any vehicle or package in a public place, for the purpose of being conveyed, may, without warrant or other written authority, detain and search any such person, vehicle or package, and may take possession of and detain any such article which he may reasonably suspect to have been stolen or unlawfully obtained or in respect of which he may reasonably suspect that a criminal offence or an offence against the customs laws has been, is being, or is about to be committed, together with the package, if any, containing it, and may also detain the person conveying, concealing or carrying such article (Section 15(1) CPC).

Any police officer of or above the rank of sergeant may, if he has reason to suspect that there is on board any vessel any property stolen or unlawfully obtained, enter without warrant, and with or without assistants, board such vessel, and may remain on board for such reasonable time as he may deem expedient, and may search with or without assistants any and every part of such vessel, and after demand and refusal of keys, may break open any receptacle, and upon discovery of any property which he may reasonably suspect to have been stolen or unlawfully obtained may take possession of and detain such property and may also detain the person in whose possession the

same is found. Such police officer may pursue and detain any person who is in the act of conveying any such property away from any such vessel, or after such person has landed with the property so conveyed away or found in his possession (Section 15(2) CPC).

Application for search warrant

A police officer may apply to a magistrate for a warrant to enter and search a place in order to obtain evidence of the commission of an offence or to recover stolen property if the police officer has reasonable grounds to suspect that the evidence or property sought is on or in the place to be searched (Section 104(1) Police Act).

Power to issue search warrant

Magistrates and justices of the peace may issue search warrants authorising a police officer (or other person named) to search a building, ship, vehicle, box, receptacle or place. A search warrant can only be issued where it is proved or there is reasonable suspicion that anything upon, by or in respect of which an offence has been committed, or anything, which is necessary to the conduct of an investigation into any offence, is in any building, ship, vehicle, box, receptacle or place.

If a police officer (or other person named) finds the object or any other thing which there is reasonable cause to suspect to have been stolen or unlawfully obtained, the police officer (or other person named) is authorised to seize it and bring it before the court issuing the warrant or some other (Section 101 CPC).

Authority conferred by search warrant

A search warrant authorises any executing officer to enter the subject premises and search the premises for things connected with the offence stated in the warrant application, and to stay at the place for the time that is reasonably necessary to execute the search warrant (Section 105(1) Police Act).

Detention of property seized

When any object obtained through a search warrant is seized and brought before a court, it may be detained until the conclusion of the case or the investigation. Reasonable care must be taken for its preservation (Section 104(1) CPC). If any appeal is made, or if any person is committed for trial the court may order for the object to be further detained for the purpose of the appeal or the trial (Section 104(2) CPC).

ARRESTS

Power of arrest without warrant

Section 88 of the Police Act provides that a police officer may arrest without warrant anyone:

- (a) who is about to commit an offence.
- (b) who is in the act of committing an offence.
- (c) whom the police officer has reasonable grounds for suspecting to be about to commit an offence.
- (d) whom the police officer has reasonable grounds for suspecting to be committing an offence.
- (e) anyone whom the police officer has reasonable grounds to suspect has committed an offence; or
- (f) who has escaped from lawful custody.

This power is exercisable only if the police officer believes, on reasonable grounds that it is necessary to arrest the person for any of the following reasons-

- (a) to enable the name, address and identity of the person to be ascertained
- (b) to prevent the person from suffering injury or causing injury to themselves or any other person
- (c) to prevent the person causing loss, damage or destruction to property
- (d) to prevent the person from committing another offence
- (e) to protect a child or other vulnerable person
- (f) to allow the prompt and effective investigation of the offence or of the conduct of the person, or
- (g) to prevent any prosecution for the offence being hindered by the disappearance of the person in question.

Section 18 of the CPC further provides that any police officer may, without an order from a Magistrate and without a warrant, arrest:

- (a) any person whom he suspects upon reasonable grounds of having committed a cognisable offence
- (b) any person who commits any offence in his presence
- (c) any person who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody
- (d) any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to such thing
- (i) any person for whom he has reasonable cause to believe a warrant of arrest has been issued.

Section 51 of the CPC also provides that a police officer knowing of a design to commit any cognisable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot otherwise be prevented (Section 51 CPC).

Form, contents and duration of warrant of arrest

Every warrant of arrest must be made by the Judge or Magistrate that issues it (Section 89(1) CPC).

Every warrant must:

- state shortly the offence with which the person against whom it is issued is charged
- name or otherwise describe person to be arrested
- order the person or persons to whom it is directed to apprehend the person against whom it is issued and bring him before the court issuing the warrant or before some other court having jurisdiction in the case to answer to the charge (Section 89(2) CPC).

An arrest warrant remains in force until it executed or until it is cancelled by the court which issued it (Section 89(3) CPC).

Information for arrested persons

A police officer who arrests a person must, as soon as is reasonably practicable after the arrest, inform the person, in a language and manner that the person understand that the person is under

arrest and the nature of the offence for which the person is arrested (Section 95 Police Act).

SPECIAL POWERS RELATING TO THE POLICE MARITIME DIVISION

In addition to the powers and duties listed above, Section 169 of the Police Act gives further powers to the Commander of the Police Maritime Division, the Commanding Officers of each vessel and all police officers. When any of these officers are carrying out Police Maritime Division functions, they have the additional powers:

- to board any vessel and inspect any licences, certificates, documents or records relating to the vessel or the persons on the vessel that are required by any law.
- to board any vessel and enter any shore facility and therein exercise any powers that may be exercised by customs officers under the Customs and Excise Act (Cap. 121).
- without a search warrant, to enter upon or into any vessel and exercise any powers that may be exercised by immigration officers under the Immigration Act (Cap.60).

CRIMINAL OFFENCES

Offences at a crime scene

Any person who:

- tampers with a crime scene
- tampers with any evidence or potential evidence at a crime scene
- hinders or obstructs a police officer
- refuses to obey any lawful direction issued by a police officer at a crime scene

commits an offence and is liable on conviction to a penalty of \$10,000 or one year imprisonment or both (Section 189 Police Act).

Assault on police officer

Any person who assaults or resists any police officer acting in the execution of his or her duty or aids, abets or incites any person to assault or resist a police officer commits an offence and is liable on conviction to a maximum penalty of \$50,000 or 5 years imprisonment or both (Section 190 Police Act).

ACCEPTING BRIBES

Any police officer or specialist staff who accepts or demands any money or other benefit as an inducement to do or refrain from doing any act in the execution of their duty or in the performance of any function on behalf of the police force commits an offence and is liable on conviction to a maximum penalty of 3 years imprisonment (section 194 Police Act).

Offering bribes

Any person who gives or offers to give money or any other benefit to a police officer or to any person performing functions on behalf of the police force as an inducement to do or to refrain from doing any act in the execution of the person's duties commits an offence and is liable on Police Act).

03

OFFENDERS

RELEVANT LEGISLATION

The Penal Code (Cap 26)

OFFENDERS

Principal Offenders

When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it:

- (a) every person who actually does the act or makes the omission which constitutes the offence
- (b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence
- (c) every person who aids or abets another person in committing the offence
- (d) any person who counsels or procures any other person to commit the offence (Section 21 Penal Code).

Procuring an offence

In addition, any person who procures another person to do or omit to do any act of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had himself done the act or made the omission, and he may be charged with doing the act or making the omission (Section 21 Penal Code).

Offences committed by joint offenders in prosecution of common purpose

When two or more persons form a common intention to commit a crime and an offence is committed of such a nature that its commission was a probable result of the common intention then each of them is deemed to have committed the offence (Section 22 Penal Code).

Counselling another to commit an offence

When a person counsels another to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence actually committed is the same as that counselled or a different one, or whether the offence is committed in the way counselled or in a different way, provided in either case that the facts constituting the offence actually committed are a probable consequence of carrying out the counsel.

In either case the person who gave the counsel is deemed to have counselled the other person to commit the offence actually committed by him (Section 23 Penal Code).

Accessories after the fact

A person who receives or assists another who is, to his knowledge, guilty of a felony, in order to enable him to escape punishment, is said to become an accessory after the fact to the felony. Any person who becomes an accessory after the fact to a felony is guilty of a felony, and shall be liable, if no other punishment is provided, to imprisonment for three years (Sections 386 and 387 Penal Code).

It is important to read each law carefully, as it could allow for certain types of persons to be offenders, and for a company to be liable for the actions of its employees.

04

COMMENCING CRIMINAL PROCEEDINGS

RELEVANT LEGISLATION

Criminal Procedure Code (CPC)

Magistrates' Court Act (MCA)

OVERVIEW

Matters to consider include:

- Which Court?
- Who will prosecute?
- Bringing the complaint and charge
- Obtaining a summons
- Serving the summons
- Seeking security for keeping the peace

Criminal prosecutions are usually initiated when a person makes a complaint to a Magistrate about the commission of an offence. The police will then present a Magistrate with a charge sheet about the commission of an offence, or the person accused with committing an offence will be brought before a Magistrate.

A Magistrate will then issue a summons requiring the accused person to attend Court. Sometimes a warrant of arrest will also be issued. A warrant of arrest will order a person (usually the police) to apprehend a person and bring him to court.

WHICH COURT?

If an Act mentions a particular court in which an offence is to be tried then the offence must be tried by that court (Section 5 CPC). If an Act does not mention a particular court then, when deciding in which court to prosecute an environmental offence, regard must be had to the maximum penalty that the relevant court can impose.

High Court

Section 4(a) of the CPC provides that any offence may be tried by the High Court. The High Court may pass any sentence authorised by law (Section 6 CPC).

Appeals in criminal cases from any Magistrate's Court are to be conducted in the High Court (Section 45 MCA).

Some laws provide that the matter must be brought in the High Court, for example under the Fisheries Management Act 2015.

Principal Magistrates' Court

An offence may be tried by Principal Magistrates' Court where the maximum punishment for the offence does not exceed 14 years imprisonment and/or a fine (Section 4(b) CPC). However the maximum penalty that can be imposed by the Principal Magistrates' Court cannot exceed imprisonment for 5 years and/or a fine of 50,000 penalty units (Section 27(1) MCA).

Magistrates' Court

Any offence may be tried by any Magistrates' Court where the maximum punishment does not exceed imprisonment for 1 year and/or \$10,000, and the Magistrates' Court has the power to impose such penalties (Section 4(c) and 7(2) CPC).

If an offence is to be tried "summarily" then it must be tried in a Magistrates' Court (Section 5 CPC).

Offences committed relating to vessels

Where an offence over which a Magistrate's Court has jurisdiction is committed or any cause or matter arises in any vessel, such offence may be prosecuted or such cause or matter heard and determined either by the Magistrate's Court exercising jurisdiction over the place where such vessel is at the time when such offence is committed or such cause or matter arises, or by the Magistrate's Court exercising jurisdiction over any place where such vessel calls after such commission or arising (Section 28 MCA).

WHO CAN PROSECUTE?

Public Prosecutors

A public prosecutor may appear and plead without any written authority before any court in which any case of which he has charge is under inquiry, trial or appeal (Section 72 CPC).

POLICE MAY CONDUCT PROSECUTION UNDER MAGISTRATES' COURTS

In any trial or inquiry before a Magistrate's Court, if the proceedings have been instituted by a police officer, any police officer may appear and conduct the prosecution notwithstanding the fact that he is not the officer who made the complaint or charge (Section 73 CPC).

Private prosecutions

"Private prosecution" means a prosecution instituted and conducted by any person other than a public prosecutor or a public officer in his official capacity.

Any person conducting a prosecution may do so personally or by an advocate (Section 75 CPC). Section 76 of CPC further provides that "any person who believes from a reasonable and probable cause that an offence has been committed by any person may make a complaint thereof to a Magistrate having jurisdiction to cause such person to be brought before him."

If any private person instructs an advocate to prosecute in any such case the public prosecutor may conduct the prosecution, and the advocate so instructed must act under his directions (Section 72 CPC).

PROCEEDINGS AGAINST FOREIGNERS

Proceedings for the trial of any foreigner cannot be instituted in any court except with the leave of the Director of Public Prosecutions and upon his certificate that it is expedient that such proceedings should be instituted. This is subject to certain exclusions (Section 126 CPC)

INSTITUTING PROCEEDINGS

Complaint and charge

Proceedings may be instituted either by the making of a complaint or by the bringing before a Magistrate of person who has been arrested without warrant (Section 76(1) CPC).

Any person who believes from a reasonable and probable cause that an offence has been committed by any person may make a complaint to a Magistrate to cause such person to be brought before the Magistrate (Section 76(2) CPC).

Issue of summons or warrant

Upon receiving a complaint and having signed the charge in accordance with the provisions of section 76, the Magistrate may in his discretion issue either a summons or a warrant to compel the attendance of the accused person before a Magistrate's Court (Section 77 CPC).

SUMMONS

Form and contents of summons

Every summons issued by a court shall be in writing, in duplicate, signed by the presiding officer of such court, or by such other officer as the Chief Justice may from time to time direct (Section 79(1) CPC).

Every summons shall be directed to the person summoned and shall require him to appear at a time and place before a court having jurisdiction to inquire into and deal with the complaint or charge. It must state shortly the offence with which the person, against whom it is issued is charged (Section 79(2) CPC).

Service

Every summons shall, if practicable, be served personally on the person summoned by delivering or tendering to him one of the duplicates of the summons (Section 80 CPC).

Service when person summoned cannot be found

Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult member of his family or with his servant residing with him or with his employer (Section 81 CPC).

Procedure when service cannot be effected

If a person cannot be personally served and a copy of the summons cannot be left with some adult member of his family, with a servant residing with him, or with his employer, then one of the duplicates of the summons can be affixed to some conspicuous part of the house in which the person summoned ordinarily resides. The summons will then be deemed to have been duly served (Section 82 CPC).

Service on a company

Service of a summons on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation, or by registered letter addressed to the chief officer of the corporation in Solomon Islands at the registered office of such company or body corporate. Service shall be deemed to have been effected when the letter would arrive in ordinary course of post (Section 83 CPC).

ARREST WARRANTS

Form, content and duration of warrant of arrest

Every warrant of arrest must be made by the Judge or Magistrate that issues it (Section 89(1) CPC).

Every warrant must:

- state shortly the offence with which the person against whom it is issued is charged
- name or otherwise describe person to be arrested
- order the person or persons to whom it is directed to apprehend the person against whom it is issued and bring him before the court issuing the warrant or before some other court having jurisdiction in the case to answer to the charge (Section 89(2) CPC).

An arrest warrant remains in force until it executed or until it is cancelled by the court which issued it (Section 89(3) CPC).

Information for arrested persons

A police officer who arrests a person must, as soon as is reasonably practicable after the arrest, inform the person, in a language and manner that the person understands that the person is under arrest and the nature of the offence for which the person is arrested (Section 95 Police Act).

05

EVIDENCE

RELEVANT LEGISLATION

Evidence Act 2009 (Evidence Act)
Criminal Procedure Code (CPC)

CRIMINAL STANDARD OF PROOF

The Evidence Act provides that in order to convict a person of a criminal offence, the court must find that the prosecution proved its case beyond reasonable doubt. Where in a criminal proceeding the onus of proof is on the accused person, then the court only needs to find that the accused proved his or her case on the balance of probabilities. (Section 12 Evidence Act).

HOW EVIDENCE IS GIVEN

In a criminal proceeding the ordinary way for a person to give evidence is orally in a courtroom in front of the court and the parties to the proceedings and their lawyers (Section 43(a) Evidence Act).

If both the prosecution and defence agree, evidence may also be given by an affidavit filed in the court, or by reading a written statement in the courtroom (Section 43(b) Evidence Act).

POLICE EVIDENCE

Section 67 of the Evidence Act provides that a police officer can give evidence by reading or being led through a written statement previously prepared by that police officer. However, this evidence can only be given if:

- (a) the statement was made by the police officer at the time of or soon after the occurrence of the events to which it refers, and
- (b) the police officer signed the statement when it was made, and
- (c) a copy of the statement had been given to the person charged or other party or to his or her legal practitioner a reasonable time before the hearing of the evidence.

DEMONSTRATION, EXPERIMENT OR INSPECTION

A party can apply to the court for an order that a demonstration, experiment or inspection be held. Such an order may be made where it would assist the court in resolving issues of fact or understanding the evidence (Section 74 Evidence Act).

RELEVANCE

For evidence to be admissible in court it must be relevant, which means it must have a tendency to prove or disprove anything as a result of the determination of a proceeding (Section 20 Evidence Act).

OPINION EVIDENCE

Usually evidence that is an opinion of a witness is not admissible in court (Section 128 Evidence Act). However there are some exceptions to this rule, including where an expert gives the opinion.

Section 130 of the Evidence Act provides that an opinion by an expert that is part of expert evidence offered in a proceeding is admissible if the Court is likely to obtain substantial help from the opinion in understanding other evidence in the proceeding, or in ascertaining any fact that is of consequence to the determination of the proceeding.

EXPERT REPORTS

Evidence of a person's opinion may be adduced by tendering a report signed by the person that:

- (a) states the person's name
- (b) states that the person has specialised knowledge based on his or her training, study or experience, as specified in the report, and
- (c) sets out an opinion that the person holds and that is expressed to be wholly or substantially based on that knowledge.

When such a report is so used, the court may, if it thinks fit, summon the expert and examine him as to the subject matter of the report (Section 133 Evidence Act).

PLANS AND REPORTS BY SURVEYORS, GOVERNMENT ANALYSTS AND GEOLOGISTS, AND MEDICAL PRACTITIONERS

Any document purporting to be a plan made by a surveyor, or a report under the hand of any analyst or geologist in the employment of the Government, or of a medical practitioner upon any matter or thing submitted to him for examination or analysis and report may be used as evidence in any inquiry or other proceeding under the CPC Code (section 180(1) CPC).

When any document is so used, the court may, if it thinks fit, summon the surveyor, analyst, geologist or medical Practitioner, as the case may be, and examine him as to the subject matter of such document (section 181(3) CPC).

USE OF CHARTS AND SUMMARIES

Evidence may be given in the form of charts, summaries or other explanatory material if it appears to the court that the material would be likely to aid its comprehension of other evidence that has been given or is to be given (Section 48 Evidence Act).

A useful book in relation to evidence law is called *Evidence Law and Advocacy in the Solomon Islands*, by Robert Cavanagh (Public Solicitor's Office, 2012)

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PART TWO

06

DEVELOPMENT CONTROL AND DISCHARGE OFFENCES

RESPONSIBLE MINISTRY

Ministry of Environment, Climate Change, Disaster Management and Meteorology (MECDM)

CONTACT DETAILS

PO Box 21
Honiara
Ph: 23032/27751
Fax: 28054

RELEVANT LEGISLATION

Environment Act 1998 (EA)
Environment Regulations 2008 (ER)

ENFORCEMENT AGENCIES AND OFFICERS

- 1) Director of Environment
- 2) Environmental Inspectors
- 3) RSIPF

MAIN ENVIRONMENTAL OFFENCES

- Commencing or continuing to carry out a prescribed development, such as logging or mining, without a development consent
- Failing to comply with the conditions of a development consent
- Discharging waste, or emitting noise, odour or electromagnetic radiation from a prescribed premises except in accordance with a discharge licence
- Failing to comply with the terms of a discharge licence
- General pollution offences relating to discharges and emissions

A full list of Development Control And Discharge Offences, and their corresponding penalties can be found at Table 1 of the Schedule.

MAIN POWERS RELATING TO ENVIRONMENTAL OFFENCES

- 1) Powers of entry
- 2) Monitoring powers relating to development activities
- 3) Notice discontinuing a development
- 4) Pollution Abatement Notices
- 5) Stop Notices
- 6) Recovery of costs
- 7) Prosecution

OBJECTIVES OF THE ENVIRONMENT ACT AND THE ENVIRONMENT REGULATIONS

The Environment Act 1998 and Environment Regulations 2008 are laws in Solomon Islands that deal with environmental impact assessment, and the control of development and pollution.

The objects of the Environment Act include:

- establishing integrated systems of development control, environmental impact assessment and pollution control,
- to prevent, control and monitor pollution, and
- to reduce risks to human health and prevent degradation of the environment (Section 3 EA).

THE ENVIRONMENT AND CONSERVATION DIVISION

The EA establishes the Environment and Conservation Division, which sits within the Ministry of Environment, Climate Change, Disaster Management and Meteorology. The Division consists of a Director, Environmental Inspectors and other officers necessary for the administration of the EA (Section 5 EA).

The functions of the Division are prescribed by Section 6 of the EA, and include to:

- (a) protect, restore and enhance the quality of the environment of Solomon Islands, having regard to the need to promote sustainable development
- (b) develop, establish and administer systems of prevention and control of pollution in both the industrial and non-industrial sectors, and
- (c) develop national standards to promote sustainable development and to monitor those standards through environmental auditing.

FUNCTIONS AND POWERS OF THE DIRECTOR

Section 7 of the EA gives the Director a number of powers. These include to manage and control the affairs of the Division; to advise the Minister on matters concerning the environment and in relation to any of the functions, powers and responsibilities of the Division; to promote co-ordination among Ministries and government divisions; and to develop, co-ordinate and facilitate implementation of national policy concerning environmental planning, environmental impact assessment and pollution control.

The Director also has the general power to carry out such other acts as he thinks necessary to properly discharge the functions and generally for carrying out the objects of the EA (Section 7(i) EA).

Section 10 of the EA gives the Director the power to direct any public authority to do anything within the powers of that authority which the Director considers will contribute to the achievement of the objects of the EA, or to refrain from doing any act which the Director considers will detract from the achievements of the objects of the EA. This may extend to directing the Ministries of Forestry and Mining to refuse to grant relevant licences for logging and mining operations.

POWERS OF ENTRY OF INSPECTORS

For the purposes of (i) ascertaining the character and condition of land, building, water or reef, or (ii) investigating an alleged offence, an Inspector may enter any land or building (other than a dwelling house) at any time, and a dwelling house at a reasonable time during daylight. Reasonable notice must however be given to the owner or occupier of the land, building or dwelling house (Section 11 EA).

DEVELOPMENT CONTROL

The EA establishes a system of development control whereby a developer must conduct environmental impact assessments and apply for and receive "development consent" from the Director before he can carry out "prescribed developments".

"Prescribed Developments"

Developments that require development consent from the Director are listed at Schedule 2 to the EA as any one of the following:

1. FOOD INDUSTRIES including
 - (a) fruit processing, bottling and canning
 - (b) brewing, malting and distillery works
 - (c) abattoirs
 - (d) other food processing requiring packaging
2. IRON AND STEEL INDUSTRIES
3. NON-METALLIC INDUSTRIES including
 - (a) lime production
 - (b) brick and tile manufacture
 - (c) extraction of minerals and mining
 - (d) extraction of aggregates stones or shingles
 - (e) radio-active related industries
 - (f) manufacture of cement
4. LEATHER, PAPER, TEXTILE AND WOOD INDUSTRIES including
 - (a) leather tanning and processing
 - (b) textile industry with dyeing facilities
 - (c) carpet industry with chemical dyeing
 - (d) manufacture of paper, pulp and other wood products
5. FISHING AND MARINE PRODUCT INDUSTRY including logging operation, saw milling, all forms of timber processing and treatment

6. CHEMICAL INDUSTRY including
 - (a) pesticide production and use
 - (b) pharmaceutical production
 - (c) fertiliser manufacture and use
 - (d) oil refineries
7. TOURISM INDUSTRY including
 - (a) hotels
 - (b) golf courses
 - (c) recreational parks
 - (d) tourism resorts or estates
8. AGRICULTURE INDUSTRY including
 - (a) livestock development
 - (b) agricultural development schemes
 - (c) irrigation and water supply schemes
9. PUBLIC WORKS SECTOR including
 - (a) landfills
 - (b) infrastructure developments
 - (c) major waste disposal plants
 - (d) soil erosion and siltation control
 - (e) hydropower schemes
 - (f) reservoir development
 - (g) airport developments
 - (h) waste management, drainage and disposal systems
 - (i) dredging
 - (j) watershed management
 - (k) ports and harbours
10. OTHER
 - (a) industrial estates
 - (b) housing development schemes
 - (c) settlement and resettlement schemes
 - (d) petroleum product storage and processing works.

Logging and mining are therefore prescribed developments and require development consent from the Director of Environment before they can be carried out.

Development Control Offences

If a developer commences, or continues to carry out, any prescribed development without first submitting a development application (together with either a public environmental report or an environmental impact statement) and being issued with a development consent (or an exemption) from the Director then he/she commits a criminal offence and is liable to a fine not exceeding \$10,000 dollars, or imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment (Section 19 EA).

The EA also provides that a developer shall not carry on any development except in accordance with the development consent (Section 25 EA).

Form 5 of the ER contains the standard form development consent and regulation 15 of the ER provides that the Director may impose any of the following further conditions:

- installation and operation of certain plant or equipment within a certain time
- the taking of certain action to minimize the risk of environmental harm
- at the cost of the developer, installation of monitoring equipment, carrying out a specified monitoring program and reporting on its progress
- preparation and carrying out of an environmental program
- provision of reports on any matter specified by the Director

- undertaking an audit at periodic intervals
- preparation and lodgment of a plan for emergency response in relation to accidental release of contaminants or risk of other emergency
- provision of information reasonably required by the Director for the administration and enforcement of the Act
- conducting baseline studies or surveys and reporting the results prior to commencing the operations
- rehabilitation of the affected area.

Monitoring powers

Section 31 of the EA gives the Director, as well as any relevant public authority, the power to monitor (or cause to monitor) all or any of the environmental aspects of a development activity, whether before or after it has been completed.

The Director, or any relevant public authority, may give such directions to the developer to ensure that appropriate safeguards and steps are taken by the developer to mitigate any adverse environmental impacts. The Developer must then comply with any directions issued, but the EA does not specify what happens when there is non-compliance.

Notice discontinuing a development

If an Inspector has reason to believe that any person is responsible for, or substantially involved in any development, he may request such person to produce within a reasonable time evidence of the development consent. If any Inspector is not satisfied that a development consent authorising the particular development exists, or where the person fails within a reasonable period to produce such evidence, the Inspector may issue a notice in writing requiring all persons involved in the development to immediately discontinue such development (Section 25 EA).

Company offences

Where a corporation is guilty of an offence, any officer, director, or agent of such corporation who authorised, assented to or participated in, or by his neglect or omission contributed to the commission of the offence, is a party to and guilty of the offence and liable to the penalty provided for the offence (Section 53 EA).

Where no penalty is prescribed

A person guilty of an offence against any provision of EA for which no penalty is elsewhere prescribed is liable on conviction in a Magistrate's Court to a fine not exceeding one thousand dollars or, in default of payment, to imprisonment not exceeding one year (Section 54 EA).

DISCHARGE LICENCES FOR PRESCRIBED PREMISES

Any person who wishes to discharge waste, or emit noise, odour or electromagnetic radiation from a "prescribed premises" must obtain a licence from the Director, and comply with the terms of the licence (Section 38 EA).

"Prescribed Premises"

Schedule 1 of the ER list the following "prescribed premises" for which discharge licences are required:

- Nightclubs
- Processing and manufacturing of food, including canneries
- Chemical industries
- Major waste disposal plants and premises
- Waste management and disposal systems
- Leather, paper, textile and wood industries
- Iron, steel and other metal industries
- Installations for manufacture of cement
- Extractions of minerals and mining
- Petroleum product storage and processing works
- Intensive fish and aqua farming
- Industrial installations for production of electricity
- Brewing and malting
- Harbours and port installations, and
- Shipyards

Licence conditions

The types of conditions that a licence for prescribed premises may be subject to include that:

- (a) The specified pollution control equipment is installed and operated in the manner specified
- (b) Specified measures are taken to minimise the likelihood of pollution due to any activity conducted or proposed to be conducted in the premises
- (c) Within any specified time, monitoring equipment of a specified type is provided on the premises
- (d) Within any specified time a monitoring programme is carried out to supply information concerning the characteristics, volume and effects of:
 - (i) the waste that is being or is to be discharged from those premises into the environment, or
 - (ii) the noise, odour or electromagnetic radiation that is being or is to be emitted from those premises into the environment,
- (f) Where practicable, measures are taken to or make available for re-use all or part of the waste, and
- (g) Any equipment be operated as specified so as to prevent, control or abate pollution (Section 42 EA).

Criminal offences relating to discharge licences for prescribed premises

Any person who occupies a prescribed premise that is subject to a licence must comply with the conditions of the licence (Section 41 EA). Failure to do so is a criminal offence punishable by a fine not exceeding one thousand dollars \$1000 year imprisonment (Section 54 EA).

An occupier of a prescribed premises cannot (i) cause or increase, or permit to be caused or increased, the discharge of waste or the emission of noise, or electromagnetic radiation from the prescribed premises; or (ii) alter or permit to be altered the nature of the waste discharged or noise, odour or electromagnetic radiation

emitted from the prescribed premises, unless in accordance with any conditions of the licence. Any occupier of a prescribed premises who does so is guilty of an offence and liable on conviction to a fine not exceeding \$5000, or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment (Section 38 EA).

GENERAL POLLUTION OFFENCES

A number of general pollution offences are detailed in the Table 1 of the Schedule.

Examples of general pollution offences include:

- (1) Any person emitting or causing to be emitted from any premises noise, odour or electromagnetic radiation which unreasonably interferes with the health, welfare, convenience, comfort or amenity of any person (Section 34 EA)
- (2) Any person causing or allowing waste to be placed in any position from which the waste could reasonably be expected to gain access to any part of the environment and is likely to result in pollution (Section 35 EA)
- (3) The occupier of any premises failing to take all reasonable and practicable measures to prevent or minimise the discharge of waste or the emission of noise, odour or electromagnetic radiation from the premises (Section 36 EA)
- (4) A person installing on or in any premises any equipment which, when operated, emits unreasonable noise (Section 51 EA).

Defences to certain pollution offences

It is a defence to proceedings for a pollution offence if the person charged with the offence proves that:

- (a) the discharge or emission occurred:-
 - (i) for the purpose of preventing danger to human life or health or irreversible damage to a significant portion of the environment, or
 - (ii) as a result of an accident which was beyond such person's control and not caused by the negligence of such person,
- (b) the person who occupies or owns the premises took all reasonable precautions to prevent that discharge or emission,
- (c) as soon as was reasonably practicable after that discharge or emission the Director was notified in writing by the person of the particulars therefore, or
- (d) the discharge or emission complies with any prescribed standard, licence or requirement in a pollution abatement notice, or a condition to development consent, or an approved policy agreed or decided under this Act (Section 48 EA).

ENFORCEMENT OPTIONS AND POWERS RELATING TO DISCHARGE AND POLLUTION OFFENCES

Pollution Abatement Notices

The Director may serve or cause to be served on the owner or the occupier of any premises a "pollution abatement notice", if the Director is satisfied that:

- waste matter is being or is likely to be discharged, or
- any noise, odour or electromagnetic radiation is being or is likely to be emitted from a premises into the environment,
- waste matter or noise, odour or electromagnetic radiation does not comply with, or would not if it were discharged or emitted into the environment comply with -
 - (i) any standard under an approved policy, or
 - (ii) any prescribed standard, or
- waste or noise, odour or electromagnetic radiation has caused or is causing or likely to cause pollution (Section 43 EA).

The pollution abatement notice must set out the reason for the notice and may require persons affected by it to take any measures the Director considers necessary to prevent, control or reduce the discharge of waste or emission of noise, odour or electromagnetic radiation.

The pollution abatement notice applies to each person who is the owner or the occupier of the premises on whom it is served. It binds each successive owner or occupier of the premises or the land to which the notice relates.

A person to whom a pollution abatement notice applies must comply with the requirements contained in the notice. Any occupier of a premises who fails to comply with pollution abatement notice is guilty of an offence and liable on conviction to a fine not exceeding \$5000 or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

Stop Notices

An Inspector, in consultation with the Director, may serve a "stop notice" on a person if he is satisfied that:

- (a) such person has not complied with any of the requirements contained in a pollution abatement notice, and
- (b) the non-compliance is causing or is about to cause conditions seriously detrimental to the environment or dangerous to human life or health (Section 45 EA).

After serving the stop notice, the Inspector may take or may cause to be taken such steps as he considers necessary (i) to stop the carrying on of the trade, process or activity, and to close down the particular premises; and (ii) to take measures so as to prevent or minimise the ill-effects such non-compliance has on the environment and on the health of the population. The costs of taking such steps are a debt due to the Government, and may be recovered through court proceedings.

Any person who fails to comply with a "stop notice" is guilty of an offence and liable on conviction to a fine not exceeding \$5000 or to imprisonment for a period not exceeding six months (or to both such fine and imprisonment).

Regulations 25 and 26 and Forms 9 and 10 of the Environmental Regulations 2008 prescribe the procedure and form and content of pollution abatement notices and stop notices

Powers concerning discharge of waste and creation of pollution

Where any waste has been or is being discharged or is likely to be discharged from any premises in breach of a licence, stop notice or a pollution abatement notice, an Inspector may in writing advise any person or assist such person to remove, disperse, destroy, dispose of or otherwise deal with the waste. Any expenses incurred in assisting the removal, disposal, destruction, disposal or other dealing, in the prevention, control or abatement, may be recovered from the person who:

- (i) was the occupier of the premises at the time of that discharge, or
- (ii) caused or permitted to be caused such discharge or was responsible for such discharge (Section 47 EA).

CASE STUDY- LOGGING WITHOUT A DEVELOPMENT CONSENT

If a logging company logs land without a development consent then they commit an offence. The penalty is a fine of up to \$10,000 and/or prison for up to one year. See Section 19 of the Environment Act 1998.

Facts

A group of men come into the RSIPF station in Gizo to make a complaint. They tell the RSIPF officer that a few days ago a logging barge landed near their village. Bulldozers and other machinery were taken off the barge and workers started to clear trees.

The villagers asked the logging company for a copy of their licences, but the logging company did not give them any documents. The villagers had been told by some wantok in Honiara that a logging company might be coming to the village. However no one in the village remembers the logging company, the Ministry of Environment, or the provincial government speaking with them about the logging. They also do not remember being given a copy of a 'public environmental report' or 'environmental impact statement' to comment on.

The villagers are very upset. The men are threatening to set fire to the logging machines, and the women and children are currently blocking the access track to the forest.

Offence

Anyone who wishes to carry out logging in Solomon Islands must obtain a development consent from the Ministry of Environment, Climate Change, Disaster Management and Meteorology. Landowners must be consulted before a development consent is issued, and the logging company must also have prepared an environmental impact statement and given a copy to the landowners for their comments.

In the current situation, the landowners cannot remember speaking about the logging, or being given a copy of the environmental impact statement. It is therefore possible that the logging company does not have a development consent, or, if they do, that it was not obtained in the proper way.

Therefore one possible offence that is likely to have been committed here is logging without a ‘development consent’.

Please note that there are a number of other environmental laws that may have also been broken here, including logging without a felling licence (see chapter 7) and without a business licence from the provincial government.

CHECKLIST

STEP ONE: OBTAIN BASIC INFORMATION

The first thing to do is obtain some basic information. This includes:

- (1) The contact details of the person making the complaint.
- (2) Where the logging is taking place, including the name of the island and the village. If possible, ask for further information about the site, such as any rivers or lagoons that are close by. You could also ask the person making the complaint to show you on a map where the logging is taking place.
- (3) Find out who is carrying out the logging. This will probably be a company name, although the villagers might only know the name of the people involved.
- (4) Find out the number and types of trees that have been removed, and any other works that might have been carried out. For example, the logging company might have constructed a log pond or some logging roads.
- (5) Find out who the land owners are, including the names of the relevant chiefs and whether the logging is taking place on more than one group's land.

STEP TWO: CHECK FOR DEVELOPMENT CONSENT

The next step is to find out whether a development consent has been issued. You can find this out in two ways:

- (1) The RSIPF has the power to require a person carrying out logging to produce a copy of the development consent. You could therefore ask someone from the logging company to give you a copy of the development consent. If they do not have a copy with them, you could ask them to bring a copy to the police station (or another place) by a particular day. See section 77 of the Police Act for more details.
- (2) Contact the Ministry of Environment, Climate Change, Disaster Management and Meteorology to ask them to check whether they have issued a development consent, or exempted the logging from the requirement to obtain a development consent. The Ministry will need most of the information you have obtained, in particular the location of the logging and the name of the company.

STEP THREE: ENFORCEMENT

If there is no development consent for the logging, and the Ministry has not exempted the logging, then you should:

- (1) Consider which powers you have, and which should be used.
- (2) Ask the Ministry of Environment to consider issuing a ‘stop notice’ under section 25 of the Environment Act 1998. A stop notice will require the logging company to stop the logging immediately.
- (3) If a decision is made to prosecute, then you will need to consider obtaining witness statements and evidence of the logging. This might include photos of the logged area, the logging barge, and any machinery. You will also need evidence from the Ministry that there is no development consent.

EXAMPLE DRAFT CHARGE- LOGGING WITHOUT A DEVELOPMENT CONSENT

“who [commenced/continued to carry out] [logging operations/ sawmilling/timber processing/ timber treatment] without having been issued with a development consent under Part III of the Environment Act 1998, or an exemption from the requirements of Part III of the Environment Act 1998.”

Please note that section 19 of the Environment Act 1998 provides:

“Consent required for prescribed development

- (1) A developer shall not commence or continue to carry out any prescribed development unless:
 - (a) a development application has been submitted to the Director, together with either a public environmental report or an environmental impact statement, as specified by the Director in section 17; and
 - (b) the developer has been issued with a development consent under this Part; or
 - (c) the Director has exempted the development from the requirements of this Part.
- (2) Any person who carries on any prescribed development in breach of subsection (1) shall be guilty of an offence and be liable to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.”

“**Prescribed developments**” are listed at Schedule 2 to the Environment Act 1998 and include “logging operation, saw milling, all forms of timber processing and treatment.”



FORESTRY OFFENCES

RESPONSIBLE MINISTRY

Ministry of Forestry and Research

CONTACT DETAILS

PO Box G24
Honiara
Ph: 28611/22453/24215
Fax: 28735

ENFORCEMENT AGENCIES AND OFFICERS

1. Commissioner of Forests and Research
2. Enforcement officers
3. Forestry officers
4. RSIPF

RELEVANT LEGISLATION

Forest Resources and Timber Utilisation Act (Cap 40) (FRTU Act)

Forest Resources and Timber Utilisation (Felling Licences) Regulations 2005 (Felling Regulations)

Forest Resources and Timber Utilisation (Protected Species) Regulations 2012 (FRTU Protected Species Regulations)

Timber (Levy and Mill Licensing) Regulations (Cap 40) and the Timber (Levy and Mill Licensing) Regulations 2005 (Milling Regulations)

OTHER RELEVANT DOCUMENTS

The Revised Solomon Islands Code of Logging Practice 2002

MAIN FORESTRY OFFENCES

The main forestry offences can be categorised as follows:

- Logging without a Felling Licence
- Failing to comply with the terms of a Felling Licence
- Failing to comply with the Felling Regulations
- Milling without a Milling Licence
- Failing to comply with the terms of a Milling Licence
- Failing to comply with the Milling Regulations
- State Forest Offences
- Forest Reserve Offences
- National Park Offences
- Protected Species Offences

A full list of Forestry Offences, and their corresponding penalties can be found at Table 2 of the Schedule.

MAIN POWERS RELATING TO FORESTRY OFFENCES

1. Cancel or suspend a felling licence or milling licence
2. Search and arrest
3. Seizure of property
4. Disposal and sale of property
5. Prosecution

OVERVIEW OF LOGGING OFFENCES

Logging without a felling licence

If a person wishes to cut down a tree or remove timber in order to sell it then he or she must first obtain a “felling licence” from the Commissioner of Forests, unless an exception applies. If the person cuts down trees or removes timber without such a licence then he or she has committed a criminal offence and is liable to a fine of \$3000 and/or 2 years imprisonment.

Specifically, section 4 of the FRTU Act provides that:

“Any person who fells any tree or removes any timber from any land for the purpose of sale thereof or of the products thereof otherwise than:

- (a) for use within Solomon Islands as firewood or unmilled timber;
- (b) for supplying logs for milling to a mill licensed under section 18, from within the area that mill is by its licence authorised to draw unmilled timber;
- (c) for such other purpose declared by the Minister by notice to be exempt from the provisions of this section; or
- (d) under and in accordance with the terms and conditions of a valid licence issued under section 5,

shall be guilty of an offence and liable to a fine of three thousand dollars or to imprisonment for two years or to both such fine and such imprisonment.”

Failing to comply with the terms of a felling licence

A person who obtains a felling licence is known as a “licencee”.

A licencee must comply with the terms and conditions of a felling licence. The standard licence terms and conditions are contained in Form B of the Felling Regulations. Some examples of conditions include:

- a. The licencee must take all necessary steps to prevent pollution of the ground and any pond, river, stream or water source, and
- b. If the licence is about to expire or has been cancelled or the licencee is about to cease operations under his licence, the licencee must complete his operations in a manner satisfactory to the Commissioner of Forests or his delegate, and in particular it must have, among other things:
 - rectified to the satisfaction of any inspector under the River Waters Act any damage to a pond, river, stream or water source caused by the logging,
 - cleared all ponds, rivers, streams and watercourses of obstructions, dams and temporary culverts caused or constructed when carrying out the logging,
 - dammed and drained all skidding tracks on slopes,
 - removed and disposed of all oil, chemical and similar pollutants and rubbish from the land, and
 - filled or drained areas of stagnant water created by the logging.

Another condition is that the licencee must comply with the Revised Solomon Islands Code of Logging Practice 2002, which regulates matters such as protected and excluded areas, location of roads and landings, landing size, methods of skidding, and decommissioning.

Failure to comply with the conditions of a felling licence is a criminal offence, punishable by a fine of \$3000, 2 years imprisonment, or both (Section 4 FRTU Act).

Failing to comply with the Felling Regulations

The Felling Regulations contain provisions regulating licenced felling operations. There are extensive regulations which govern the construction of roads, landings and temporary crossings, permitted activities within a buffer zone, skidding operations, felling in certain weather conditions and log ponds. There is also a requirement to prepare annual harvesting plans and coupe plans before logging can commence.

The Felling Regulations also make it an offence to log in certain areas, including land that is 400 metres above sea level, state forests and forest reserves, land within 30 metres of a tambu area, land within 100 metres of a village, and areas within 100 metres of the ocean, a lagoon or lake. The Commissioner of Forests can however give his approval to log these areas.

The penalty for failing to comply with the Felling Regulations is a fine of \$100 or imprisonment for three months.

A full list of the offences under the Felling Regulations can be found at Table 2 of the Schedule.

OVERVIEW OF MILLING OFFENCES

Milling without a milling Licence

If a person wishes to install or operate a timber mill then he or she must first obtain a "milling licence" from the Commissioner of Forests. Installing or operating a timber mill without such a licence is a criminal offence, punishable by a fine of \$3000 and/or imprisonment for 2 years.

Specifically, section 17 of the FRTU Act provides that:

"Any person who installs or operates a mill otherwise than under and in accordance with the terms and conditions of a valid licence issued under section 18 of the FRTU Act shall be guilty of an offence and liable to a fine of three thousand dollars or to imprisonment for two years or to both such fine and such imprisonment."

Failing to comply with the terms of a milling licence

A person holding a milling licence must comply with the terms and conditions of the milling licence. The standard licence terms and conditions are contained the First Schedule and Third Schedule of the Timber (Levy and Licensing) Regulations (Cap 40).

Failure to comply with the terms of a milling licence is a criminal offence punishable by a fine of \$3000 and/or imprisonment for 2 years (Section 17 FRTU Act).

Failing to comply with the Milling Regulations

The Milling Regulations apply to persons supplying timber to licenced mills.

If a person supplying timber to a licenced mill will fell more than 1,000 cubic metres of timber within a year, or use extraction machinery, then he or she must first prepare annual harvesting plans and coupe plans. Failure to do so is a criminal offence punishable by a fine of \$100 or 3 months in prison (Regulation 4A Milling Regulations).

It is an offence for any person who fells timber to be supplied for milling to a licenced mill to fell trees in certain areas, including land that is 400 metres above sea level, state forests and forest reserves, land within 30 metres of a tambu area, land within 100 metres of a village, and areas within 100 metres of the ocean, a lagoon or lake. The Commissioner of Forests can however give his approval to log these areas (Regulation 4B Milling Regulations).

Similar to the Felling Regulations, there are also a number of regulations which govern the construction of roads, landings and temporary crossings, permitted activities within a buffer zone, skidding operations, felling in certain weather conditions and log ponds.

The penalty for failing to comply with the Milling Regulations is a fine of \$100 or imprisonment for 3 months.

A full list of the offences under the Milling Regulations can be found at Table 2 of the Schedule.

STATE FOREST OFFENCES

Public land or land owned or leased by the Government can be declared as a State Forest. It is an offence to do various things within a State Forest (e.g. felling trees, cultivating land, grazing livestock or erecting buildings) without a permit granted by the Commissioner of Forests. Such offences are punishable by a fine of \$2000 and/or imprisonment for 1 year (Section 22 FRTU Act).

When any person is convicted of erecting any unauthorised building, shelter or structure or of planting any unauthorised crops in a state forest, the court may in addition to any penalty it may impose, order such building, shelter, structure or crops to be removed and the land restored to its previous condition within such time as it shall fix (Section 31 FRTU Act).

FOREST RESERVE OFFENCES

The Minister of Forestry can declare any area of forest or other vegetation within a rainfall catchment area as a Forest Reserve, if the Minister is satisfied that it is required for the purpose of conserving water resources. It is an offence to carry out certain acts within a Forest Reserve without a permit, including felling trees, clearing land, erecting buildings and grazing livestock. Such offences are punishable by a fine of three thousand dollars and/or imprisonment for one year (Section 27 FRTU Act).

When any person is convicted of erecting any unauthorised building, shelter or structure or of planting any unauthorised crops in a forest reserve, the court may in addition to any penalty it may impose, order such building, shelter, structure or crops to be removed and the land restored to its previous condition within such time as it shall fix (Section 31 FRTU Act).

NATIONAL PARKS OFFENCES

Section 3 of the National Parks Act provides that the Minister may declare any area of land to be a national park. It is illegal unlawful to carry out certain acts within a national park without a permit, such as residing in a national park (unless an exception applies), hunting any animal (other than fish), lighting a fire, littering, or taking vegetation from a national park (Sections 8, 9 and 10 of the National Parks Act).

PROTECTED SPECIES OFFENCES

The FRTU Protected Species Regulations provide that the following species are protected and cannot be felled or removed from any land for the purposes of sale or export, except for scientific research purposes as authorized under the Wildlife Protection and Management Act:

Mangrove (*Rhizophora* spp.) and all other mangrove species

Ebony (*Diospyros* spp.)

Ngali Nut (*Canarium indicum*)

Tubi (*Xanthostemon*)

The FRTU Regulations also provide that the following species shall not be exported in an unprocessed form:

Rosewood (*Pterocarpus indicus*)

Ironwood (*Instia bijuga*)

Kauri (*Agathis macrophylla*)

Walnut (*Dracontomelum vitiense*)

Canoe tree (*Gmelina moluccana* and *Canarium spp*)

Rattan (*Calamus spp*)

Vasa (*Vitex*)

ENFORCEMENT OF FORESTRY OFFENCES

The FRTU Act provides for the appointment of a Commissioner of Forests, and such numbers of enforcement officers, forest officers, and other officers as may be necessary to carry into effect the provisions on the FRTU Act.

POWERS TO ENFORCE FORESTRY OFFENCES

The FRTU Act gives explicit powers to the Commissioner of Forest Resources, enforcement officers, forestry officers and police officers.

Cancellation and suspension of licences and permits

Section 39 of the FRTU Act provides that the Commissioner of Forest Resources may by notice in writing cancel or suspend a felling licence or milling licence if he or she is satisfied that the holder of a felling licence or milling licence has contravened any of the provisions of the FRTU Act, or that there has been a contravention of any of the terms of conditions of the licence.

Before cancelling or suspending a felling licence or milling licence, the Commissioner of Forest Resources must give the holder of the felling licence or milling licence an opportunity to be heard. Any person who is aggrieved by the cancellation or suspension of his or her licence or permit may, within two months, appeal in writing to the Minister, whose decision is then be final.

Search, arrest etc

Section 32 of the FRTU Act gives enforcement officers, forestry officers and police officers powers to, without warrant:

- (a) demand from any person the production of any authority or licence for any act done or committed by such person in any state forest or forest reserve or in relation to any forest produce for which a licence or permit is required under the FRTU Act;
- (b) require any person found within any state forest or forest reserve or in the vicinity of such forest, and who has in his possession any forest produce, to give an account of the manner in which such person became possessed of such produce, and may arrest that person if he fails to give a satisfactory account;
- (c) arrest any person reasonably suspected of being guilty of a forest offence or of being in possession of any forest produce in respect of which an offence has been committed, provided that no person shall be arrested for this unless such person refuses to give his name and address or gives a name and address which there is reasonable cause to believe is false or there is reasonable cause to believe that he will abscond;
- (d) seize and detain any livestock found trespassing or found without any person in charge of them in any state forest or forest reserve;
- (e) enter any timber yard or mill by day to inspect forest produce therein.

If an enforcement officer or forest officer makes an arrest under section 32 of the FRTU Act, he must without unnecessary delay take or send the person arrested to a police officer.

Any police officer making an arrest under section 32 of the FRTU Act, or to whom a person arrested is taken, must deal with such person in accordance with the provisions of the Criminal Procedure Code Act relating to persons arrested without a warrant.

Seizure of property used in committing forest offence

Section 33 of the FRTU Act provides that where there is reason to believe that a forest offence has been committed in respect of any forest produce, the produce, together with all tools, machinery, equipment, boats, conveyances and livestock reasonably suspected to have been used in the commission of the offence, may be seized by any enforcement officer or forest officer or police officer.

Any officer who seizes property must place on the property, or on the receptacle in which it is contained, a mark indicating that it has been seized and must as soon as possible make a report of the seizure to a Magistrate.

Power to dispose of property seized when person suspected of forest offence is unknown

Section 35 of the FRTU Act provides that where there is reason to believe that a forest offence has been committed by a person who is unknown or cannot be found, any property seized in respect of such suspected offence under section 33 shall be taken possession of and may be disposed of by or under the direction of the Commissioner of Forest Resources.

When possession is taken of any such property the Commissioner of Forest Resources, or, subject to the directions of the Commissioner of Forest Resources, an enforcement officer or a forest officer, must serve notice upon any person whom he has reason to suspect to be interested in the property, or may publish such notice in such manner as he deems fit.

Any person claiming to be interested in any such property may, within one month from the service or publication of a notice, appeal to a Magistrate against the taking into possession of such property (Section 37 FRTU Act).

The property cannot be sold or otherwise disposed of until the expiration of one month from the date of the service or publication of the notice, or without hearing any person claiming any right to the property and any evidence which he may produce in support of his claim within such period of one month, or until after the determination of any appeal.

Sale of perishable property

If any seized property is subject to speedy and natural decay then a Magistrate or an enforcement officer or forest officer may direct the sale of such property. The proceeds of such sale can be dealt with as the property may have been dealt with had it not been sold (Section 36 FRTU Act).

Property taken possession of to vest in Crown

When possession has been taken of any property under section 33 of the FRTU Act, and the time limited for appealing has expired, or the determination of any such appeal is in favour of the Commissioner of Forest Resources, the property or the proceeds of sale vests in the Crown absolutely (Section 38 FRTU Act).

Forfeiture of property after conviction for a forest offence

Section 34 of the FRTU Act provides that when any person is convicted of a forest offence, all forest produce in respect of which such offence has been committed, and all tools, machinery, equipment, boats, conveyances and livestock used in the commission of such offence, shall be liable to be forfeited by order of the court recording the conviction. Such forfeiture may be in addition to any other penalty prescribed for such offence.

OTHER RELEVANT LEGISLATION AND OFFENCES

Three other laws are particularly relevant to the carrying out of logging operations.

The Environment Act

The Environment Act 1998 makes it an offence to carry out logging operations without development consent from the Ministry of Environment. It is also an offence to carry out logging operations in breach of a condition of development consent. See Chapter 6 for more information.

The Protected Areas Act

Industrial and commercial extraction of timber and round logs is prohibited in any Protected Area declared under the Protected Areas Act 2010. See Chapter 11 for more information.

Business licences

In many cases, before a person can conduct a business within a province, they must obtain a business licence from the relevant Provincial Government. Carrying out logging without a business licence is an offence and the relevant Provincial Government should be consulted to determine whether a business licence has been granted for the operations.

CASE STUDY- LOGGING WITHOUT A LICENCE OR IN PROHIBITED AREAS

Logging without a felling licence or failing to comply with the conditions of a felling licence is a criminal offence punishable by a fine of \$3,000, two years imprisonment, or both (section 4 FRTU Act).

Logging in certain areas without the authorization of the Commissioner of Forests is also a criminal offence punishable by a fine of \$100 or imprisonment for 3 months.

Facts

Some women from the market come into Auki police station complaining that their river water has been polluted from soil washing down from an area that a company has been logging. The soil has made their drinking, cooking and washing water very dirty and they can no longer safely use it.

The logging company has also been cutting down trees very close to their gardens and village.

The women tell you that the logging company has been taking trees from the area for a long time and that they are not sure if there is a licence for the logging.

Offence

There are a number of offences that may have been committed here, including:

- (1) Logging without a felling licence (Section 4 FRTU Act).
- (2) Failing to comply with the conditions of a felling licence (Section 4 FRTU Act); and
- (3) Logging in certain areas, including land that is 400 metres above sea level, land within 100 metres of a village, land within 30 metres of a garden, and within certain distances of streams and gullies, without the authorization of the Commissioner of Forest Resources (Regulation 13 Felling Regulations).

If there is a logging licence then the fact that soil is washing down the river might mean that the logging company is not complying with the conditions of its licence, or has been logging in prohibited areas.

Please note that there are a number of other offences that may also have been committed, such as logging without a development consent (see Chapter 6), in a protected area (see Chapter 11) or without a provincial government business licence.

CHECKLIST

STEP ONE: OBTAIN BASIC INFORMATION

The first thing to do is obtain some basic information. This includes:

- (1) The contact details of the person making the complaint.
- (2) Where the logging is taking place, including the name of the island and the village. If possible, ask for further information about the site, such as any rivers or lagoons that are close by. You could also ask the person making the complaint to show you on a map where the logging is taking place.
- (3) Find out who is carrying out the logging. This will probably be a company name, although the villagers might only know the name of the people involved.
- (4) Find out the location and number and types of trees that have been removed, and any other works that might have been carried out.
- (5) Find out whether any trees have been taken from prohibited areas, such as 400 metres above sea level, or close to gardens, villages, streams and gullies.
- (6) Find out when the river became polluted and whether there are particular times when it is worse than others.
- (7) Find out who the land owners are, including the names of the relevant chiefs and whether the logging is taking place on more than one group's land.

STEP TWO: CHECK FOR FELLING LICENCE

The next step is to find out whether a felling licence has been issued. You can find this out in three ways:

- (1) The RSIPF has the power to require a person carrying out logging to produce a copy of the felling licence. You could therefore ask someone from the logging company to give you a copy of the felling licence. If they do not have a copy with them, you could ask them to bring a copy to the police station (or another place) by a particular day. See Section 77 of the Police Act for more details.
- (2) Contact the Ministry of Forestry and Research to ask them to check whether they have issued a felling licence and also if they have authorized logging in prohibited areas. The Ministry will need most of the information you have obtained, in particular the location of the logging and the name of the company. The Ministry may have a Forestry Officer who is responsible for the area that is being logged, and you should try to speak with them about whether the logging is legal.
- (3) Section 32 of the FRTU Act also gives enforcement officers, forestry officers and police officers powers to, without warrant demand from any person the production of any authority or licence for any act done or committed by such person in any state forest or forest reserve or in relation to any forest produce for which a licence or permit is required under the FRTU Act.

STEP THREE: ENFORCEMENT

If you discover that there is no felling licence, or the conditions of a licence are not being complied with, or logging is taking place in prohibited areas without authorization from the Commissioner of Forest Resources, you should:

- (1) Ask the Ministry of Forestry and Research to consider cancelling or suspending any licence under section 39 of the FRTU Act.
- (2) Consider which powers you have, and which should be used.
- (3) Consider seizing the property used to commit the offence, for example logging equipment such as bulldozers and chainsaws, or boats. This can be done under section 33 of the FRTU Act. If the property is seized then you must put a mark on it (or its container) that has been seized, and also make a report of the seizure to a Magistrate.
- (4) If a decision is made to prosecute, then you will need to consider obtaining witness statements and evidence of the logging and its location. You will also need evidence from the local Forestry Officer, or the Ministry, in relation to what was and what was not allowed.
- (5) Section 34 of the FRTU Act provides that when any person is convicted of a forest offence, all forest produce in respect of which such offence has been committed, and all tools, machinery, equipment, boats, conveyances and livestock used in the commission of such offence, shall be liable to be forfeited by order of the court recording the conviction. Such forfeiture may be in addition to any other penalty prescribed for such offence.

EXAMPLE DRAFT CHARGES

Logging without a felling licence or failing to comply with the conditions of a felling licence (section 4 FRTU Act)

“did [fell a tree or remove timber from land] for the purpose of sale of [the timber/its products] otherwise than in accordance with the provisions of section 4(1) of the Forest Resources and Timber Utilisation Act (Ch. 40) for [specify how the tree or timber or products were used, referring to the options listed in section 4(1)].”

Logging in prohibited areas (regulation 13 Felling Regulations)

“did carry out felling operations under a felling licence in [and/or allowed timber felled under the licence to fall inside]:

[a State Forest or a Forest Reserve]

[areas that have ecological or scientific importance, including outer reef and lagoon islands, swamps, wetlands and mangroves vital for the protection of important marine resources]

[areas which are 400 meters above sea level unless approved by the Commissioner of Forest Resources]

[areas within 30 meters from a tambu area]

[areas within 30 meters from a garden of an owner of the land]

[areas within 100 meters from a village]

[subject to paragraph (h), areas within 100 meters from the ocean, a lagoon or a lake]

[areas within 50 metres from a log pond]

[areas where there is a landslip, including the area where the soil that slipped lies]

[areas within 50 meters from the bed of a stream that is 10 metres or more wide]

[areas within 25 meters from the bed of a stream that is less than 10 meters wide]

[areas within 10 metres from a gully]

[in any other area identified by the owner or owners of the land in the approved timber rights agreement as an area where they do not want felling to occur]

without the approval of the Commissioner of Forest Resources or a forest officer authorized by the Commissioner of Forest Resources, in contravention of regulation 13 of the Forest Resources and Timber Utilisation (Felling Licences) 2005.”

08

MINING

RESPONSIBLE MINISTRY

Ministry of Mines, Energy and Rural Electrification

CONTACT DETAILS

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ENFORCEMENT AGENCIES AND OFFICERS

1. Director of Mines
2. Inspector of Mines
3. RSIPF

RELEVANT LEGISLATION

Forest Resources and Timber Utilisation Act Mines and Minerals Act 1996 (MMA)

Mines and Minerals Regulations 1996 (MMR)

Penal Code (Cap 26) (Penal Code)

MAIN MINING OFFENCES

- Carrying out reconnaissance, prospecting or mining operations except in accordance with the MMA and MMR
- Carrying out reconnaissance, prospecting or mining in a reserved area and other certain restricted areas, such as tambu sites and cultivated land
- Prospect licence holder failing to comply with a number of conditions, including notification of commercial discoveries, backfilling and removing equipment and making good damage

- Mining leaseholder failing to pay surface rental and compensation for damage
- Mining leaseholder failing to carry out a mining plan in accordance with sound conservation, technical and engineering practices generally used in the mining industry
- General alluvial mining offences, including prohibition on using mechanised earthmoving equipment and explosives and not polluting, interrupting or adversely affecting the flow of any water
- General building materials permit offences, including failing to pay surface access fees, compensation for damage and royalties
- Exporting minerals in contravention of the MMR
- Larceny of minerals under the Penal Code

MAIN POWERS RELATING TO MINING OFFENCES

1. Suspension and cancellation of permit
2. Inspection
3. Take extracts from books, accounts etc
4. Take samples of material
5. Examine and inspect equipment and machinery
6. Survey or inspect any workings, cuttings, pits, trenches, excavations etc
7. Notice to clean up and repair and recovery of costs where a mineral rights holder has breached his duty of due diligence
8. Notice to rehabilitate roads, stream beds or banks or land damaged as a result of prospecting
9. Restoration order
10. Forfeiture of damage deposit
11. Forfeiture of "security of compliance bond"
12. Prosecution

OVERVIEW

What is mining?

"Mining" means intentionally to extract any mineral and includes:

- milling
- processing
- concentrating
- beneficiating
- smelting, or
- refining

and includes any operation directly or indirectly incidental thereto (Section 3 MMA).

What is a mineral?

A "mineral" means any substance found naturally in or on the earth formed by or subject to a natural geological process, but does not include petroleum as defined in section 3(l) of the Petroleum (Exploration) Act (Section 3 MMA).

Who holds mineral rights?

The Solomon Islands Government has the exclusive right to deal with and develop the mineral resources in such manner as it deems to be in the national interest (Section 2(3) MMA). The Government may -

- (a) explore, develop or manage mineral resources,
- (b) enter into agreements or arrangements providing for the participation of any person in connection with the exploration, development and acquisition of minerals, or
- (c) grant the exclusive right to any person to enter any land to prospect for or mine minerals and acquire such minerals upon such terms and conditions it thinks fit (Section 2(4) MMA).

POWERS OF THE MINISTER

The "Minister" means the Minister of the Government for the time being charged with the responsibility for mines and minerals. The Minister may at any time, on the advice of the Board -

- (a) issue -
 - (i) reconnaissance permits
 - (ii) prospecting licences
 - (iii) mining leases
 - (iv) gold dealer's licences, and
 - (v) building materials permits.
- (b) authorise in writing any public officer to enter upon any land in Solomon Islands for the purpose of conducting reconnaissance, prospecting or other geological, geophysical or geochemical surveys.
- (c) by notice, direct the holder of any permit, licence or lease issued pursuant to this Act to produce relevant books, records, accounts or other information as may be specified in the notice.
- (d) direct any person to comply with the provisions of the MMA or MMR.
- (e) direct a holder of a permit, licence or mining lease to comply with its terms and conditions.

- (f) take whatever measures as may be necessary-
 - (i) to protect the health and safety of persons
 - (ii) for conservation purposes with a view to preventing waste
 - (iii) to minimise damage to any mineral deposit, land, air, water, vegetation or animal life
 - (iv) to protect sites of archaeological, historical, or geological significance.
- (g) prescribe rates of, defer or remit royalty payments (Section 6 MMA).

OFFICERS

The MMA appoints-

- (a) a Director of Mines, and
- (b) an Inspector of Mines, and such other officers as may be necessary for the due administration of this Act.

The Director is the holder of the post of Chief Geologist. (Section 5 MMA)

FUNCTIONS AND POWERS OF THE DIRECTOR

The Director has power, for the purpose of the performance of his functions under the MMA:

- (a) to advise the Board on the technical aspects of reconnaissance, prospecting and mining operations so as to ensure that Solomon Islands receives the greatest benefits obtainable from the exploitation of its mineral resources.
- (b) to receive applications for permits, licences and leases and to submit such applications to the Board for the Board's consideration.
- (c) to negotiate, as directed by the Board and in consultation with the holders of mining leases, with landowners for surface access rights and rentals.
- (d) to conduct or authorise inspections of any gold dealing, reconnaissance, prospecting or mining operations in order to ensure that such operations are carried out in accordance with the provisions of the MMA and MMR and the terms of any licence, permit or lease.

- (e) to authorise persons other than holders of permits, licences, or leases to export samples for purposes of scientific research or such other purposes as he may deem fit, and
- (f) to keep and maintain any registers, information and records relating to gold dealing, reconnaissance, prospecting or mining in such manner as the Minister may require (Section 7 MMA).

POWERS OF INSPECTORS

Any inspector shall, at all reasonable times, have access to any area or premises where gold dealing, reconnaissance, prospecting or mining operations or operations incidental thereto, are being carried out and may -

- (a) inspect and take extracts from all books, accounts, vouchers and documents specifically relating to such operations,
- (b) inspect and take samples of any material being prospected or mined,
- (c) examine or inspect any equipment, machinery or other implements used in connection with such operations or related operations, and
- (d) survey or inspect any workings, cuttings, pits, trenches, drill holes or other excavations or working places relating to such operations to ensure that all operations are being carried out in accordance with the MMA or MMR.

Where an inspector finds, or has reason to believe, that a holder is in breach of any provisions of the MMA or MMR he must bring such breach to the notice of the Director. The Director, on being informed of any such breach may take whatever action he deems necessary in accordance with the provisions of the MMA (Section 8 MMA).

MINERALS BOARD

The Minerals Board is responsible for general matters relating to the administration of the MMA (Section 10 MMA).

Functions of the Minerals Board

The functions of the Minerals Board are:

- (a) to advise the Minister on the issue of permits, licences or leases in respect of gold dealing, reconnaissance, prospecting and mining operations to be carried out in terms of the MMA.
- (b) to take such measures as it deems necessary or appropriate to inform landowners or land holding groups affected, on operations to be carried out, in terms of permits, licences or leases, as the case may be.
- (c) to assist respective holders of, or applicants for, permits, licences and leases to negotiate with landowners and land owning groups in order to enable such holders to gain access to affected land and carry out reconnaissance, prospecting or mining operations.
- (d) to assist landowners or land holding groups to determine surface access fees and other payments in terms of the MMA.
- (e) to assist in the determination of compensation for damage that may become payable pursuant to the MMA, and
- (f) to take such measures as it deems necessary or appropriate to establish trust funds for the benefit of landowners or land holding groups referred to in sections 25 and 34 of the MMA (Section 11 MMA).

TYPES OF MINING PERMITS AND LICENCES

Reconnaissance Permits

Part III of the MMA deals with Reconnaissance Permits.

“Reconnaissance” means intentionally to search for any mineral by geophysical, geochemical, photo-geological surveys or other remote sensing techniques, and surface geology in connection therewith, but does not include drilling, trenching, pitting or other excavations or subsurface techniques other than hand-operated auguring (Section 3 MMA).

The Minister may grant a reconnaissance permit to an applicant where the Minister is satisfied that the applicant has adequate financial resources and the technical competence and experience to carry out effective reconnaissance operations, and the proposed reconnaissance programme is adequate for reconnaissance. (Section 13 MMA).

It is an offence to carry out reconnaissance operations except in accordance with the MMA and MMR and a company will require a reconnaissance permit. The penalty is a fine of up to \$1,000, or in the fine is not paid, imprisonment of up to 1 year (section 2(2) and 2(5) MMA).

Prospecting Licences

Part IV of the MMA deals with Prospecting Licences. “Prospecting” means intentionally to search for any mineral and includes determining the extent of any mineral deposit and its economic value (Section 3 MMA).

The Minister may issue prospecting licences to any applicant where the Minister is satisfied that the applicant has adequate financial resources and the technical competence and experience to carry out effective prospecting operations and the proposed prospecting programme is adequate for prospecting (Section 19 MMA).

A grant of a prospecting licence is subject to the acquisition of surface access rights for prospecting (Section 21 MMA).

The holder of a prospecting licence together with his servants and agents, has the exclusive right to enter any land in the prospecting area and carry out prospecting and for such purpose may, as far as is necessary;

- (a) drill, trench, pit and make excavations,
- (b) build roads, helicopter pads, erect camps and construct temporary buildings,
- (c) install or fix machinery, and
- (d) take or direct any public water from any lake, river or watercourse (Section 26 MMA).

It is an offence to carry out prospecting operations except in accordance with the MMA and MMR and a person/company will require a prospecting licence. The penalty is a fine of up to \$1,000, or if the fine is not paid, imprisonment of up to 1 year (section 2(2) and 2(5) MMA).

Mining Leases

Part V of the MMA deals with Mining Leases. "Mining" means intentionally to extract any mineral and includes milling, processing, concentrating, beneficiating, smelting or refining and includes any operation directly or indirectly incidental thereto (Section 3 MMA).

The Minister may issue mining leases for the carrying out of mining operations in any area of Solomon Islands. Only the holder of a prospecting licence who has made a commercial discovery may apply for a mining lease, which shall be restricted to an area within his prospecting area and in respect of a mineral covered by his prospecting licence (Section 30 MMA).

The grant of a Mining Lease is subject to the acquisition of surface access rights for mining (Section 32 MMA).

A mining company may, in the exercise of its rights under its lease, enter upon the mining area to carry out mining, including the right to -

- (a) make all necessary excavations to mine the mineral deposit or deposits in the mining area and to re-work mine tailings and dumped materials,
- (b) erect, construct and maintain in the mining area such machinery and buildings, workshops and other production facilities as may be necessary or convenient for the purpose of mining, storing, transporting, dressing, treating, smelting or refining the mineral recovered in the course of mining,
- (c) stack products or dump any waste products of mining or mineral processing,
- (d) erect, construct and maintain houses and buildings for the use of the mining company, its contractors, agents and their employees and their immediate families,

- (e) lay pipes, make water races, ponds, dams and reservoirs and divert and use any water necessary, provided that the needs of users of river water downstream of the mining area, are taken into account,
- (f) construct and maintain all such passageways, communications facilities and conveniences as may be necessary for carrying out mining operations, and
- (g) engage in all such other activities as may be reasonably necessary for carrying out mining operations (Section 43 MMA).

It is an offence to carry out mining operations except in accordance with the MMA and MMR and a person/company will require a mining lease. The penalty is a fine of up to \$1,000, or if the fine is not paid, imprisonment of up to 1 year (section 2(2) and 2(5) MMA).

Alluvial Permits

Part VI of the MMA deals with Alluvial Mining. The Director may issue an alluvial miner's permit to any Solomon Islands citizen who is over twenty-one years of age and has not been convicted of an offence involving dishonesty or fraud (Section 50(1) MMA).

An alluvial miner's permit cannot be issued in respect of any area other than to the landowners in the area, unless such landowners agree in writing to its issuance to the person who is not a landowner in the area (Section 50(3) MMA).

An alluvial miner shall have the right to enter any land and undertake alluvial mining in soft, unconsolidated material lying on or beneath the surface of the ground and formed by natural geological processes (Section 53(1) MMA).

It is an offence to carry out alluvial mining operations except in accordance with the MMA and MMR and a person will require an alluvial permit. The penalty is a fine of up to \$1,000, or if the fine is not paid, imprisonment of up to 1 year (section 2(2) and 2(5) MMA).

Gold Dealing

Part VII of the MMA deals with gold dealing. The Minister may issue a gold dealer's licence to any licensed bank in Solomon Islands or any person who (i) is over twenty one years of age; (ii) is a citizen of Solomon Islands; (iii) is a fit and proper person to hold such a licence and who, in the opinion of the Board appears to understand the provisions of the MMA, to such an extent so as to enable him to carry out the obligations imposed under the MMA; and (iv) has not been convicted for an offence under the MMA or an offence involving dishonesty or fraud (Section 55 MMA).

The holder of a gold dealer's licence, together with his servants and agents, has the right to (a) purchase gold from either the holder of an alluvial miner's permit, or from another licensed gold dealer; or (b) sell gold to any person within Solomon Islands; or (c) export gold, provided that both purchases and sales are effected at the registered place of business of the gold dealer (Section 58 MMA).

Any person who purchases, sells, exports or otherwise deals with gold contrary to the MMA commits an offence and is liable to a fine of up to \$20,000 and/or imprisonment of up to five years (section 63 MMA).

Building Materials Permits

Part VIII of the MMA deals with Building Materials Permits. The Minister may issue building materials permits for the mining of building materials in any area of Solomon Islands to any person who makes application pursuant to section 65 of the MMA, where the Minister is satisfied that the proposed mining will not cause erosion of coastal or river sediments, or otherwise adversely affect, either directly or indirectly, the environment (Section 64 MMA).

It is an offence to mine for building materials except in accordance with the MMA and MMR and a person/company will require a building material permit.

The penalty is a fine of up to \$1,000, or in the fine is not paid, imprisonment of up to one year (section 2(2) and 2(5) MMA).

NON-CRIMINAL LIABILITIES AND REMEDIES

In addition to the criminal offences outlined above, there are a number of non-criminal liabilities and remedies available with respect to mining activities.

Suspension and cancellation by the Minister

The Minister on the advice of the Board may suspend or cancel a permit, licence or mining lease in the event that the holder:

- (a) contravenes any provisions of the MMA or MMR,
- (b) commits a material breach of, or fails to comply with or observe, any provision of his permit, licence or mining lease (unless such breach is due to an event beyond his reasonable control which could not have been reasonably foreseen or avoided),
- (c) dissolves, liquidates, becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors, petitions or applies to any tribunal for the appointment of a trustee or receiver for himself, or commences any proceedings relating to himself under any law pertaining to bankruptcy, arrangement, insolvency or readjustment of debt (Section 71(1) MMA).

The cancellation of a permit, licence or mining lease by the Minister does not affect the liabilities of the holder incurred prior to the date of cancellation, or the obligations to remove any improvements and to make safe and restore the area subject to the permit, licence or mining lease, as the case may be (Section 71(4) MMA).

The holder of a permit, licence or mining lease suspended or cancelled by the Minister may appeal against such decision to the High Court (Section 71(5) MMA).

Restoration Order

The Director of Mines has the power to order a company to restore the surface of the land where it has been disturbed by prospecting or mining activities. The Director can do this either before or after granting the licence or lease (Section 49E(2) MMA).

Damage caused by a prospecting licence

The Director may require the holder of a prospecting licence to carry out specified works to rehabilitate any roads, streambeds or banks, or land damaged as a result of his prospecting (Section 27(3) MMA).

Duty of due diligence and liabilities for breach

A mineral rights holder must carry out operations with due diligence, efficiency and economy and in accordance with good technical and engineering practices generally used in the mining industry so as to:

- (a) Conserve and avoid the waste of mineral deposits of Solomon Islands,
- (b) Result in minimum ecological damage or destruction,
- (c) Control the flow and prevent the escape of contaminants, tailings and other matters produced in the course of such operations,
- (d) Prevent avoidable damage to trees, crops, buildings and other structures,
- (e) Avoid any action which could endanger the health or safety of persons, and
- (f) Avoid harm to fresh water, marine and animal life (Regulation 18 MMR).

When the Director is of the opinion that any of the conditions specified above has been breached or is likely to be breached, he shall, in writing require the holder to take such measures to avoid such breach and to clean up and repair any such damage and destruction to the maximum reasonable extent (Regulation 19 (1) MMR).

If a holder fails to take such necessary measures as specified above, clean up or repair such damage or destruction, as the case may be, the Director, after giving the holder reasonable notice in the circumstances, may take any action or may execute work which he considers necessary in the circumstances, and the costs and expenses of such work shall be borne by the holder (Regulation 19 (2) MMR).

Emergency, major accident, death or injury

Every mineral rights holder must notify the Director in writing as reasonably as possible, in the event of any emergency, major accident or death or injury to persons (Regulation 20(1) MMR).

A mineral rights holder is liable for any loss suffered or damage arising out of his wrongful or negligent acts or omissions and those of its contractors or employees in the conduct of activities under a mineral right (Regulation 20(2) MMR).

A mineral rights holder indemnifies the government, its employees and agents against all claims and liabilities arising out of any loss, damage, death or injury occasioned by any act or omission of the holder, its contractors or employees in the conduct of operations under a mineral right (Regulation 20(3) MMR).

However, no mineral rights holder is liable for an unavoidable delay or failure to perform any of his obligations under a mineral right due to any event or conditions which the holder could not reasonably be expected to prevent or control, provided that the condition was not caused by negligence or by a failure to observe good mining industry practice (Regulation 20(4) MMR).

Every mineral rights holder must give notice to the Director describing such an event as soon as possible, and similarly give notice of the restoration of normal conditions and take all reasonable measures to remove his inability to perform and comply with the terms and conditions of his mineral right (Regulation 20(5) MMR).

OTHER RELEVANT LEGISLATION AND OFFENCES

Three other laws may also be directly relevant to the carrying out of mining operations.

The Environment Act

The Environment Act 1998 makes it an offence to extract minerals and carry out mining without a development consent from the Ministry of Environment. It is also an offence to carry out mining operations in breach of a condition of a development consent. See Chapter 6 for more information.

The Environment Act also provides that a licence from the Director of Environment is required to operate 'prescribed premises'. 'Prescribed premises' include 'extractions of minerals and mining'.

The Protected Areas Act

In addition, industrial and commercial extraction of minerals is prohibited in any protected area declared under the Protected Areas Act 2010. See Chapter 11 for more information.

Business licences

In many cases, before a person can conduct a business within a province, they must obtain a business licence from the relevant Provincial Government. Carrying out mining without a business licence may be an offence and the relevant Provincial Government should be consulted to determine whether a business licence has been granted for the mining operations.

CASE STUDY- PROSPECTING FOR MINERALS

It is an offence to explore for, or develop mineral resources, or carry out reconnaissance, prospecting or mining operations except in accordance with the Mines and Minerals Act 1996 and the Mines and Minerals Regulations 1996. To conduct mining activities, a company will usually require either a reconnaissance permit, a prospecting licence or a mining lease. Which one they require will depend on what they propose to do. The company will also need to enter into a surface access agreement with the landowners.

The penalty for conducting activities without the relevant permit, licence or lease is a fine of up to \$1,000, or if the fine is not paid, imprisonment of up to one year (Section 2(2) and 2(5) Mine and Minerals Act 1996).

It is also an offence to carry out reconnaissance, prospecting or mining in a reserved area and other certain restricted areas, such as tambu sites and cultivated land. The penalty is a fine of up to \$1,000, or if the fine is not paid, imprisonment of up to one year (Section 4(1) and 2(5) Mines and Minerals Act 1996).

Facts

A group of men come into the RSIPF station to complain that a company has been surveying their land and digging trenches. They think that the company is looking for minerals and they are worried that the company might not have a permit to do so.

The men have asked the company for a copy of their authorization but the company has not given it to them. The men do not remember being asked to approve the mining activities, and they have not seen an environmental impact assessment or signed any type of surface access agreement.

The men also tell you that the mining company has been working at a tambu site, as well as on some of the land where the women have been growing food.

Offence

In the current situation, the company is surveying the land and digging trenches. It therefore looks like the company might be ‘prospecting’ for minerals. The men cannot remember speaking about the mining or signing a surface access agreement with the company. It is therefore possible that the company does not have a prospecting licence or a surface access agreement for the work it is carrying out.

The company is also digging trenches at a tambu site and on farmed land.

There are a number of offences that may have been committed here, including:

- (1) Prospecting without a prospecting licence (Section 2(2) of the Mines and Mineral Act 1996).
- (2) Prospecting at a tambu site, without the written consent of the landowners (Section 4(2) (a) of the Mines and Minerals Act 1996).
- (3) Prospecting on cultivated land or land rendered fit for planting and habitually used for the planting of crops, without the written consent of the landowners (Section 4(2)(b) of the Mines and Minerals Act 1996).

Please note that there are a number of other offences that may also have been committed, such as extracting minerals:

- (1) without a development consent (see Chapter 6)
- (2) in a protected area (see Chapter 11)
- (3) or without a provincial government business licence.

CHECKLIST

STEP ONE: OBTAIN BASIC INFORMATION

The first thing to do is obtain some basic information. This includes:

- (1) The contact details of the person making the complaint.
- (2) Where the prospecting is taking place, including the name of the island and the village. If possible, ask for further information about the site, such as any rivers or lagoons that are close by. You could also ask the person making the complaint to show you on a map where the prospecting is taking place.
- (3) Find out who is carrying out the prospecting. This will probably be a company name, although the villagers might only know the name of the people involved.
- (4) Find out the location of the prospecting and any other works that might have been carried out.
- (5) Find out who the landowners are, including the names of the relevant chiefs and whether the prospecting is taking place on more than one groups land.

STEP TWO: CHECK FOR PROSPECTING LICENCE

The next step is to find out whether a prospecting licence has been issued. You can find this out in two ways:

- (1) The RSIPF has the power to require a person carrying out prospecting to produce a copy of the prospecting licence. You could therefore ask someone from the mining company to give you a copy of the prospecting licence. If they do not have a copy with them, you could ask them to bring a copy to the police station (or another place) by a particular day. See section 77 of the Police Act for more details.

- (2) Contact the Ministry of Mines to ask them to check whether they have issued a prospecting licence. The Ministry will need most of the information you have obtained, in particular the location of the prospecting and the name of the company. The Ministry may have an Inspector or officer who is responsible for the area and you should try to speak with them about whether the prospecting is legal.

If you cannot find the name of the company and relevant people then you can check the Company Haus website, or contact Company Haus directly.

STEP THREE: ENFORCEMENT

If you discover that there is no prospecting licence, prospecting is occurring in breach of a prospecting licence or prospecting is taking place in restricted areas without the consent of the landowners, you should:

- (1) Ask the Ministry of Mines to consider investigating the matter.
- (2) Inform the Ministry of Mines that prospecting appears to be being carried out in or on prohibited areas- ie the tambu site and cultivated land. Ask the Ministry whether the Ministry has prescribed any distances from such sites within which prospecting cannot occur.
- (3) In addition to general inspection powers under section 8 of the Mines and Minerals Act, the Ministry has the power to:
 - a. Issue a restoration order, ordering the company to restore the surface of the land where it has been disturbed by prospecting or mining activities (section 49E(2) MMA).
 - b. Require the holder of a prospecting licence to carry out works or rehabilitate any roads, streambeds, banks or land damaged as a result of his or her prospecting (section 27(3) MMA).
 - c. If the person or company holds a prospecting licence, suspend or cancel the licence (section 71(1) MMA).
- (6) Consider which powers you have, and which should be used.
- (7) If a decision is made to prosecute, then you will need to collect evidence of the prospecting and its location, including witness statements. You will also need evidence from the Ministry of Mines, in relation to what was and what was not allowed.

EXAMPLE DRAFT CHARGES

Carry out reconnaissance, prospecting or mining operations without authorisation

“did carry out [reconnaissance/prospecting/mining operations] except in accordance with the Mines and Minerals Act 1996 and the Mines and Minerals Regulations 1996, namely by carrying out [reconnaissance/prospecting/mining operations] without a [reconnaissance permit/prospecting licence/mining lease], in contravention of section 2(b) of the Mines and Mineral Act 1996.”

Carrying out reconnaissance, prospecting or mining at a certain sites, without the written consent of the landowners

“did carry out [reconnaissance/prospecting/mining] in or on a [village/place of burial/tambu site/other site of traditional significance/inhabited house or building/cultivated land/land rendered fit for planting and habitually used for the planting of crops] without the written consent of the owner or occupier thereof [and within such distance prescribed by the Minister], in contravention of section 4(2) of the Mines and Minerals Act 1996.”



FISHERIES OFFENCES

RESPONSIBLE MINISTRY

Ministry of Fisheries and Marine Resources

CONTACT DETAILS

PO Box G13
Honiara
Ph: 28604/39143
Fax: 38730

ENFORCEMENT AGENCIES AND OFFICERS

1. Director of Fisheries
2. Chief licensing officer
3. Licensing officers
4. Fisheries officers
5. RSIPF
6. Provincial officers
7. Observers, port samplers and fish quality control auditors

RELEVANT LEGISLATION

Fisheries Management Act 2015
Provincial Government Act 1997
Provincial Ordinances
Delimitation of Marine Waters Act (Cap. 95)
Continental Shelf Act (Cap 94)

MAIN FISHERIES OFFENCES

- Carrying out a fisheries activity prohibited by an Order made by the Director
- Carrying out certain fisheries activities without a valid licence, or not in accordance with a licence
- Using, carrying, placing any chemical, poison or noxious substance, bomb, electrical device, dynamite or explosive substance or device for the purpose of killing, taking, stunning, stupefying or disabling fish
- Engaging or assisting in drift net fishing activities
- Using prohibited fishing gear
- Deploying or maintaining fish aggregating devices without permission
- Taking, landing, selling dealing in, transporting, receiving, buying, possessing, importing or exporting any fish or fish product declared as protected or endangered
- Specific offences relating to foreign fishing vessels

A full list of fisheries offences can be found at Table 4 of the Schedule.

MAIN POWERS RELATING TO FISHERIES OFFENCES

- (1) Enter and search premises
- (2) Take, detain, remove or secure information and evidence
- (3) Arrest
- (4) Direct and control a vessel suspected of committing an offence
- (5) Seize vessels, aircraft and relevant items
- (6) Remove any part from a vessel so as to disable it from sailing
- (7) Cancellation and suspension of a licence

FISHERIES MANAGEMENT ACT 2015

The Fisheries Management Act 2015 ('FMA') was passed by Solomon Islands Parliament in May 2015 and is in its first stages of implementation. It repealed the old Fisheries law in Solomon Islands and made some amendments to the Provincial Government Act 1997, the Town and Country Planning Act (Cap 154) and the Fisheries (United States of America) Act (Cap 39).

The Director of Fisheries is responsible for the management and coordination of monitoring, control and surveillance of fisheries activities. However, under the FMA, the regulation of inshore and coastal fishing activities appears to be left to local communities and provincial governments, with the main focus of the FMA on offshore fishing.

Section 3(2) of the FMA provides that for some offences the FMA does not apply to:

1. engaging in fishing for:
 - a) personal consumption and not for sale, trading, commercial or manufacturing purposes
 - b) recreational fishing
 - c) customary fishing
2. vessels used by indigenous Solomon Islanders for customary fishing.

It is therefore important to check each offence carefully to see who it applies to.

WHAT IS A 'FISH'?

The FMA defines a 'fish' to include many animals and plants that you might not normally think to be a 'fish'. The legal definition is:

"any water-dwelling aquatic or marine animal or plant, alive or dead, and includes their eggs, swpan, spat and juvenile stages, and any of their parts."

This means that a 'fish' include not only fish, but other animals such as dolphins, beche-de-mer, crocodiles, sea weed, clams and coral.

WHAT IS FISHING?

Under the FMA, 'fishing' means:

- searching for, catching, taking, or harvesting fish,
- attempted searching for, catching, taking, or harvesting fish,
- engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish,
- placing, searching for or recovering any fish aggregating device or associated electronic equipment including radio beacons,
- any operation at sea in support of or in preparation for any of the above activities,
- the use of any aircraft related to the above activities.

FISHING LICENCES

The FMA provides for fisheries activities to be licenced. Under section 43 of the FMA, the types of fisheries activities that cannot be carried out without a licence include:

- a) using a fishing vessel for fishing related activities in the fisheries waters, including –
 - (i) transshipment,
 - (ii) bunkering at sea, and
 - (iii) supply of spare parts to fishing vessels,
- (b) using a Solomon Islands fishing vessel for fishing or related activities in areas beyond the fisheries waters, including fishing on the high seas or fishing in waters under the jurisdiction of another State,

- (c) artisanal fishing in direct or indirect association with a registered company, except for recreational fishing,
- (d) the export or import of fish, live fish or fish products,
- (e) operating export facilities for the export or import of fish, live fish or fish products,
- (f) operating fish and fish product processing or storage facilities,
- (g) any activity relating to processing for purposes of export,
- (h) commercial aquaculture,
- (i) subject to section 3 of the Research Act (Cap. 152), research into fisheries, fishery resource or related activities within the fisheries waters,
- (j) introduction into the fisheries waters of any genetically modified fish,
- (k) commercial sport fishing, or
- (l) such other activities as may be prescribed.

Carrying out one of these activities without a licence is an offence, with a fine of up to \$100,000 for a person and \$300,000 for a company.

Failing to comply with the terms of a licence is an offence, with a fine of up to \$2,000,000 and/or imprisonment for a person, or \$6,000,000 for a company. In addition, the licence may be cancelled or suspended.

Some examples of where a licence might be required include in relation to the keeping of dolphins for commercial aquaculture or for live export.

PROHIBITED FISHING

Section 22 of the FMA provides that the Director may prohibit a number of activities by making an Order in the Gazette. The Order applies to all persons, and may wholly or partially prohibit:

- (a) fishing –
 - (i) at all times or during specified period from any specified area of fisheries waters, and the possession of such fish during the specified period or in the specified area,
 - (ii) for fish that are not of a specified or dimension
 - (iii) by a specified method or gear
 - (iv) by persons other than a specified class of persons
 - (v) by vessels other than a specified class or number of vessels
 - (vi) in a manner that that results in wastes, by-catch, discards, regulatory discards, or economic discards
 - (vii) above a regulated quantify or specified quota,
- (b) the landing, buying, selling, receiving, possession or export of fish or of fish included in a specified class of fish,
- (c) a person from having in his or her possession or charge fishing gear or equipment, including fish aggregating devices and associated electronic equipment, of a specified kind, size or quantity,
- (d) deployment or retrieval of a fish aggregating device and associated electronic equipment or fishing within a specified radius of such device,
- (e) the use of a port or fish landing centre by specified categories of fishing vessels for specified purposes,
- (f) any activity designated as prohibited in a Fisheries Management Plan,
- (g) any activity prohibited or otherwise regulated under any conservation and management measures adopted by a regional fisheries management organisation in which Solomon Islands is member or cooperating non-member,
- (h) the conduct of a specified type of related activity, or
- (i) such other activities as the Director may specify that fall within the scope of the FMA, consistent with its objective and principles.

Carrying out an activity prohibited by an Order is an offence, with a fine of up to \$5,000,000 and/or imprisonment for up to 2 years for a person, or a fine of \$15,000,000 for a company.

Some examples of activities that an order might prohibit include the taking and export of beche-de-mer.

PROTECTED OR ENDANGERED SPECIES

Under section 31 of the FMA, the Minister may, on the advice of the Director and in consultation with the Minister responsible for environment, by Order in the Gazette, declare as protected or endangered any fish;

- (a) that are designated as protected or endangered under an international agreement, or
- (b) that the Director recommends be declared as protected or endangered, based on the best available scientific evidence.

It is an offence for a person to take, land, sell, deal in, transport, receive, buy, possess, import or export any fish or fish product declared as protected or endangered. The penalty is a fine of up to \$500,000 and/or imprisonment for a person, or a fine of up to \$1,500,000 for a company. In addition, the fish or fish products are forfeited to the Solomon Islands government.

Some examples of prohibited or endangered species could include turtles and other endangered species.

POLLUTION OF FISHERY WATERS

Under section 32 of the FMA, it is an offence to attempt to introduce, prepare for the introduction of, or introduce into the fisheries waters, directly, indirectly, deliberately or accidentally, any deleterious substance, including substances which may have toxic, hazardous or other harmful properties or effects in relation to fish or the aquatic environment, and which may adversely affect the habitat or health of the fish.

The penalty is a fine of up to \$5,000,000 and/or imprisonment for up to 6 months for a person, or a fine of up to \$15,000,000 for a company. In addition, the offender is also 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.

AUTHORISED OFFICERS AND THEIR POWERS

Section 65 of the FMA outlines 'authorised officers' for the purposes of monitoring, control, surveillance and enforcement of the FMA. Authorised officers include the Director of Fisheries, a chief licencing officer and other licensing officers, fisheries officers and other officers.

Police officers acting within the limits of their authority are deemed by section 65(4) of the FMA to be authorized officers for the purposes of the FMA.

Sections 66 to 73 of the FMA outline the powers of authorized officers. These include the usual stopping, searching and seizing powers, and also includes the power to order a person to cease and desist, and the power to arrest without warrant (section 70), as well as the power to immobilize a vessel (Section 73).

SOME TIPS WHEN USING THE FMA

For every day that an offence continues, a separate offence is considered to have been committed (section 104 FMA).

In some cases, where an employee, officer or agent commits an offence, the company also commits the offence (section 111 FMA).

Where a company is convicted of an offence, every person concerned in the management of the company is also guilty if it is proved that the activity took place with the person's authority, or the person knew or should have known that the offence was to be or was being committed, and failed to take all reasonable steps to prevent or stop it (section 115 FMA).

The financial penalty for a company is three times higher than for a person (section 106 FMA).

In addition to financial penalties and/or imprisonment, many offences allow for the forfeiture of the fish or equipment, and in some cases the cancellation of the relevant licence. Table 4 of the Schedule contains further information on this.

For certain offences, a person may be banned from fishing for up to a period of five years (section 107 FMA).

A person or company can also be liable to the Solomon Islands government for compensation (section 110 FMA).

There are different types of people regulated by the FMA. For example, there are owners, operators and masters of vessels. You should check the law carefully and think about who might have committed the offence. For example, a hirer of a vessel is considered to be the 'owner' (section 2(2) FMA), and the actions of crew members are taken to be actions of 'operators' (section 112 FMA).

Cases will usually be brought in the High Court (section 97(1) FMA), under the guidance and control of the Director of Public Prosecutions (section 98(2) FMA).

The FMA also provides for a procedure known as 'summary administrative proceedings'. See Part 11 of the FMA for more information.

PROVINCIAL ORDINANCES

The FMA retains the responsibilities of Provincial Governments to enact fisheries ordinances in relation to provincial waters in accordance with Schedule 3 of the Provincial Government Act 1997.

The following are examples of provincial ordinances relating to fisheries:

- Choiseul Province Fisheries and Marine Environment Ordinance 2011
- Guadalcanal Province Fisheries Ordinance 2009
- Makira Ulawa Province Fisheries Ordinance 2009
- Temotu Province Fisheries Ordinance 2009
- Western Province Fisheries Ordinance 2011

In general, these ordinances restrict harvesting of animals such as turtle to particular times of the year, and minimum net sizes and species sizes, and prohibit certain types of fishing gear and fishing methods. Some ordinances also allow for the creation of marine protected areas, and prescribe different provincial licences that are required for certain activities.

These ordinances now need to be gazetted in order to have legal effect as regulations under the FMA.

In addition, before a person can conduct a business within a province, they must obtain a business licence from the relevant Provincial Government. Commercial fishing without a business licence may be an offence and the relevant Provincial Government should be consulted to determine whether a business licence has been granted for fishing.

FISHERIES MANAGEMENT PLANS AND COMMUNITY FISHERIES MANAGEMENT PLANS

In relation to inshore and coastal fisheries, the FMA provides for a Fisheries Management Plan (FMP) and/or a Community Fisheries Management Plan (CFMP). The FMP will be devised by the Director and will outline management measures, licencing, enforcement powers and authorities, fine, penalties and sanctions to be applied.

Customary rights holders may also devise a CFMP in consultation with the Director and the relevant provincial government.

Similar to provincial ordinances, the FMP and CFMP must be gazetted in order to have legal effect as regulations under the FMA.

MARINE PROTECTED AREAS AND MARINE MANAGED AREAS

The FMA also provides for the creation of Marine Protected Areas (MPAs) and Marine Managed Areas (MMAs) over coastal and inshore ecosystems. These areas must be declared by the Minister and must be published in the gazette. It is an offence to engage in activities prohibited under a declaration, with a fine of up to \$5,000,000 and/or 2 years imprisonment for a person, or up to \$15,000,000 for a company. In addition, where there is destruction or adverse impacts on the fishery resource in the declared area, then the offender is also liable to pay full compensation and restoration of the area to its original state.

These protected areas may be confused with marine protected areas that are declared under the Protected Areas Act 2010 (see Chapter 11), or marine protected areas declared under a provincial ordinance. Care should therefore be taken to make sure that it is clear under which law an area is 'protected', and which offences will apply.

CASE STUDY- DYNAMITE FISHING

Subject to any relevant Provincial Ordinance, no person shall, for the purpose of killing, taking, stunning, stupefying or disabling fish or in any way rendering fish more easily caught :

- (a) use, permit to be used or attempt to use;
- (b) carry, permit to be carried, possess or committed; or
- (c) place in the water or assist in placing in the water

any chemical, poison or noxious substance, bomb, electric device, or material (whether of manufactured or of natural origin), dynamite or explosive substance or device.

In addition, no person shall:

- (a) land, tranship, buy, sell, deal in, transport, receive or possess any fish or fish product taken by any means which contravenes this section; or
- (b) fail or refuse to give, on request to any authorised officer, information regarding –
 - (i) an activity described above, or the support of or any contribution to such activity; or
 - (ii) the source of the supply of any fish or fish product referred to in paragraph (a).

The penalty is a fine of up to \$3,000,000 and/or imprisonment for up to 3 years (with an additional 3 month term added to the penalty for further offences) for a person, or \$9,000,000 for a company.

All fish and fish products seized are forfeited, and any vessel or vehicle used to transport such fish or fish products may be forfeited to the Solomon Islands government.

See section 23 of the FMA.

Facts

Some pikininis come into the RSIPF station in Munda to tell you that they heard some loud noises and saw some bubbles and splashing of water while they were out fishing and then they noticed a lot of fish on the surface. They think some men were using dynamite to stun and collect fish for sale.

Offence

It is an offence to use dynamite to fish and to sell the fish that are caught as a result.

There may also be a number of other offences, including in relation to damage to marine protected areas (see Chapter 9 and 11), or under a provincial fisheries ordinance.

CHECKLIST

STEP ONE: OBTAIN BASIC INFORMATION

The first thing to do is obtain some basic information. This includes:

- 1) The contact details of the person making the complaint.
- 2) Where the explosion took place, including the name of the closest island and the village. You could also ask the person making the complaint to show you on a map where the fishing took place.
- 3) Find out who is carrying out the explosions and selling the fish.
- 4) Find out who the customary owners of the reef are, including the names of the relevant chiefs.

STEP TWO: INVESTIGATION

The next step is to speak to the people suspected of carrying out the dynamite fishing. In this regard, it is an offence for the person to fail or refuse to give information regarding dynamite fishing.

If you think that someone has some fish that were caught through dynamite fishing, you should also ask them for information. It is an offence for those people not to tell you where the fish came from.

STEP THREE: ENFORCEMENT

If you think that dynamite fishing has taken place, then you should:

- 1) Speak to the provincial government and fisheries officer to see if a provincial ordinance has been breached.
- 2) Ask the Ministry of Fisheries and Marine Resources whether an exemption for scientific research had been granted under section 23(4) of the FMA. If one has not been granted, ask the Ministry to consider investigating the matter.
- 3) Consider which powers you have, and which should be used.
- 4) Consider seizing the fish and fish products, and whether the vessel used should be forfeited.
- 5) Note that any explosive, substance or other noxious substance found on board any vessel is presumed, in the absence of proof otherwise, to be for one of the prohibited purposes.
- 6) If a decision is made to prosecute, then you will need to collect evidence of the prospecting and its location, including witness statements.

EXAMPLE DRAFT CHARGES

Fishing with prohibited substances

“did, for the purpose of [killing/ taking/stunning/stupefying/ disabling] fish [used/permitted to be used/attempted to use] [and/or] [carried/permitted to be carried/ possessed/committed] [and/or] [placed in the water/assisted in placing in the water] [insert name of chemical, poison or noxious substance, bomb, electric device, dynamite or explosive substance or device] in contravention of section 23(2) of the Fisheries Management Act 2015.”

Landing, transhiping, buying, selling, dealing in, transporting, receiving or possessing fish caught with prohibited substances

“did [land/tranship/buy/sell/deal in/ transport/receive/possess] fish or fish product, namely [insert the fish/fish product] taken in contravention of section 23(2) of the Fisheries Management Act 2015, in contravention of section 23(3)(a) of the Fisheries Management Act 2015.”

10

IMPORT AND EXPORT OF PLANTS AND ANIMALS

RESPONSIBLE MINISTRY

Ministry of Environment, Climate Change, Disaster Management and Meteorology

Ministry of Finance and Treasury–Customs and Immigration

Ministry of Forestry and Research

Ministry of Fisheries and Marine Resources

ENFORCEMENT AGENCIES AND OFFICERS

1. Chief Inspector
2. Inspectors
3. Customs Officers
4. RSIPF

RELEVANT LEGISLATION

Wildlife Protection and Management Act 1998 (WPMA)

Wildlife Protection and Management Regulations 2008 (WPMR)

Forest Resources & Timber Utilisation (Protected Species) Regulations 2012 (FRTU Protected Species Regulations)

Customs and Excise Act (Cap 121) (Customs Act)

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

Fisheries Management Act 2015

MAIN WILDLIFE OFFENCES

- (1) A person who is not an “approved person” taking and holding or exporting or importing specimens
- (2) Exporting a Schedule I specimen, otherwise than by an approved person holding a scientific research permit
- (3) Exporting a Schedule II specimen, otherwise than by an approved person holding a permit for commercial purposes or otherwise
- (4) Selling or otherwise disposing of an imported animal (and its progeny), otherwise than in accordance with the written approval of the Director of Environment
- (5) Selling or otherwise disposing of an imported plant (and its progeny), otherwise than in accordance with the written approval of the Director of Environment
- (6) Possession of illegally obtained specimens

MAIN POWERS RELATING TO WILDLIFE OFFENCES

1. Revocation and suspension of permits
2. Production of permits and certificates
3. Boarding vessels and aircraft
4. Arrest and seizure
5. Forfeiture of specimens
6. Confiscation
7. Prosecution

OVERVIEW

The WPMA and the WPMR regulate the import and export of animal and plant specimens. They prohibit and regulate the import and export of certain wildlife unless certain approvals and permits are obtained.

Importing and exporting prohibited and restricted wildlife without the relevant permits is a criminal offence.

The Fisheries Management Act 2015 (see chapter 9) and the Customs Act also include offences with respect to the import and export of animals and plants.

OBJECTIVES OF THE WPMA AND WPMR

One objective of the WPMA and WPMR is to comply with the obligations of the Solomon Islands under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Further objectives are to further the protection and conservation of the wild flora and fauna of Solomon Islands by regulating:

- (a) the export of specimens that are, or derived from, native Solomon Islands animals or native Solomon Islands plants,
- (b) the export and import of specimens that are, or are derived from animals, or plants of a kind that are threatened with extinction,

- (c) the export and import of specimens that are, or are derived from, animals or plants, of a kind that require, or may require, special protection by regulation of international trade in such specimens,
- (d) the import of animal specimens or plant specimens which could have an adverse effect on the habitats of native Solomon Islands animals or native Solomon Islands plants, and
- (e) the management of flora and fauna to ensure sustainable uses of these resources for the benefit of Solomon Islands (Section 3 WPMA).

INSPECTORS AND POLICE POWERS

The WPMA allows for the appointment of a Chief Inspector, inspectors and such other officers as may be necessary for the proper carrying out of the purposes of the WPMA.

All customs and police officers are deemed to be inspectors for the purpose of carrying out the duties imposed under the WPMA (Section 28 WPMA).

APPROVED PERSONS

The Director may, by notice published in the Gazette, declare an institution, zoological organisation or person engaged in activities relating to animals or plants in Solomon Islands or elsewhere as an “approved person” for the purposes of taking and holding any specimens or for the export or import of such specimen. The declaration must specify the class or classes of specimen with which the approved person may deal with. Such approved persons may then apply for a permit to export or import a specimen. (Section 8 WPMA)

Only persons, institutions or zoological organizations declared as an “approved person”, can take and hold specimens, or export and import specimens. A person who contravenes this requirement commits an offence and is liable on conviction to a fine not exceeding \$3000 or to 3 months imprisonment (Regulation 9 WPMR).

REGISTER OF SCIENTIFIC ORGANISATIONS

A registered scientific organisation not being an approved person may make an application in writing to the Minister for permission to export or import for scientific research any specimen which is otherwise prohibited under the provisions of the WPMA (Section 20 WPMA).

The Director must maintain a list of all scientific organisations that are registered for such purposes (Section 19 WPMA).

PROHIBITED AND RESTRICTED EXPORTS

Permits for scientific research purposes

Schedule I of the WPMA lists plant and animal specimens that can only be exported by “approved persons” who hold a valid export permit issued for scientific research purposes under Section 14(5) of the WPMA.

Schedule I specimens include, for example, a number of turtle species.

Section II of the WPMA makes it an offence for a person to otherwise export such specimens. The penalty for exporting a Schedule 1 specimen is a fine not exceeding \$5,000 dollars or imprisonment for a term not exceeding 6 months.

The full list of Schedule I specimens are:

BIRDS

Pterodroma becki (Beck’s petrel)
 Haliastur sanfordi (Solomon sea eagle)
 Accipiter imitator (Imitator sparrow hawk)
 Nesoclopeus wordfordi (Woodford’s rail)
 Gallinula sylvestris (San Cristobal mountain rail)
 Caloenas nicobarica (Nicobar pigeon)
 Columba pallideiceps (Yellow-legged pigeon)
 Gallicolumba salomonis (Thick-billed ground dove)
 Gallicolumba sanctaecrucis (Santa Cruz ground dove)
 Microgoura meki (Solomon Islands ground pigeon)
 Halcyon bougainvillei (Moustached Kingfisher)
 Pitta anerythra (Solomon Islands pitta)
 Phylloscopus amoenus (Kolombangara warbler)
 Clytorhynchus hamlini (Rennell shrikebill)
 Rhipidura malaitae (Malaita fantail)
 Zosterops luteirostris (Gizo white eye)
 Zosterops sanctaecrucis (Nendo white eye)
 Anas gibberifrons (grey teal)
 Accipiter meyerianus (Meyers goshawk)
 Gallicolumba beccarii (Grey-breasted ground dove)
 Gallicolumba jobiensis (White-breasted ground dove)
 Gallicolumba salomonis (Thick-billed ground dove)
 Zosterops dauma (Scaly thrush)
 Gallus gallus (Santa Cruz jungle fowl)
 All birds of the family Psittacidae except for the following species:
 Cacatua ducorpsi
 Chalcopsitta cardinalis
 Eclectus roratus
 Lorius chloroceros
 Trichoglossus haematodus massena

MAMMALS**Giant rats**

Solomys salamonis
 Solomys sapientis
 Solomys ponceleti
 Uromys res
 Uromys porculus
 Uromys imperator

Monkey-faced flying foxes

Pteralopex atrata
 Pteralopex anceps (new species)

Flying foxes

Pteropus cognatus
 Pteropus howensis
 Pteropus mahaganus
 Pteropus nitidenis
 Pteropus rayneri
 Pteropus tuberculatus
 Pteropus sp. (new species)

Blossom bats

Melonycteris woodfordi

Insectivorous bats

Antops ornatus
 Hipposiderous dinops
 Hipposiderous demissus
 Chaerophon solomonis

REPTILES**Snakes**

Ramphotylops affinis
 Ramphotylops willeyi

Gecko

Lipidodactylus shebae

Skink

Tribolonotus ponceleti

Frogs

Platymantis solomonis
 Platymantis aculeodactylus
 Platymantis solomonis
 Discodeles malacuna

Crocodiles

Crocodylus porosus

Turtles

Dermochelys coriacea (Leatherback turtle)
 Eretmochelys imbricata (Hawksbill turtle)
 Chelonia mydas (Green turtle)
 Lepidochelys olivacea (Olive Ridley turtle)
 Caretta carreta (Loggerhead turtle)

INSECTS

Graphium meeki
 Graphium mendana
 Papilio toboroi
 Paparantica gramantis
 Tiradelphe schneideri
 Tirumala euploemorpha

PLANTS

Xanthostermon sp.
 Bulbophyllum melanoxanthum
 Corybas gemmatus
 Dendrobium capbellii
 Dendrobium rechingerorum
 Dendrobium renelli
 Dendrobium sancristobalense
 Habenaria bouganvilleae
 Paphiopedilum wenthworthianum

FISHES

Amphipnon chrysopterus (orange-fin Anemonefish)
 Amphipnon clarkii (Clarks Anemonefish)
 Amphipnon leucokranos (White-bonnet Anemonefish)
 Amphipnon melanopus (Black & White Anemonefish)
 Amphipnon percula (Clown Anemonefish)
 Amphipnon perideraion (Pink Anemonefish)
 Amphipnon polymnus (Saddleback Anemonefish)
 Amphipnon sandaracinos (orange Anemonefish)
 Amphipnon biaculeatus (Spinecheek Anemonefish)

Permits for commercial or other purposes

Schedule II of the WPMA lists plant and animal specimens that can only be exported by an “approved person” who holds a valid permit to export such specimen for commercial purposes or otherwise under Section 14 of the WPMA.

Schedule II specimens include many types of parrots and giant clams. The tubi tree has apparently been moved from Schedule I to now be a Schedule II specimen, however this may be subject to change and should be confirmed.

Section 11 of the WPMA makes it an offence for a person to otherwise export such specimens. The penalty for otherwise exporting a Schedule II specimen is a fine not exceeding \$3000 or imprisonment for a term not exceeding 3 months.

The full list of Schedule II specimens are:

BIRDS

Cacatua ducorpsi (white cockatoo)
Chalcopsitta cardinalis (Coconut lory)
Eclectus roratus (Eclectus parrot)
Lorius chlorocerus (Yellow-bibbed lory)
Trichoglossus haematodus massena (Rainbow lorikeet)

REPTILES**Order Anura**

Litoria thesaurensis
Batrachylodes vertebralis
Ceratobatrachus guentheri
Discodeles opisthodom
Platymantis papuensis
Platymantis solomonis

Order Squamata - suborder Saura Gecko

Cyrtodactylus louissiadensis
Gehyra vittatus

Skinks

Corucia zebrata
Emoia cyanura
Lamprolepis smaragdina
Prasinohaena virens
Sphenomorphus cocinattus
Sphenomorphus solomonis
Varanus indicus

SUBORDER SERPENTS**Snakes**

Candoia bibroni
Candoia carinata
Dendrelapis calligaster

INSECTS

Ornithoptera victoriae
Ornithoptera priamus urvillianus

MAMMALS

(All species of flying foxes not in Schedule 1)

PLANTS

Diospyros ebenum (Ebony)
Cordia subcordata (Kerosine wood)
Hernandia numphaeifolia
Agathis macrophylla (Kauri)
Canarium indicum (Big Ngali nut)
Canarium salomonense (Small Ngali nut)
Gmelia moluccana (Canoe tree)
Intsia bijuga (Iron wood)
Pterocarpus indicus (Rose wood)
Castanospermum australe (Black bead)
Acianthus vulcanicus
Arachnis becarii
Bulbophyllum fractifexum subsp. *solomonense*
Coelogyne susanae
Corybas longipedunculatus
Dendrobium gnomus
Dendrobium ruginosum
Dendrobium salomonense
Dendrobium vanikorensense

Diplocaulobium magnilabre
 Diplocaulobium subintegrum
 Macodes cominsii
 Robiquetia woodfordi
 Zeusine elatior var. argustata

MOLLUSCS

Giant Clams

Tridacna gigas
 Tridacna derasa
 Tridacna squamosa
 Tridacna crocea
 Tridacna maxima
 Hippopus hippopus
 Pinctada maxima (Gold Lip)
 Pinctada margaritifera (Black Lip)

Erchinoderms

Holothuria scabra

PROHIBITED AND RESTRICTED IMPORTS

General

The Minister can declare by order that a plant or animal specimen be a prohibited or restricted import. No person can import such declared plant or animal specimen unless such a person is an approved person and has a valid permit under section 14 (Section 12 WPMA). There is however no prescribed penalty for this offence.

Imported Animals

The holder of a permit may, with the written approval of the Director, sell or otherwise dispose of any animal (or progeny of that animal) to any other person, or release the animal (or the progeny) from captivity. Where the animal dies, the permit holder must bury, cremate or otherwise dispose of the body in a satisfactory manner.

A holder of a permit who contravenes or fails to comply with any of these requirements is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 and/or to imprisonment for a period not exceeding 3 months (Section 24 WPMA).

Imported Plants

The holder of a permit may, with the written approval of the Director, sell or otherwise dispose of a plant (or the progeny of that plant) to any other person, or plant or sow that plant (or the progeny of that plant) in such manner so as to

enable that plant to be in or spread to an area or a place that is not under the effective control of the holder of the permit. Where the plant dies the permit holder shall bury, burn or otherwise dispose of the plant in a satisfactory manner.

A holder of a permit who contravenes or fails to comply with any of these requirements is liable on conviction to a fine not exceeding five thousand dollars and/or to imprisonment for a period not exceeding three months (Section 25 WPMA).

POSSESSION OF ILLEGALLY OBTAINED SPECIMENS

A person who without reasonable excuse has in his possession:

- (a) on board a vessel or aircraft any specimen obtained in contravention of the provisions of the WPMA, or
- (b) any specimen that he knows or has reasonable grounds to suspect has been imported or is to be exported in contravention of the provisions of the WPMA

is guilty of an offence and liable on conviction to a fine not exceeding \$10,000 dollars and/or to imprisonment for a period not exceeding 5 years (Section 26 WPMA).

POWERS RELATING TO ENFORCEMENT OF WILDLIFE OFFENCES

Revocation and suspension of permits

The Director may at any time, by notice in writing served on the holder of a permit, suspend or revoke the permit if he has reasonable grounds to suspect that a provision or condition of the permit has or is being contravened. The suspension of a permit may be for an indefinite period or for a period specified in the notice. During the period of suspension the permit has no force or effect but the period or currency of the permit or authority shall continue to run. (Section 23 WPMA).

Production of permits

The holder of any permit must produce the original copy of the permit to the Customs and Quarantine officers at the designated point of export or import into Solomon Islands and pay any fees, duties or taxes that may be payable under the relevant law in respect of the import or the export of the specimens authorised under the permit (Section 22 WPMA).

The holder of any permit to import or export must also produce at the designated point of entry or exit:

- (a) in the case of an animal -
 - (i) a certificate issued by a Government or registered veterinary surgeon certifying the origin of the specimens and that within twenty-four hours before departure such animal was apparently healthy and free from disease,
 - (ii) a certificate of any treatment that the animal has been subjected to in accordance with the procedure required for the export or import of that animal, and
 - (iii) a licence issued in accordance with the provisions of the Agricultural Quarantine Act,
- (b) in the case of a plant -
 - (i) a phytosanitary certificate certifying that the specimens are apparently healthy and free from disease, and
 - (ii) a certificate of any treatment that the plant has been subjected to in accordance with the procedure required for the export or import of the specimen,
- (c) the permit to export a specimen to Solomon Islands from the country of origin, and
- (d) the permit to import the specimen from the exporting country nominated in the permit to Solomon Islands (Section 22(2) WPMA).

Powers of inspectors to board vessels, aircraft, etc

An inspector (including RSIPF officers) may at any time, if he has reasonable cause to believe that there is or on any vehicle, vessel, aircraft or premises any specimen, the possession of which would constitute an offence, board or enter any such vehicle, vessel, aircraft or premises for the purpose of exercising the functions conferred upon an inspector under the WPMA (Section 29 WPMA).

Powers of arrest and seizure

An inspector (including RSIPF officers) may, where he has reasonable grounds to believe that an offence has been committed or is being committed against any provisions of the WPMA and that the person committing the offence is likely to leave Solomon Islands, without warrant, arrest such person and if the inspector making the arrest is not a police officer, he shall without unnecessary delay hand over such person to a police officer.

An inspector making such an arrest may seize any vehicle, vessel, aircraft and equipment which he believes has been used in commission of such offence or in respect of which he believes such offence has been committed (Section 30 WPMA).

Obstructions etc. of inspectors

A person who wilfully obstructs any inspector in the exercise of any of the powers conferred upon him under the WPMA, or fails to comply with any lawful order made by an inspector, or to answer any question in the course of an inquiry made by any inspector, shall be guilty of an offence and liable to a fine not exceeding \$2,000 dollars or to imprisonment for a period not exceeding 12 months, or to both such fine and imprisonment (Section 31 WPMA).

Forfeiture of specimens

Where a person is convicted of an offence under the WPMA, any specimen to which the offence relates, together with any equipment or material used in storing or housing such specimen shall be forfeited to the Government, and any expenses or cost incurred in the upkeep or holding of such specimen up to the time of conviction of the offence shall be recovered from the person convicted of the offence.

The Minister may at any time prior to the disposal of the matter by the court cause the specimen to be destroyed or dealt with in any manner he sees fit. In doing so he may require two independent witnesses to identify in writing the nature of the specimen and certify the method of disposal of the specimen. Where a specimen has been disposed of and the person charged has been subsequently found not guilty of the alleged offence, he may recover the value of the specimen from the Government (Section 32 WPMA).

Confiscation of items and objects used in the commission of offences

Any item or object used in the commission of an offence under section 11 or 12 of the WPMA is forfeited to the Government and the proceeds from the sale of such item or object is be deemed to be property of the Government. (Section 22 WPMA).

OTHER RELEVANT LAW

CITES

The Solomon Islands Government is yet to enact any domestic law to implement CITES, however the Ministry of Environment regulates the trade in CITES species through the issuing of permits. There are not however any offences in relation to CITES species, unless the species are also captured in the WPMA and WPMR offences.

Customs

The Third Schedule of the Customs Act lists certain goods that are prohibited or restricted to be exported (Section 35 and Third Schedule of the Customs Act). Prohibited exports include all goods that are absolutely prohibited from being exported under an Solomon Island Law. Restricted exports are all goods that are restricted to be exported under any Solomon Islands law, except in accordance with such law.

These would include protected animal and plant species under the Wildlife Protection and Management Act 1998 and the Wildlife Protection and Management Regulations 2008.

In cases where a plant or animal is being exported in breach of the WPMA or WPMR, then Customs Officers have a number of powers, including:

1. Power to refuse or cancel clearance of a ship or aircraft
2. Power to stop carriage of any ship, aircraft or carriage
3. Power of arrest
4. Power to prosecute

Forest Resources and Timber Utilisation (Protected Species) Regulations 2012

The FRTU Protected Species Regulations provide for further protection of certain plant species. The regulations provide that the following species are protected and cannot be felled or removed from any land for the purposes of sale or export, except for scientific research purposes as authorized under the WPMA:

- Mangrove (*Rhisophora* spp.) and all other mangrove species
- Ebony (*Diospyros* spp.)
- Ngali Nut (*Canarium indicum*)
- Tubi (*Xanthostemon*)

The regulations also provide that the following species cannot be exported in an unprocessed form:

- Rosewood (*Pterocarpus indicus*)
- Ironwood (*Instia bijuga*)
- Kauri (*Agathis macrophyllia*)
- Walnut (*Dracontomelum vitiense*)
- Canoe tree (*Gmelina moluccana* and *Canarium* spp)
- Rattan (*Calamus* spp)
- Vasa (*Vitex*)

Fisheries Law

Under section 31 of the FMA, the Minister of Fisheries may, on the advice of the Director and in consultation with the Minister responsible for environment, by Order in the Gazette, declare as protected or endangered any fish:

- (a) that are designated as protected or endangered under an international agreement, or
- (b) that the Director recommends be declared as protected or endangered, based on the best available scientific evidence.

It is an offence for a person to take, land, sell, deal in, transport, receive, buy, possess, import or export any fish or fish product declared as protected or endangered. The penalty is a fine of up to \$500,000 and/or imprisonment for a person, or a fine of up to \$1,500,000 for a company. In addition, the fish or fish products are forfeited to the Solomon Islands government.

CASE STUDY- EXPORTING PROTECTED SPECIES

Exporting certain species, such as turtles, without a scientific research permit is a criminal offence, punishable by a fine of up to \$5,000, or imprisonment for up to 6 months (section 11 WPMA).

Exporting other species, such as the giant clam, without a commercial export permit is a criminal offence, punishable by a fine of up to \$3,000, or imprisonment for up to 3 months (section 11 WPMA).

In addition, a person who without reasonable excuse has in his possession:

- (a) on board a vessel or aircraft any specimen obtained in contravention of the provisions of the WPMA; or
- (b) any specimen that he knows or has reasonable grounds to suspect has been imported or is to be exported in contravention of the provisions of the WPMA

is guilty of an offence and liable on conviction to a fine not exceeding \$10,000 dollars and/or to imprisonment for a period not exceeding 5 years (Section 26 WPMA).

Facts

Some landowners come into Noro police station complaining that they have noticed that a people have been taking turtles and giant clams and putting them on a boat owned by a logging company that they think is going to leave Solomon Islands soon.

Offences

Turtles

Schedule I of the WPMA lists plants and animals that can only be exported by an 'approved persons' (ie a person, institution or organization that has been declared as approved under section 8 of the WPMA) who also holds a valid scientific research permit under section 14(5) of the WPMA.

Five turtle species are listed as Schedule 1 specimens under the WPMA:

- Dermochelys coriacea (Leatherback turtle)
- Eretmochelys imbricata (Hawksbill turtle)
- Chelonia mydas (Green turtle)
- Lepidochelys olivacea (Olive Ridley turtle)
- Caretta carreta (Loggerhead turtle)

Therefore any person trying to export the turtles would need a scientific export permit and the people who are exporting the turtles may have therefore committed an offence against section 11 of the WPMA.

Giant clam

Schedule II of the WPMA lists plants and animals that can only be exported by an 'approved person' (section 8 of the WPMA) who also holds a valid commercial export permit. Schedule II currently lists 8 types of giant clam that need a commercial export permit under section 14(4). The people who are exporting the giant clams may have therefore committed an offence against section 11 of the WPMA.

Please note that there are a number of other offences that may also have been committed, including under the Fisheries Management Act 2015 and provincial ordinances (see Chapter 9).

CHECKLIST

STEP ONE: OBTAIN BASIC INFORMATION

The first thing to do is obtain some basic information. This includes:

- (1) The contact details of the person making the complaint.
- (2) Where the turtles and giant clams have been taken from, including the name of the island and the village. If possible, ask for further information about the site, such as any rivers or lagoons that are close by. You could also ask the person making the complaint to show you on a map where the turtles and giant clams were taken from.
- (3) Find out who is taking the turtles giant clam. This will probably be individual people, but they might be doing this as employees or representatives of a company, such as a logging company.
- (4) Find out who the land owners are, including the names of the relevant chiefs.
- (5) Find out the name of the boat and where it will take the turtles and giant clams. For example, the boat might be going to Honiara, or it might be leaving the Solomon Islands.

STEP TWO: CHECK FOR SCIENTIFIC RESEARCH AND COMMERCIAL EXPORT PERMITS

The next step is to find out whether the person exporting is an 'approved person' and whether a scientific research permit and/or commercial export permit has been issued.

You can find this out in three ways:

- (1) The RSIPF has the power to require a person trying to export protected plants and animals to produce a copy of the relevant permits. You could therefore ask the people or company trying to export the turtles and giant clam to give you a copy of their permits authorizing them to do so. They must be able to provide you with:
 - a. A copy of a notice that declares them to be an 'approved person'
 - b. A scientific research export permit for the export of the turtles
 - c. A commercial export permit for the export of the giant clam

If they do not have a copies of their permits with them when you ask, you could ask them to bring a copy to the police station (or another place) by a particular day. See section 77 of the Police Act for more details.

- (2) Ask Customs to ask the person to produce the original copy of the relevant permits at the port of export. This is a requirement under section 22 of the WPMA.
- (3) Contact the Ministry of Environment, Climate Change, Disaster Management and Meteorology to ask them whether the persons are ‘approved persons’, and whether they have been granted any scientific research export permits or commercial export permits.

STEP THREE: ENFORCEMENT

If you discover that the person is not an ‘approved person’ and/or does not hold the right permits for the export, you should:

- (1) Contact the Ministry of Environment, Climate Change, Disaster Management and Meteorology, and Customs to tell them about the possible offence.
- (2) Consider which powers you have, and which should be used.
- (3) Consider boarding the boat to search for the prohibited exports. Inspectors appointed by the Ministry of Environment, Climate Change, Disaster Management and Meteorology, Customs officers and RSIPF officers have power to do so under section 29 WPMA.
- (4) Consider whether to arrest the person and seize the prohibited exports under section 30 WPMA.
- (5) Consider whether to confiscate items or objects used in the commission of the offence under section 32 WPMA.
- (6) Speak to Customs about their powers with respect to the illegal export. For example, Customs officers have a number of powers they could use under section 35 of Schedule 3 of the Customs Act, including:
 - a. The power to refuse or cancel the clearance of the ship
 - b. The power to stop the ship
 - c. The power of arrest
 - d. The power to prosecute
- (7) If a decision is made to prosecute, you will need to consider obtaining witness statements and evidence of the export or attempted export.

EXAMPLE DRAFT CHARGES

Exporting or attempting to export a Schedule I WPMA species without being an ‘approved person and/or holding a valid scientific research export permit

“did [export/attempt to export] [insert the name of the Schedule I WPMA specimen] [without being an approved person] [and/or] [without a valid permit to export such specimen issued for scientific research purposes under section 14(5) of the Wildlife Protection and Management Act 1998].”

Exporting or attempting to export a Schedule II WPMA species without being and ‘approved person’ and/or holding a valid commercial export permit

“did [export/attempt to export] [insert the name of the Schedule II WPMA specimen] [without being an approved person] [and/or] [without a valid permit to export such specimen for commercial purposes or otherwise under section 14 of the Wildlife Protection and Management Act 1998].”

Possession of a specimen to be exported in contravention of the provisions of the WPMA

“did, without reasonable excuse, have in [his/her] possession [insert name of Schedule I and/or Schedule II WPMA specimen] knowing [or having reasonable grounds to suspect] that it was to be exported in contravention of the provisions of the Wildlife Protection and Management Act 1998.”



PROTECTED AREAS

RESPONSIBLE MINISTRY

Ministry of Environment, Climate Change, Disaster Management and Meteorology (MECDM)

CONTACT DETAILS

PO Box 21
Honiara
Ph: 286/23031/23032/27751
Fax: 28054

RELEVANT LEGISLATION

Protected Areas Act 2010 (PA Act)

Protected Areas Regulations 2012 (PA Regulations)

ENFORCEMENT AGENCIES AND OFFICERS

- 1) Director of Environment
- 2) Inspectors
- 3) Rangers
- 4) RSIPF

MAIN PROTECTED AREAS OFFENCES

- Carrying out a prohibited activity in a Protected Area (for example logging and mining)
- Carrying out a restricted activity in a Protected Area without the permission of the Management Committee or authorised by the management plan
- Carrying out a prohibited activity in a Marine Protected Area
- Failing to comply with a stop order from the Director relating to pollution of a Marine Protected Area from a land based activity

MAIN POWERS RELATING TO PROTECTED AREAS

- 1) Inspection
- 2) Stop and search
- 3) Produce permit
- 4) Seizure
- 5) Stop orders
- 6) Infringement notice
- 7) Court order

OVERVIEW

The PA Act gives the Minister for Environment the power to declare an area of land or sea as a 'Protected Area'. An area can only be declared as a Protected Area under the PA Act if it meets one of the following criteria in section 10(1) of the PA Act:

- the area possesses significant genetic, cultural, geological or biological resources
- the area constitutes the habitat of species of wild fauna and flora of unique national or international importance
- the area merits protection under the Convention Concerning the Protection of the World Cultural and Natural Heritage, or
- the area requires special measures to be taken to conserve biological diversity.

A Protected Area declared under the PA Act will fall within one of the five following classes:

- Resource Management Areas
- Nature Reserves
- National Parks
- Natural Monuments, and
- Closed Areas.

The PA Act came into force in 2012. At the time of writing there are no declared protected areas in the Solomon Islands, however a number of applications have been submitted to the Ministry for approval.

PROHIBITED ACTIVITIES IN A PROTECTED AREA

Once an area is declared as a Protected Area under the PA Act, the PA Regulations list activities that are always prohibited in a Protected Area, and a number of criminal offences related to such activities.

For example commercial logging and mining is illegal in a Protected Area. These are known as “general prohibitions” and a full list is provided at Table 6 of the Schedule.

The penalty is a maximum fine of \$100,000 for an individual and up to \$500,000 for a company.

RESTRICTED ACTIVITIES

Whether or not other certain activities are illegal in a Protected Area will depend on the rules contained in the management plan for the Protected Area. This is because the PA Regulations contain a number of activities that are illegal unless the management plan or Management Committee for the Protected Area authorise such activities. For example, it is illegal to take any species from a Protected Area unless authorised by the management plan or Management Committee. A full list of these “restricted activities” is provided at Table 6 of the Schedule.

The penalty is a maximum fine of \$10,000 for an individual and up to \$50,000 for a company.

ADDITIONAL RESTRICTIONS RELATING TO MARINE PROTECTED AREAS

The PA Regulations also list a number of activities that are prohibited in a marine protected area (MPA). For example, harvesting of fish and other aquatic resources must not be done within clearly identified spawning aggregations or during spawning seasons, and nets or wire mesh must not be dredged, trawled or dragged on the sea floor. A full list of these additional restrictions and their penalties are provided at Table 6 of the Schedule.

LAND BASED ACTIVITIES AFFECTING MARINE PROTECTED AREAS

Regulation 54 of the PA Regulations provides that a person must not intentionally or negligently carry out any activity or development on land that may release material into an MPA that is harmful or destructive to the environment, unless the Minister for Environment approves the activity. The Minister can only give such approval if it is in the interests of the national economy, and subject to strict conditions.

If a MPA is being polluted by a land based activity, such as sediment pollution from logging operations, the Director must serve a notice on the person responsible for the activity requiring them to stop the activities within a specified period. The period must be less than 6 months and it is an offence not to comply with the order.

The penalty is a maximum fine of \$100,000 for an individual and up to \$500,000 for a company.

It is important to note that the offence does not arise through the pollution of the MPA itself, but with the failure to comply with a notice from the Director.

OFFENCES BY COMPANIES, DIRECTORS, OFFICERS, EMPLOYEES ETC

Regulation 69 of the PA Regulations provides that a company is deemed to commit an offence if the act was committed by any person acting with or upon the direction, authorisation, assent, acquiescence, agreement or participation of a director, officer, agent or other employee of the company.

Where the company commits the offence, the director, officer, agent or employee who directed, authorized, assented to, acquiesced in, agreed to or participated in the commission of the offence also commits the offence and is liable on conviction to the penalty for that offence.

Any company that is convicted of an offence is liable to a maximum penalty not exceeding five times the fine for that offence.

INSPECTORS AND RANGERS

The Minister can appoint any person as an inspector. The powers of inspectors are set out in Section 20 of the PA Act as follows:

- (a) Inspect any protected area in order to ascertain whether the Act has been breached
- (b) Prepare a report on any matter
- (c) Assist a management committee in the management and protection of its protected area
- (d) Stop and search any person, vessel, vehicle or thing within a protected area if there are reasonable grounds to believe the Act has been contravened
- (e) Require any person who is undertaking any biodiversity research or bioprospecting research to produce his permit
- (f) Stop any person carrying out any biodiversity or bioprospecting research who is without a permit or who cannot produce his permit
- (g) Report any contravention to the police

Inspectors can also issue infringement notices (Section 22 PA Act).

The Management Committee for a Protected Area can appoint rangers for the area. To be a ranger the person must be:

- (i) at least 18 years old and a member of the local community, group or tribe having an interest in the area, or
- (ii) an employee of the NGO managing the area (Regulation 65 PA Act).

Regulation 66 of the PA Regulations provides that rangers have the power to:

- (a) Stop, board, enter or search any person, vehicle or vessel which the ranger suspects of transporting, removing or in the possession of any specimen, species, plant, artefact, object or similar material
- (b) Seize any specimen, species, plant, artefact, object or similar material which the ranger has reasonable ground to believe has been removed from a protected area
- (c) Require any person committing a minor breach to rectify or remedy the breach within a reasonable time
- (d) Order a person to stop or cease a specific activity
- (e) Seize, detain or confiscate any equipment or gear used in the commission of an offence

ENFORCEMENT

Infringement notices

An inspector can issue an infringement notice against a person who has committed an offence. For example, if a person carries out commercial logging or mining in a Protected Area or takes any organism from a Protected Area without authorisation, they can be served with an infringement notice.

Form H of Schedule 2 of the PA Regulations is a template infringement notice. If the person served with the infringement notice pays the fixed penalty on time, plus incidental costs, then no criminal proceedings will be commenced for the offence. If the offender does not pay or disputes the charge then they can be prosecuted.

An offender can be prosecuted directly without first being served with an infringement notice, however the infringement notice process offers a quicker and cheaper enforcement option.

Criminal prosecutions

Section 20(2) of the PA Act provides that the Minister can appoint people to commence prosecutions for offences.

The Director of Public Prosecutions and police can also initiate prosecutions.

Application to the High Court

The Director can apply on behalf of a Management Committee to the High Court for an order to stop an activity that harms or threatens biodiversity in a Protected Area. The High Court can make various orders including an order prohibiting the person from doing the activity, and an order requiring the person to rehabilitate the area (Regulation 71).

OTHER RELEVANT LAWS

Forest Resources and Timber Utilisation Act

The FRTU Act gives the Minister for Forests the power to declare land as a State Forest or a Forest Reserve.

State Forests

Public land or land owned or leased by the Government can be declared as a State Forest (Section 20 FRTU Act). It is an offence to do various things within a State Forest (e.g. felling trees, cultivating land, grazing livestock or erecting buildings) without a permit granted by the Commissioner of Forests (Section 22 and 31 FRTU Act). These offences are listed in Table 2 of the Schedule.

Forest Reserves

The Minister of Forestry can declare any area of forest or other vegetation within a rainfall catchment area as a Forest Reserve, if the Minister is satisfied that it is required for the purpose of conserving water resources (Section 24 FRTU Act). It is an offence to carry out certain acts within a Forest Reserve without a permit, including felling trees, clearing land, erecting buildings and grazing livestock (Section 27 and 31 FRTU Act). These offences are listed in Table 2 of the Schedule.

National Parks Act

The National Parks Act has been largely superseded by the PA Act, however it remains in force. Section 3 of the National Parks Act provides that the Minister may declare any area of land to be a national park. It is illegal unlawful to carry out certain acts within a national park without a permit, such as residing in a national park (unless an exception applies), hunting any animal (other than fish), lighting a fire, littering, or taking vegetation from a national park (Sections 8, 9 and 10 of the National Parks Act).

Provincial Ordinances

There are a number of provincial ordinances that allow for the creation of protected areas. It is difficult to compile a full list of relevant ordinances, and to determine which are in force at a particular time, however some ordinances that may be in force and relevant to protected areas are:

- Choiseul Province Fisheries and Marine Environment Ordinance 2011
- Choiseul Province Preservation of Culture Ordinance 1997
- Choiseul Province Resource Management Ordinance 1997
- Guadalcanal Province Wildlife Management Area Ordinance 1990
- Isabel Province Conservation Areas Ordinance 1993
- Isabel Province Resource Management and Environmental Protection Ordinance 2005
- Isabel Province Marine and Freshwater Ordinance 1993
- Isabel Province Wildlife Sanctuary Ordinance 1995
- Makira Ulawa Province Preservation of Culture and Wildlife Ordinance 1984
- Malaita Province Wildlife Management and Licensing Ordinance 1995
- Temotu Province Environmental Protection Ordinance 1993
- Western Province Fisheries Ordinance 2011, and
- Western Province Resource Management Ordinance 1994.

The relevant provincial government and the Ministry of Provincial Government should be contacted if it is suspected that an environmental offence has been committed with respect to an area that may be protected under provincial law.

Fisheries Management Act 2015 – marine protected areas and marine management areas

The FMA also provides for the creation of Marine Protected Areas and Marine Managed Areas over coastal and inshore ecosystems. These areas must be declared by the Minister of Fisheries and must be published in the gazette. It is an offence to engage in activities prohibited under a declaration, with a fine of up to \$5,000,000 and/or 2 years imprisonment for a person, or up to \$15,000,000 for a company. In addition, where there is destruction or adverse impacts on the fishery resource in the declared area, then the offender is also liable to pay full compensation and restoration of the area to its original state.

These protected areas may be confused with marine protected areas that are declared under the PA Act or marine protected areas declared under a provincial ordinance. Care should therefore be taken to make sure that it is clear under which law an area is 'protected', and which offences will apply.

CASE STUDY- LOGGING IN A PROTECTED AREA AND CAUSING POLLUTION TO A MARINE PROTECTED AREA

It is a criminal offence to log or mine an area that has been declared a protected area under the Protected Areas Act 2010. The punishment is a fine of up to \$100,000 for a person and up to \$500,000 for a company (Regulation 61 Protected Areas Regulations 2010).

There are also certain procedures and offences where logging or mining causes pollution to marine protected areas (Regulation 54 Protected Areas Regulations 2012).

Facts

Some landowners come into Seghe police station to complain that a logging company has cut down some trees within their protected area. They tell you that they are from the Management Committee of the protected area and that the Ministry of Environment, Climate Change, Disaster Management and Meteorology has recently declared their area to be a protected area.

They also tell you that the protected area covers not just their land, but also the water surrounding their land. They have noticed that the logging has caused a lot of soil to run into their protected lagoon.

Offences

It is possible that the logging company has committed the offence of carrying out commercial logging in a protected area (section 61 Protected Areas Regulations 2012).

If the Ministry of Environment, Climate Change, Disaster Management and Meteorology has already served the logging company with a 'stop notice', then it is possible that the company has also committed an offence of failing to comply with the stop notice (regulation 54 Protected Areas Regulations 2012).

Please note that there are a number of other offences that may also have been committed, such as logging without a development consent (see Chapter 6), logging without a felling licence (see Chapter 7) or without a provincial government business licence. Marine pollution offences may also be applicable, including under the Fisheries Management Act 2015 (Chapter 9).

CHECKLIST

STEP ONE: OBTAIN BASIC INFORMATION

The first thing to do is obtain some basic information. This includes:

- (1) The contact details of the person making the complaint, and the details of the Management Committee.
- (2) Where the logging is taking place, including the name of the island and the village. If possible, ask for further information about the site, such as any rivers or lagoons that are close by. You could also ask the person making the complaint to show you on a map where the logging is taking place.
- (3) Find out who is carrying out the logging. This will probably be a company name, although the villagers might only know the name of the people involved.
- (4) Find out the location and number and types of trees that have been removed, and any other works that might have been carried out.
- (5) Find out when the lagoon became polluted and whether there are particular times when it is worse than others.
- (6) Find out who the land owners are, including the names of the relevant chiefs and whether the logging is taking place on more than one groups land.

STEP TWO: CHECK WHETHER THE AREA CONCERNED IS A PROTECTED AREA

The next step is to confirm that the area concerned is a protected area that has been declared under section 10 of the Protected Areas Act 2010. In order to do this, you should:

- (1) Ask the landowners/Management Committee for a copy of the declaration under section 10 of the Protected Areas Act 2010.
- (2) Contact the Ministry of Environment, Climate Change, Disaster Management and Meteorology and ask them for a copy of the declaration, including confirmation of the boundaries of the protected area, and whether it also covers the water.
- (3) Ask the Ministry of Environment, Climate Change, Disaster Management and Meteorology whether they have already issued a stop notice under regulation 54 of the Protected Areas Regulations 2012 in relation to any pollution of a marine protected area.
- (4) Contact the provincial government. It is possible that the area might have also been protected under a provincial government ordinance, in which case there may be further offences that have been committed.

STEP THREE: ENFORCEMENT

If you discover that logging has been taking place in a protected area, you should:

- (1) Confirm that the logging was 'commercial'. In order to prove this you will need to show that the person/company was cutting down the trees so that they could be sold or exported.
- (2) Speak to the Management Committee for the protected area, as well as any appointed inspectors and rangers. The Protected Areas Act 2010 gives inspectors and rangers certain powers with respect to enforcement within a protected area, including stopping, searching and seizure powers. An inspector can also issue infringement notices.

- (3) Speak with the Ministry of Environment, Climate Change, Disaster Management and Meteorology in relation to initiating prosecutions. The Minister can appoint people to commence a prosecution (section 20(2) of the Protected Areas Act 2010), and the Director can apply to the High Court for an order to stop the illegal logging.
- (4) Consider which powers you have, and which should be used.
- (5) If a decision is made to prosecute, then you will need to consider obtaining witness statements and evidence of the logging and its location.

In relation to the pollution of the marine protected area, you should:

- (1) Speak with the Ministry of Environment, Climate Change, Disaster Management and Meteorology in relation to whether a stop notice has been or can be issued. If a marine protected area is being impacted by a land based activity, such as sediment run-off from logging, the Director must service a notice on the person responsible requiring them to stop the logging within 6 months. If a person does not comply with such an order then they commit an offence, punishable by a fine of up to \$100,000 for a person or \$500,000 for a company (regulation 54 of the Protected Areas Regulations 2012).

EXAMPLE DRAFT CHARGES

Carrying out commercial logging or mining in a protected area

“did carry out industrial or commercial extraction of [timber/round logs/non-timber forest products] [minerals] within a protected area [or within a distance of not more than 1 kilometre of the defined boundaries of such area, as determined by the Director] in contravention of regulation 61(1) of the Protected Areas Regulations 2012.”

Failing to comply with a ‘stop notice’ in relation to land-based pollution to a marine protected area

“did fail to comply with a notice issued under regulation 54(2) of the Protected Areas Regulations 2012.”

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MARINE POLLUTION OFFENCES

RESPONSIBLE MINISTRY

Solomon Islands Maritime Safety Administration
(Administration)

Ministry of Infrastructure Development

Ports Authority

ENFORCEMENT AGENCIES AND OFFICERS

- (1.) Director of Marine
- (2.) Principal Surveyor
- (3.) Surveyor
- (4.) Principal Shipping Officer
- (5.) Shipping Officer
- (6.) Inspectors
- (7.) RSIPF
- (8.) Port Authority

RELEVANT LEGISLATION

Maritime Administration Act 2009 (Maritime Administration Act)

Shipping Act 1998 (Shipping Act)

Shipping (Marine Pollution) Regulations 2011
(Marine Pollution Regulations)

Shipping (Dangerous Goods and IMDG Code)
Regulations 2011 (Dangerous Goods Regulations)

Continental Shelf Act (Cap 94) (Continental
Shelf Act)

Petroleum (Exploration) Act (Cap 44) (Petrol
Exploration Act)

Petroleum Rules (made under the Petroleum Act
(Cap 81) (Petroleum Rules)

Port Rules (made under the Ports Act (Cap 161)
(Port Rules)

River Waters Act (Cap 135) (River Waters Act)

Fisheries Management Act 2015 (FMA)

MAIN WATER POLLUTION OFFENCES

- Failure to report incidents
- Discharging pollutants or harmful substances from a vessel, platform or land into Solomon Islands waters
- Discharging ballast water
- Scraping hulls or other external surfaces
- Harmful anti-fouling systems
- Discharges from vessel repair facilities
- Dumping waste at sea
- Spillage and leakage of dangerous goods
- Discharge of oil relating to petroleum exploration facilities
- Discharge of oil in the carriage and storage of petroleum
- Polluting a port

MAIN POWERS IN RELATION TO WATER POLLUTION OFFENCES

- (1) Stop, board and search vessels
- (2) Require information
- (3) Inspect and examine anything on board a vessel
- (4) Seize evidence
- (5) Take samples and carry out tests
- (6) Arrest

THE SOLOMON ISLANDS MARITIME SAFETY ADMINISTRATION

The Maritime Administration Act 2009 establishes the Solomon Islands Maritime Safety Administration (Administration). The Administration is responsible for administering, applying and enforcing the Shipping Act 1998, and any other law applying to the maritime sector in Solomon Islands, unless such a law specifically provides for its administration by an entity other than the Administration.

One function of the Administration is “marine pollution prevention and response, and related matters” (Section 7(d)).

SHIPPING ACT 1998

Reporting of casualties or incidents

Where a vessel discharges into the sea a harmful substance, or effluents containing harmful substances, then the master of the vessel must as soon as practicable, report the event to the Principal Surveyor (or other person appointed under the Act). Failing to comply with this requirement is a criminal offence liable upon conviction to a fine not exceeding \$10,000 (Section 2 and 83 of the Shipping Act).

MARINE POLLUTION REGULATIONS

The Marine Pollution Regulations are the principal law in the Solomon Islands dealing with pollution incidents affecting the marine environment, where the source of pollution is a vessel. All vessels in the Solomon Islands, and all Solomon Islands vessels are covered by the regulations. The Marine Pollution Regulations also apply to pollution to the marine environment from activities on land (Regulation 5 Marine Pollution Regulations).

The Marine Pollution Regulations also implement a number of international conventions relating to the pollution of the marine environment, including the International Convention for the Prevention of Pollution from Vessels.

Who can commit an offence?

Regulation 6 of the Marine Pollution Regulations lists the people who can commit an offence as:

- the owners, master, manager or agent of a vessel, as well as persons chartering the vessel,
- the owner or person in charge of an apparatus where a breach of the law arises from an apparatus used for transferring pollutant to or from a vessel,
- the owner, operator or person in charge of a platform can be liable where the contravention arises from a platform,
- the owner or occupier of land, or a person who has caused or contributed to the breach, where a breach of the law arises from a place on land,
- the owner or person in charge of exploration can be liable where the contravention arises from the exploration of the seabed or sub-soil, or any natural resources in the environment.

Discharge of pollutants or harmful substances

Regulation 9(2) of the Marine Pollution Regulations provides that no pollutant or harmful substance may be discharged from a vessel, platform, or place on land into Solomon Islands waters, or from a Solomon Islands vessel into any waters. The penalty for doing so is a maximum fine of \$5,000 and/or a maximum 12 months imprisonment. A person is also liable to pay for the total costs of any clean up operations and all necessary action to restore the environment to its original condition (Regulation 9(3) Marine Pollution Regulations).

There are a number of defences to this offence, including where the discharge was allowed under certain laws, was necessary for securing the safety of a vessel or saving a life at sea, or where it resulted from damage to a vessel where the offender took all reasonable precautions to prevent or minimise the discharge and the owner or master acted with no intent to cause damage

and did not act recklessly with knowledge that damage would probably result (Regulations 9(4) and (5) Marine Pollution Regulations).

Discharge of Ballast Water

No ballast water containing non-indigenous harmful aquatic organisms or pathogens can be discharged from a vessel into Solomon Island waters (Regulation 10(1) Marine Pollution Regulations). Any master of a vessel intending to discharge ballast water must obtain all necessary approvals and notify the Director of Marine. The owner or master of the vessel is liable and the penalty is a maximum fine of \$5,000 and/or a maximum twelve months imprisonment (Regulation 10(5) Marine Pollution Regulations).

Scraping hulls or other external surface

A person cannot scrape or clean any hull or other external surface of a vessel in a manner:

- (a) which permits the introduction of non-indigenous harmful aquatic organism or pathogens into Solomon Islands waters,
- (b) which is inconsistent with any requirements applying to the scraping and cleaning of hulls published by the International Maritime Organisation, or in prescribed Standards or Codes of Practice,
- (c) which contravenes a direction given to the person by an authorised officer of the administration.

If a person does so then he or she commits an offence and the penalty is a maximum fine of \$5,000 and/or a maximum 12 months imprisonment (Regulation 11(3) Marine Pollution Regulations). The owner and master of the vessel is also liable for the offence (Regulation 11(4) Marine Pollution Regulations).

Harmful anti-fouling systems

The use and application of harmful anti-fouling systems containing organotin compounds and any other prescribed harmful substance on vessels in Solomon Islands waters or a man made structure is prohibited. The penalty is a maximum fine of \$5,000 and/or a maximum 6 months imprisonment (Regulation 12(5),(6) and (7) Marine Pollution Regulations).

Discharges from vessel repair facilities

The discharge, disposal or escape of:

- (a) hull scrapings
- (b) paints and paint residues
- (c) abrasive blasting mediums
- (d) any other pollutant or harmful substance, or
- (e) any effluent containing such pollutant or harmful substances,

into Solomon Islands waters from a vessel repair facility is prohibited (Regulation 13(1) Marine Pollution Regulations). A vessel repair facility must put in place systems for the effective containment and recovery of all of the substances referred to above (Regulation 13(2) Marine Pollution Regulations).

The owners or operator of a ship repair facility who contravenes these prohibitions or requirements commits an offence and is liable upon conviction to a fine not exceeding \$5000 and/or maximum 6 months imprisonment (Regulation 13(3) Marine Pollution Regulations).

Dumping waste at sea

Wastes cannot be dumped at sea otherwise than in accordance with the regulations or a permit. They cannot be incinerated at sea. The owner or master of a vessel that does so is liable on conviction to fine not exceeding \$5000 and/or to a maximum of 12 months imprisonment (Regulation 36 Marine Pollution Regulations).

Reporting obligations

If any pollutant, harmful substance, non-indigenous harmful aquatic organism or pathogen is discharged into Solomon Islands waters from a vessel, platform or place on land then the owner, master, person in charge of the vessel or platform, or the occupier of the place on land must immediately and by the quickest available means report the occurrence to the Director of Marine and to the Permanent Secretary responsible for disaster management. Failure to do so is an offence liable to a maximum fine of \$5000 and/or maximum six months imprisonment (Regulation 16 Marine Pollution Regulations).

Continuing offences

Where an offence against the Marine Pollution Regulations continues for a period after the initial contravention and no other penalty is provided elsewhere for the continuance of the offence, then any person who commits that offence is, in addition to any other liability, liable upon conviction to a fine not exceeding \$1000 for every day during which the offence continues (Regulation 37(2) Marine Pollution Regulations).

DANGEROUS GOODS REGULATIONS

Fire and spillage and leakage of dangerous goods

Any person who commits or permits any act which causes any part of a ship or its cargo to catch fire, or causes any dangerous goods to spill or leak from its container, commits an offence. The penalty is a maximum fine of \$20,000 and/or a maximum of 3 months imprisonment (Regulation 27(1) Dangerous Goods Regulations).

Reporting obligations

The master of a ship must ensure that where a ship is in a Solomon Islands port or at a Solomon Islands offshore terminal and it has on board a package or receptacle from which there is actual or probable leakage or spillage of dangerous goods, the harbor master and the Director of Marine are notified as soon as possible of such leakage or spillage (Regulation 23 Dangerous Goods Regulations).

The master of a ship must also report the particulars of the following incidents to the Director of Marine as soon as possible and to the fullest possible extent:

- (a) any actual or probable loss or spillage into the sea of dangerous goods from any ship in Solomon Islands waters,
- (b) any actual or probable loss or spillage into the sea of dangerous goods from a Solomon Islands ship in any waters,

- (c) dangerous goods for which their receptacles have been found damaged on a ship coming into a Solomon Islands port or Solomon Islands offshore terminal, or on a Solomon Islands ship in any waters (Regulation 24 Dangerous Goods Regulations).

The penalty for failing to comply with these requirements is a fine of a maximum \$20,000 and/or imprisonment for a maximum of 3 months (Regulation 278 Dangerous Goods Regulations).

OTHER MARINE OFFENCES

A number of other marine offences are listed in Table 8 of the Schedule. These offences are in relation to:

- (1) Offshore petroleum prospecting (Continental Shelf Act),
- (2) The carriage and storage of petroleum (Petroleum Rules, made under the Petroleum Act (Cap 81), and
- (3) Offences relating to the pollution of ports (Port Rules, made pursuant to the Ports Act (Cap 161).

POWERS OF OFFICERS

Powers of the Principal Shipping Officer and delegates

A Principal Shipping Officer or his delegate may, for the purposes of enforcing the Shipping Act without warrant:

- (a) stop, board and search any vessel he reasonably suspects to have committed any offence or that the owner or master or any crew member thereof has committed any offence under the Shipping Act,
- (b) require the master of any crew member to inform him about any incident occurring aboard or involving the vessel,
- (c) make any inspection, examination of anything aboard the vessel,
- (d) require to be produced, examined and take copies of any certificate, document, logbook or other record required to be kept by the Act or Regulations, or which concerns the operation of the vessel or employment of the crew,
- (e) seize any logs, charts, documents, equipment or material and take or require to be taken any samples which he has reasonable grounds to believe, show or tend to show,

with or without other evidence, the commission of any offence against the Act,

- (f) seize anything which he has reasonable grounds to believe might be used as evidence in any proceedings under the Act,
- (g) arrest any person whom he has reasonable grounds to believe has committed an offence against the Act (Section 210(10) Shipping Act).

Powers of Inspectors

The Director may by written notice appoint properly trained and qualified persons to be an inspector to investigate and report on a number of matters including whether the Marine Pollution Regulations have been complied with, and on what measures have been taken to prevent the discharge of pollutants (Regulation 18 Marine Pollution Regulations).

An inspector may:

- (a) enter and inspect a vessel, platform facility, place on land and any apparatus used for the storage, transfer or processing of pollutants, garbage or sewage,
- (b) test any legally required equipment,
- (c) require the production of records,
- (d) board a vessel or platform to ascertain the circumstances relating to an alleged discharge of a pollutant into Solomon Islands waters or from a Solomon Islands vessel into any waters, and
- (e) board a vessel and take, or require to be taken, soundings of tanks, spaces and bilges, and any samples of any pollutant from the vessel for analysis (Regulation 18(2) Marine Pollution Regulations).

OTHER RELEVANT LAWS

Protected Areas Act 2010 and Protected Areas Regulations 2012

It is illegal to discharge pollutants into a marine protected area that has been declared under the Protected Areas Act 2010. There are also restrictions relating to land-based activities causing pollution to a Marine Protected Area (see Chapter 11).

Environment Act 1998 and Environment Regulations 2008

The Environment Act 1998 and the Environment Regulations 2008 contain offences that can also relate to marine pollution. For example failing to comply with the terms of a discharge licence and general pollution offences relating to discharges and emissions. See Chapter 6 for more information.

Environmental Health Act (Cap 99) and Environmental Health (Public Health Act) Regulations 1980

The Environmental Health Act and Environmental Health (Public Health Act) Regulations contain a number of offences that could apply to pollution of the marine environment. For example where there is a general nuisance or where pollution is as a result of an offensive trade. There are also specific provisions in the regulations regarding nuisances from vessels whereby health inspectors and health officers are given certain powers. See Chapter 13 for more information.

Forest Resources and Timber Utilisation Act (Cap 40)

Logging operations can cause severe pollution of the marine environment. Where such pollution occurs then consideration should be given as to whether the logging company has the necessary consents (a Felling Licence and Development Consent), whether it is complying with those consents, and also whether it is complying with the Felling Regulations and Milling Regulations. See Chapter 7 for more information.

Mines and Minerals Act 1996 and Mines and Minerals Regulations 1996

Mining operations are capable of causing marine pollution. Where marine pollution has occurred as a result of a mining operation then consideration should be given as to whether the mining company holds all required licences and consents and whether it is complying with those licences and consents. Consideration should also be given as to whether any other provision of the MMA and MMR has been contravened. See Chapter 8 for more information.

Fisheries Management Act 2015

Under section 32 of the FMA, it is an offence to attempt to introduce, prepare for the introduction of, or introduce into the fisheries waters, directly, indirectly, deliberately or accidentally, any deleterious substance, including substances which may have toxic, hazardous or other harmful properties or effects in relation to fish or the aquatic environment, and which may adversely affect the habitat or health of the fish.

The penalty is a fine of up to \$5,000,000 and/or imprisonment for up to 6 months for a person, or a fine of up to \$15,000,000 for a company. In addition, the offender is also 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.

Provincial Ordinances

Some Provinces have Ordinances that regulate the discharge of pollution into marine and freshwater environments. For example in the Western Province it is an offence to discharge wastes or other polluting matter into any body of water if the discharge will harm fish or other living resources or damage the ecology of the water body (Western Province Fisheries Ordinance 2011).

The relevant provincial government should be consulted in relation to any marine pollution offence within its waters in order to ascertain whether an offence has been committed under provincial law.

CASE STUDY- MARINE POLLUTION

It is an offence to discharge pollutants or harmful substances from a vessel, platform or place on land into Solomon Island waters. The punishment is a fine of up to \$5,000 and/or imprisonment for up to one year Regulation 9(2) of the Shipping (Marine Pollution) Regulations 2011).

If the offence continues then the fine is up to a further \$1,000 for every day that the offence continues (Regulation 37(2) Shipping (Marine Pollution) Regulations 2011).

Facts

A person has come into Rove police station in Honiara to complain some liquids have been escaping from a ship in Honiara harbour. They tell you that the liquid looks and smells like oil and that they have also noticed that the ship has been dumping its sewage and garbage into the water.

Offences

'Harmful substances' includes substances, which, if introduced into the sea, could create hazards to human health, or harm to living resources and marine life. 'Pollutants' includes oil and oily mixtures, and sewage and garbage. They also include plastics, synthetic ropes and synthetic fishing nets (Regulation 2 and 9(1)(c) of the Shipping (Marine Pollution) Regulations 2011).

It is therefore possible that the offence of discharging pollutant or harmful substances into Solomon Island waters has been committed (Regulation 9(2) of the Shipping (Marine Pollution) Regulations 2011).

The people who could have committed the offence include the owner, master, manager or agent of the ship (Regulation 6 of the Shipping (Marine Pollution) Regulations 2011).

Please note that there are a number of other offences that may also have been committed, such as pollution of fisheries waters (see Chapter 9) and pollution of a marine protected area (see Chapter 11), as well as provincial ordinances.

CHECKLIST

STEP ONE: OBTAIN BASIC INFORMATION

The first thing to do is obtain some basic information. This includes:

- (1) The contact details of the person making the complaint.
- (2) Where the discharge is taking place.
- (3) The name of the ship.
- (4) When the discharge took place, and whether it is still happening.

STEP TWO: ENFORCEMENT

If you suspect that the ship is discharging pollutants or harmful substances, you should:

- (1) Confirm the location and identity of the ship.
- (2) Contact the Solomon Islands Maritime Safety Administration to report the complaint.
- (3) Speak with the Solomon Islands Maritime Safety Administration about investigating the complaint. The RSIPF have a number of powers, and the Principal Shipping Officer and delegates, and inspectors also have certain powers with respect to stopping, searching, seizing and testing (section 210(10) Shipping Act 1998 and regulation 18 of the Shipping (Marine Pollution) Regulations 2011).
- (4) Look at the exceptions in regulation 9(4) and 9(5) of the Shipping (Marine Pollution) Regulations 2011 to see if they apply.
- (5) Consider which powers you have, and which should be used.
- (6) If a decision is made to prosecute, then you will need to consider obtaining witness statements and evidence of the discharge.

EXAMPLE DRAFT CHARGES

Discharging a pollutant or harmful substance into Solomon Island waters

“did discharge from a [vessel/ platform/place on land] a pollutant or harmful substance, namely [insert the pollutant or harmful substance], into Solomon Island waters [or from a Solomon Islands vessel into any waters] in contravention of regulation 9(2) of the Shipping (Marine Pollution) Regulations 2011.”

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NUISANCE AND GENERAL POLLUTION OFFENCES

RESPONSIBLE MINISTRY

Environmental Health Division (EHD),
within the Ministry of Health and Medical Services

CONTACT DETAILS

PO Box 349
Honiara
Ph: 28610/22376/20831
Fax: 20085

RELEVANT LEGISLATION

Environmental Health Act (Cap 99)(EH Act)
Environmental Health (Public Health Act)
Regulations 1980 (EH Regulations)
River Waters Act (Cap 135)
Penal Code (Cap 26)

ENFORCEMENT AGENCIES AND OFFICERS

- (1) Minister for Health
- (2) Health Inspector
- (3) Health Officer
- (4) Medical Officer
- (5) Provincial Government
- (6) Honiara City Council
- (7) RSIPF

MAIN NUISANCE AND GENERAL POLLUTION OFFENCES

- Causing a nuisance or allowing to exist on any land or premises any nuisance or other condition liable to be injurious or dangerous to health
- Failing to obey an order to comply with the requirements of the local authority or health inspector, or otherwise to remove a nuisance
- Carrying out an offensive trade without consent
- Pollution of water supply
- Public sewer and drain offences
- Refuse and sewage offences relating to watercourses
- Offences relating to declared rivers
- Penal code offences

MAIN POWERS RELATING TO NUISANCE AND GENERAL POLLUTION OFFENCES

- (1) Notice to remove a nuisance
- (2) Court complaint
- (3) Court order
- (4) Powers of entry, including in relation to vessels
- (5) Prosecution

OVERVIEW

The EH Act makes provision for ‘securing and maintaining environmental health’. Under the EH Act, the Minister for Health is responsible for the administration of environmental health services in Solomon Islands. The Minister can delegate these powers to ‘local authorities’, which are the Provincial Assemblies and the Honiara City Council.

NUISANCES

The EH Regulations provide that no person shall cause a nuisance. Owners and occupiers of premises cannot cause a nuisance or other conditions liable to be injurious or dangerous to health (Regulation 22 EH Regulations).

What is a nuisance?

The following are deemed by the EH Regulations to be nuisances:

- (a) any dwelling or premises or part thereof which is or are of such construction or in such a state or so situated or so dirty or so verminous as to be injurious or dangerous health or which is or are liable to favour the spread of a infectious disease.
 - (b) any street, or part thereof, any stream, pool, ditch, gutter, watercourse, sink, water-tank, cistern, water-closet, earth-closet, privy, urinal, cesspool, soakaway pit, septic tank, cesspit, soil-pipe, waste-pipe, drain, sewer, garbage receptacle, dustbin, dung-pit, refuse-pit, sloptank, ash-pit or manure heap so foul or in such a state or so situated or constructed as to be offensive or injurious or dangerous health.
 - (c) any well, river, stream, spring or other source of water supply, or any tank, cistern or other receptacle for water, whether public or private, the water from which is used or is likely to be used by man for drinking or domestic purposes, or in connection with any dairy, or in connection with the manufacture or preparation of any article of food intended for human consumption, which is in the opinion of a health inspector or health officer polluted or otherwise liable to render any such water injurious or dangerous to health.
 - (d) any noxious matter or waste water flowing or discharged from any premises, wherever situated, into any street, or into the gutter, side channel or surface water drain of any street, or into any watercourse, irrigation channel or bed thereof not approved for the reception of such discharge.
 - (e) any stable, cowshed, or other building or premises used for the keeping of animals or birds, which is so constructed, situated, used or kept as to be offensive, or which is injurious or dangerous to health.
 - (f) any animal or bird so kept as to be injurious to health.
 - (g) any accumulation or deposit of refuse, rubbish, offal, manure or other matter whatsoever which is offensive or which is injurious or dangerous to health.
 - (h) any dwelling or premises which is or are so over-crowded as to be injurious or dangerous to the health of the inmates.
 - (i) any factory or trade premises not kept in a state of cleanliness and free from offensive smell arising from any drain, sewer, latrine or privy or not ventilated so as to destroy or render harmless and inoffensive as far as practicable any gases, vapours, dust or other impurities generated, or so overcrowded or so badly lighted or ventilated as to be injurious or dangerous to the health of those employed therein.
 - (j) any factory or trade premises causing or giving rise to smells or effluvia which are offensive or which are injurious or dangerous to health.
 - (k) any area of land kept or permitted to remain in such a state as to be offensive or liable, to cause any infectious, communicable or preventable disease or injury or danger to health.
 - (l) any chimney sending forth smoke, dust, grit, or other effluvia in such quantity or in such manner as to be offensive, or injurious or dangerous to health.
 - (m) any cemetery, burial place or place of sepulture so situated or so crowded or otherwise so conducted as to be offensive or injurious or dangerous to health.
 - (n) any septic tank, soakaway, cesspit, gully, cistern, sewer, drain, gutter, privy, water-closet or other drainage or sanitary fitment formerly used for the drainage of any building and no longer used therefor, which has not been filled in, demolished or removed to the satisfaction of a health inspector or health officer, and which is likely to give rise to conditions dangerous or injurious to health.
 - (o) any act, omission or thing which is, or may be, dangerous to life, or injurious to health.
- (Regulation 24 EH Regulations).

Notice to remove a nuisance

Local authorities are given a duty to maintain cleanliness and prevent nuisances, and to take proceedings at law against any person causing or responsible for the continuance of a nuisance or condition (Regulation 23 EH Regulations).

A person who is causing a nuisance can be served with a notice requiring the person to remove the nuisance. This notice can be served by a local authority or a health inspector. If the person causing the nuisance cannot be found, the notice can be served on the owner or occupier of the premises (Regulation 25 EH Regulations).

Court complaint and summons

If the person served with the notice does not comply with the terms of the notice, the local authority or health inspector must lodge a complaint with the Magistrates' Court or a Local Court, and the court must issue a summons to the person served with the notice requiring the person on whom the notice was served to appear before the court (Regulation 26 EH Regulations).

If the court is satisfied that the person is causing the nuisance, it can make an order requiring the person to comply with the notice, remove the nuisance and to do any works necessary. The court can also impose a fine of \$40 and order the person to pay all costs incurred up to the time of the hearing (Regulation 26 EH Regulations).

If a nuisance is removed but the local authority or health inspector still consider that the nuisance is likely to recur then they must cause a complaint to be made before the court and the court must issue a summons. If the court is satisfied that the alleged nuisance, although removed, is likely to recur on the same dwelling or premises, the court must make an order requiring the relevant person to do any specified work necessary to prevent the recurrence of the nuisance and prohibiting its recurrence (Regulation 26 EH Regulations).

Penalties regarding nuisances

Any person who fails to obey an order to comply with the requirements of the local authority or health inspector, or otherwise to remove the nuisance, shall, unless he satisfies the court that he has used all diligence to carry out such order, be guilty of an offence and liable to a fine of \$40 and to a further fine of \$10 for every day or part of a day during which the non-compliance continues (Regulation 27 EH Regulations).

The local authority or health inspector may in such case enter the premises to which any such order relates and remove the nuisance and do whatever may be necessary in the execution of such order and recover the expenses incurred from the person against whom the order was made. (Regulation 27 EH Regulations).

POWERS OF ENTRY

A local authority or any of its health officers, or medical officer or health inspector or, on the request of the health officer, medical officer, or health inspector and, on the order of a Magistrate, any police officer of or above the rank of Inspector, shall have the right to enter any building or premises:

- (a) for the purpose of examining as to the existence thereon of any nuisance liable to be dealt with summarily under this Part at any hour by day and, in the case of a nuisance referred to in regulation 24(h) at any hour by day or by night, or, in the case of a nuisance arising in respect of any trade or business, at any time when that trade or business is in progress or is usually carried on.
- (b) where a nuisance has been ascertained to exist or a nuisance order has been made under this Part, at any such hour as aforesaid until the nuisance is abated or the works ordered to be done are completed.
- (c) where a nuisance order has not been complied with or has been infringed, at all reasonable hours, including all hours during which business therein is in progress or is usually carried on, for the purpose of executing such order.

Any person who fails to give or refuses access to any health officer, health inspector, medical officer or police officer if such health officer, health inspector, medical officer or police officer requests entry to any dwelling or premises, or obstructs or hinders him in the execution of his duties under this Part, shall be guilty of an offence and liable on conviction by a court to a fine of \$40. (Regulation 30 EH Regulations).

NUISANCES REGARDING VESSELS

Health inspectors and health officers have the power to enter and inspect any vessel lying in port, harbour, river or other water and to use reasonable force if admittance is refused. Any person who hinders or prevents such health officer or health inspector from making entry and inspection is guilty of an offence and liable to a fine of \$100 (Regulation 51 EH Regulations).

Where a health inspector or health official ascertains the existence of a nuisance he or she can make an order in writing for the removal or discontinuance of the nuisance by the master of the vessel (Regulation 52 EH Regulations).

If the order is not complied with then the health inspector or health officer has the power to enter the vessel and to remove or remedy the nuisance (and to do such works as to prevent the continuance of the nuisance), and the costs of doing so are recoverable from the master or owner of the vessel (Regulation 54 EH Regulations).

These powers could be used if, for example, a vessel was discharging pollutants into a watercourse.

OFFENSIVE TRADES

The EH Regulations require a person to obtain the written consent of the local authority and the Director before carrying out an offensive trade. The local authorities are the Provincial Governments and the Honiara City Council. Any person who does not obtain such consent is guilty of an offence and liable to a fine of \$200 (Regulation 33 EH Regulations).

What is an offensive trade?

The Second Schedule of the EH Regulations lists “offensive trades” as the following:

- Blood or offal boiling or treating
- Bone boiling or crushing
- Fat melting or extraction
- Fellmongering
- Glue making
- Gut scraping
- Hide and skin storing and curing
- Knackering
- Lime burning
- Manure storing
- Manufacture of fish meal, silage, fertiliser or manure
- Slaughtering
- Soap making
- Size making
- Tanning
- Tallow making
- Tripe boiling

PENAL CODE OFFENCES

Common nuisance

Section 172 of the Penal Code makes it an offence for a person to cause any common injury or danger or annoyance, or to obstruct or cause inconvenience to the public in the exercise of common rights. This is known as common nuisance and is a misdemeanour with a penalty of imprisonment for 1 year.

Polluting or obstructing watercourses

Any person who pollutes or obstructs any aqueduct, dam, sluice, pipe, pump, watercourse or fountain, is guilty of a misdemeanour, and is liable to a fine of \$40 or to imprisonment for 2 months (Section 181 Penal Code).

Fouling air

Any person who voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, is guilty of a misdemeanour (Section 186 Penal Code). The penalty is imprisonment for a term not exceeding 2 years, or a fine (or both) (Section 41 Penal Code).

Offensive trades

Any person who, for the purposes of trade or otherwise, makes loud noises or offensive or unwholesome smells in such places and circumstances as to annoy any considerable number of persons in the exercise of their common rights, commits and is liable to be punished as for a common nuisance (Section 187 Penal Code).

CASE STUDY - NUISANCE/RUBBISH OFFENCES

It is an offence to cause a nuisance, which includes accumulating or depositing rubbish which is offensive or injurious or dangerous to health (Regulations 22 and 24 of the Environmental Health (Public Health Act) Regulations 1980). The fine is \$40 and possible payment of costs.

It is an offence to deposit refuse on a beach or foreshore or in a watercourse in, or which flows through, an urban sanitary district without the permission of the local authority (Regulations 93 and 94 of the Environmental Health (Public Health Act) Regulations 1980). The fine is \$100.

It is an offence to cause common injury or danger or annoyance, or to obstruct or cause inconvenience to the public in the exercise of common rights. The penalty is imprisonment for 1 year (section 172 Penal Code).

It is an offence to pollute or obstruct any pipe, pump or watercourse. The penalty is a fine of \$40 or imprisonment for up to 2 months (section 181 Penal Code).

Facts

A person has come into Honiara police station to complain that people have been depositing rubbish on the side of the road in Honiara, close to homes and a small river. This rubbish smells very bad and has been blocking the river and causing pollution to the water supply.

Offences

It is possible that the following offences have been committed:

- (1) Causing a nuisance (Regulations 22 and 24 of the Environmental Health (Public Health Act) Regulations 1980).
- (2) Depositing refuse in a watercourse which flows through an urban sanitary district without the permission of the local authority (Regulation 94 of the Environmental Health (Public Health Act) Regulations 1980).
- (3) Causing common injury or danger or annoyance, or to obstruct or cause inconvenience to the public in the exercise of common rights (Section 172 Penal Code).
- (4) Polluting or obstructing any pipe, pump or watercourse (Section 181 Penal Code).

CHECKLIST

STEP ONE: OBTAIN BASIC INFORMATION

The first thing to do is obtain some basic information. This includes:

- (1) The contact details of the person making the complaint.
- (2) Where the rubbish has been deposited.
- (3) Who might be depositing the rubbish.

STEP TWO: ENFORCEMENT

You should:

- (1) Confirm the location and type of rubbish, as well as who might be depositing it.
- (2) Contact the Environmental Health Division, within the Ministry of Health and Medical Services, and the local authority.
- (3) Speak with the Environmental Health Division, within the Ministry of Health and Medical Services, and the local authority about whether the disposal was authorised and whether they can issue a notice to remove the nuisance, and then pursue a court order if the notice is not complied with (Regulations 23 and 26 of the Environmental Health (Public Health Act) Regulations 1980).
- (4) Consider which powers you have, and which should be used.

- (5) If a decision is made to prosecute in relation to an offence under the Penal Code, then you will need to consider obtaining witness statements and evidence of the rubbish disposal.

EXAMPLE DRAFT CHARGES

Causing a nuisance under the Environmental Health (Public Health Act) Regulations 1980

Section 172 of the Penal Code “did [cause a nuisance] [or suffered to exist on any land or premises owned or occupied by him or of which he has charge] a nuisance or other condition liable to be injurious or dangerous to health, namely [insert the nuisance or condition, having regard to regulation 24 list of nuisances], in contravention of regulation 22 of the Environmental Health (Public Health Act) Regulations 1980.”

Depositing refuse in a watercourse which flows through an urban sanitary district without the permission of the local authority

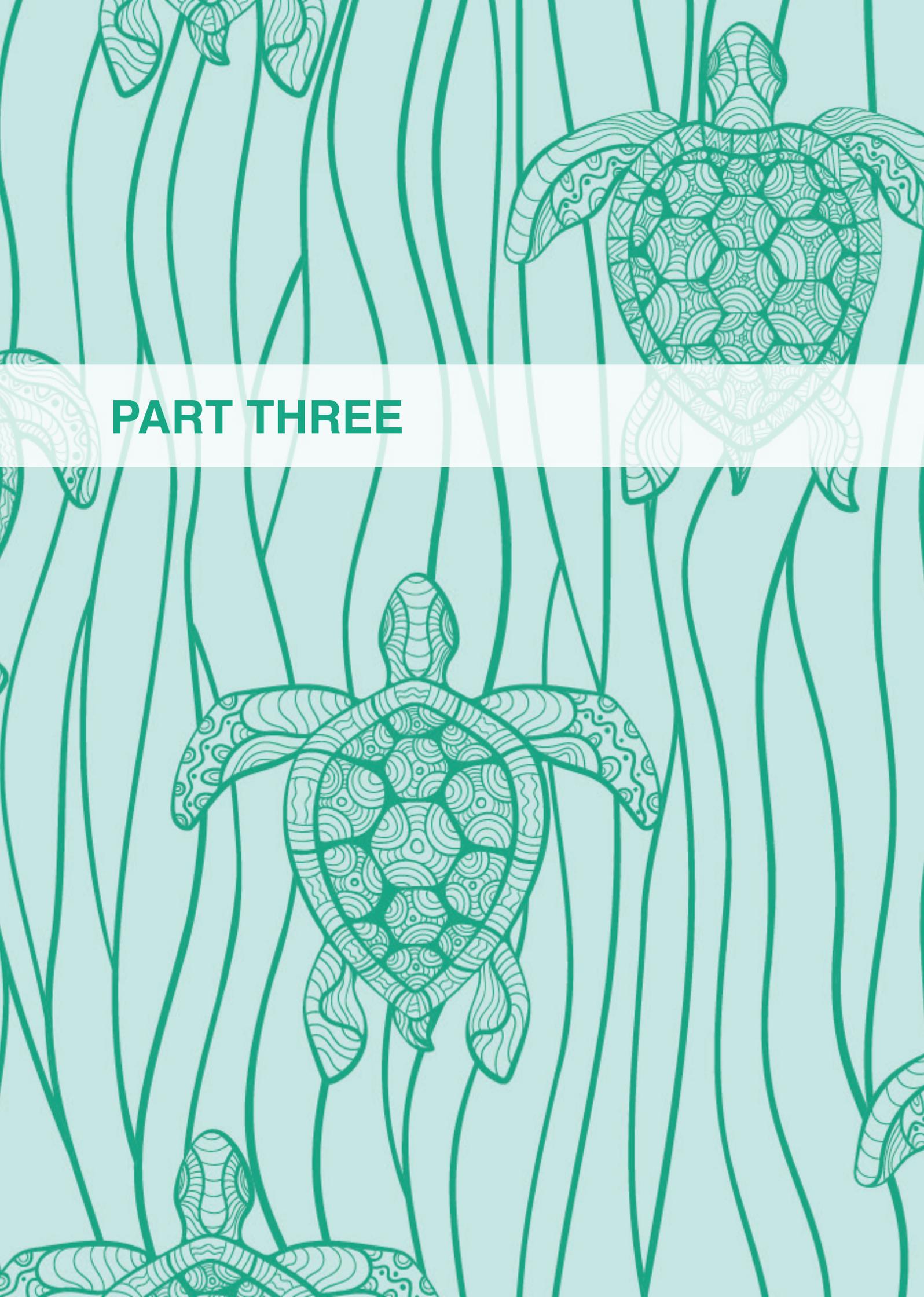
“did throw, empty or deposit or did cause to be thrown, emptied or deposited into a [river/stream/creek/ or other watercourse], namely [insert the name and location of the river/stream/creek or watercourse], which flows [through/into] an urban sanitary district, [rubbish/refuse/ waste products/raw sewage/ or other noxious or offensive matter], namely [insert the type of refuse] in contravention of regulation 94 of the Environmental Health (Public Health Act) Regulations 1980.”

Causing a common nuisance under the Penal Code

“[did an act not authorized by law or omitted to discharge a legal duty thereby causing common injury, or danger or annoyance] namely [insert the act or omission]
OR [obstructed or caused inconvenience to the public in exercise of common rights] namely [insert the obstruction or inconvenience] in contravention of section 172 of the Penal Code (Cap 26).”

Polluting or obstructing watercourses

“did pollute or obstruct an [aqueduct/dam/sluiice/pipe/pump/watercourse/fountain], namely [insert name and location of the aqueduct/dam/sluiice/pipe/pump/watercourse/fountain] in contravention of section 181 of the Penal Code (Cap 26).”

The background is a teal-colored line-art illustration. It features several stylized turtles swimming in a sea of seaweed. The turtles are depicted with intricate, circular patterns on their shells and flippers. The seaweed consists of long, thin, vertical blades that create a sense of depth and movement. The overall style is clean and modern, with a focus on geometric and organic shapes.

PART THREE

14

CUSTOMS

RELEVANT MINISTRY

Ministry of Finance and Treasury – Customs and Immigration

CONTACT DETAILS

PO Box 26
Honiara
Ph: 21058/21074/21075
Fax: 27855

RELEVANT LEGISLATION

Customs and Excise Act (Cap 121) (Customs Act)

RELEVANT ENFORCING AGENCIES AND OFFICERS

- (1) Comptroller of Customs and Excise
- (2) Customs Officers
- (3) RSIPF

MAIN CUSTOMS OFFENCES RELATING TO THE ENVIRONMENT

- Export of prohibited goods
- Export of restricted goods

MAIN CUSTOMS POWERS RELATING TO ENVIRONMENTAL OFFENCES

- (1) All customs officers have the same powers, authorities and privileges as members of the RSIPF with respect to customs laws
- (2) Power to refuse or cancel clearance of a ship or aircraft
- (3) Power to stop carriage of any ship, aircraft or carriage
- (4) Power of arrest
- (5) Power to prosecute

EXPORT OF PROHIBITED OR RESTRICTED GOODS

The Third Schedule of the Customs Act lists certain goods that are prohibited or restricted to be exported (Section 35 and Third Schedule of the Customs Act).

Prohibited exports include all goods which are absolutely prohibited from being exported under any Solomon Island Law.

Restricted exports are all goods which are restricted to be exported under any Solomon Islands law, except in accordance with such law.

These would include protected animal and plant species under the Wildlife Protection and Management Act 1998 and the Wildlife Protection and Management Regulations 2008 (see Chapter 10).

The penalty for attempting to ship prohibited or restricted goods is \$200 or three times the duty paid value of such goods and all such goods are forfeited (Section 140 Customs Act). While the amount of this penalty may not be adequate to deter the commission of an offence, the forfeiture of the goods and the Customs powers with respect to clearance of a ship may act as an important deterrent.

POWER TO REFUSE OR CANCEL CLEARANCE OF A SHIP OR AIRCRAFT

For the purpose of securing compliance with any provision of the Customs Act, an officer may at any time refuse the clearance of any ship or aircraft. Where clearance has already been granted, any officer may demand return of the clearance if the ship is within the limits of any port or the aircraft is in the limits of any airport. The clearance then becomes void (Section 151 Customs Act).

STOPPING CARRIAGE

Any officer can, upon reasonable suspicion, stop and examine and ship, aircraft or carriage within Solomon Islands to find out if any uncustomed or prohibited goods are contained therein (Section 20 Customs Act).

POWER OF ARREST

Any officer may arrest and detain any person who he finds committing an offence, or is suspected on reasonable grounds of having committed an offence, against Customs laws and take him before a Magistrate to be dealt with according to law (Section 224 Customs Act).

POWER TO REFUSE OR CANCEL CLEARANCE OF A SHIP OR AIRCRAFT

POWER TO PROSECUTE

Any officer may prosecute and conduct any information or other proceedings under Customs law in respect of any offence or penalty (Section 257 Customs Act).

OTHER RELEVANT LAWS

Wildlife Protection and Management Act 1998

Wildlife Protection and Management Regulations 2008

Fisheries Management Act 2015

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IMMIGRATION AND DEPORTATION

RELEVANT MINISTRY

Ministry of Finance and Treasury - Customs and Immigration

CONTACT DETAILS

PO Box 26
Honiara
Ph: 21058/21074/21075
Fax: 27855

RELEVANT LEGISLATION

Immigration Act 2012

MAIN POWERS

- Stop departure
- Cancelling visa
- Deportation order
- Restricting return to Solomon Islands

MAIN ENFORCEMENT AGENCY AND OFFICERS

- (b) Director of Immigration
- (c) Immigration officers
- (d) RSIPF

THE IMMIGRATION ACT

Stopping a person from leaving Solomon Islands

If a person has committed an environmental offence, it is worth considering whether a 'stop departure request' should be issued. This would prevent a person from leaving Solomon Islands so that they can be prosecuted for an offence.

The Attorney General or the Minister for Justice and Legal Affairs may request (in writing to the Director of Immigration) that a non-citizen be stopped from departing if they are satisfied that the person should remain in Solomon Islands temporarily for the purposes of an Act or its regulations (Section 89(1)(a) and (4)(a) of the Immigration Act).

The Commissioner of Police may also request (in writing to the Director of Immigration) that a non-citizen be stopped from departing if they are satisfied there is a warrant for the arrest of the person in relation to an offence against the law of Solomon Islands, that is a felony or equivalent to a felony (Section 89(1)(b) and (4)(b)(i) of the Immigration Act).

An immigration officer must refuse a person permission to leave Solomon Islands if a 'stop departure request' is in force (Section 8 and 9 of the Immigration Act).

Cancelling a visa and issuing a deportation order

If a person has committed an environmental offence, or there is a significant risk that they will commit an environmental offence, it is worth considering whether the Director of Immigration should cancel their visa to remain in Solomon Islands.

A person who is not from the Solomon Islands needs permission to enter, work and remain in Solomon Islands. Usually, a person will need to obtain a visa from Immigration to do so (Sections 10 of the Immigration Act), and an immigration officer has to power to refuse entry into Solomon

Islands if a person does not have a visa (Section 7 of the Immigration Act).

The Director may cancel a visa if he or she is satisfied that there is a 'character concern' (Section 21(1)(c) Immigration Act). There are a number of reasons why a person could be of 'character concern', including where the Director considers that:

- (1) having regard to the person's past and present conduct (including but not limited to criminal conduct), the person is not of good character, or
- (2) the Director considers that there is a significant risk that, if the person were allowed to enter or stay in Solomon Islands, the person would engage in criminal conduct (section 23(1)(d) of the Immigration Act).

A person who has had their visa cancelled has a duty to depart Solomon Islands (Section 10 and 28 of the Immigration Act). If the person does not depart and there is a 'character concern' then the Minister of Immigration can make an order for the deportation of a person (section 31 of the Immigration Act).

Restricting return to Solomon Islands

If a person is deported from Solomon Islands because of a 'character concern' then they are restricted from entering Solomon Islands for a period of 10 years from the day that they are deported (section 42 of the Immigration Act).

Employing a non-citizen not authorized to work

Sometimes a company who has committed an environmental offence might be employing non-citizen who does not hold the required visa to work. For example, a logging company might be employing foreigners who do not have employment visas. It is worth considering whether a person or company who has (or may have) committed an environmental offence has also employed non-citizens who were not authorized to work.

Employing a non-citizen who is not able to legally work in Solomon Islands is a criminal offence. The penalty for an individual employer is a fine of up to \$5,000 or imprisonment for up to six months, or for a company a fine of up to \$25,000 (section 69 of the Immigration Act).

16

CORRUPTION AND ABUSE OF OFFICE

Corruption and abuse of office may be relevant to environmental crimes, particularly those where a licence or permit is required to do a certain thing. For example, there may be cases where the following has occurred:

- Corruption in the public service
- Extortion by public officers
- Bribery
- Abuse of office

RELEVANT LEGISLATION

The Penal Code (Cap 26)

OFFICIAL CORRUPTION

Section 91 of the Penal Code provides that any person who:

- being charged with the performance of any duty by virtue of such employment, corruptly asks for, solicits, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge of the duties of his office,
- corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure, or attempt to procure, to, upon, or for any person employed in the public service, or to, upon, or for any other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed,

is guilty of a felony and shall be liable to imprisonment for 7 years.

EXTORTION BY PUBLIC OFFICERS

Section 92 of the Penal Code provides that any person who, being employed in the public service, takes or accepts from any person for the performance of his duty as such officer, any reward beyond his proper pay and emoluments, or any promise of such reward, shall be guilty of a misdemeanour, and shall be liable to imprisonment for 3 years.

PUBLIC OFFICERS RECEIVING PROPERTY TO SHOW FAVOUR

Section 93 of the Penal Code provides that any person who, being employed in the public service, receives any property or benefit of any kind for himself or any other person, on the understanding, express or implied, that he shall favour the person giving the property or conferring the benefit, or any one in whom he is interested, in any transaction then pending, or likely to take place, between the person giving the property or conferring the benefit, or any one in whom he is interested, and any person employed in the public service, shall be guilty of a misdemeanour and shall be liable to imprisonment for 6 months.

ABUSE OF OFFICE

Section 96 of the Penal Code provides that any person who, being employed in the public service, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another, is guilty of a misdemeanour. If the act is done or directed to be done for purpose of gain, he shall be guilty of a felony, and shall be liable to imprisonment for 3 years.

The Director of Public Prosecutions must agree to any prosecution for this offence.

**FRAUDS AND BREACHES OF TRUST
BY PERSONS EMPLOYED IN THE
PUBLIC SERVICE**

Any person employed in the public service who, in the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person, shall be guilty of a misdemeanour (Section 129 Penal Code).

CORRUPTLY TAKING A REWARD

Any person who corruptly takes any money or reward directly or indirectly, under pretence or upon account of helping any person to recover any property which has, under circumstances which amount to felony or misdemeanour, been stolen or obtained in any way whatsoever, or received, shall (unless he has used all due diligence to cause the offender to be brought to trial for the same) be guilty of felony, and shall be liable to imprisonment for 7 years (Section 120 Penal Code).

17

MONEY LAUNDERING AND PROCEEDS OF CRIME

They may be cases where it is important to consider money laundering and proceeds of crime.

The Proceeds of Crimes Act enables the unlawful proceeds of all serious crime to be identified, traced, frozen, seized and eventually confiscated.

There are also a number of offences relating to benefiting from a crime and money laundering.

RELEVANT AUTHORITY

Anti-Money Laundering Commission (the Commission)

RELEVANT LEGISLATION

The Money Laundering and Proceeds of Crime Act 2002 (Proceeds of Crime Act)

THE ANTI-MONEY LAUNDERING COMMISSION

Section 11 of the Proceeds of Crime Act establishes the Commission. The Commission consists of:

- (a) the Attorney-General or his representative as Chairman,
- (b) the Commissioner of Police or his representative,
- (c) the Secretary, Minister of Finance or his representative,
- (d) the Governor of the Central Bank or his representative, and
- (e) such other technical experts appointed by the Minister on the recommendation of the Commission.

THE PROCEEDS OF CRIME ACT

One purpose of the Proceeds of Crime Act is to enable the unlawful proceeds of all serious crime to be identified, traced, frozen, seized and eventually confiscated.

A “serious crime” means an offence against any law in the Solomon Islands where the maximum penalty is greater than one year in prison.

Benefitting from a crime

A person is taken to have benefitted from a serious crime if the person has at any time received any payment or other reward in connection with, or derived any pecuniary advantage from, the commission of a serious crime.

A person’s proceeds of a serious crime are:

- (a.) any payments or other rewards received by the person in connection with, and
- (b.) any pecuniary advantage derived by the person at any time from,

the commission of the crime.

The value of a person’s proceeds of a serious crime is the aggregate of the values of the payments, rewards or pecuniary advantages received by him in connection with, or derived by him from, the commission of the offence (Section 10 Proceeds of Crime Act).

Money-laundering offences

Section 7 of the Proceeds of Crimes Act provides that a person commits the offence of money laundering if the person:

- (a) acquires, possesses or uses property, knowing or having reason to believe that it is derived directly or indirectly from acts or omissions:
 - (i) in Solomon Islands which constitute an offence against any law of Solomon Islands punishable by imprisonment for not less than 12 months, or
 - (ii) outside Solomon Islands which, had they occurred in Solomon Islands, would have constituted an offence against the law of Solomon Islands and punishable by imprisonment for not less than 12 months, or
- (b) renders assistance to another person for:
 - (i) the conversion or transfer of property derived directly or indirectly from those acts or omissions, with the aim of concealing or disguising the illicit origin of that property, or of aiding any person involved in the commission of the offence to evade the legal consequences thereof, or
 - (ii) concealing or disguising the true nature, origin, location, disposition, movement or ownership of the property derived directly or indirectly from those acts or omissions.

Any person who is guilty of money laundering is liable to a fine not exceeding \$150,000 and/or to imprisonment for a term not exceeding 10 years. In the case of a body corporate, the penalty is a fine not exceeding \$200,000.

Application for confiscation order or pecuniary penalty order

Where a person is convicted of a serious offence, the Director of Public Prosecutions may, not later than 6 months after the conviction, apply to the Court for one or both of the following orders:

- (a) a confiscation order against property that is tainted property in respect of the offence,

- (b) a pecuniary penalty order against the person in respect of benefits derived by the person from the commission of the offence (Section 28 Proceeds of Crime Act).

Confiscation order on conviction

Section 33 of the Proceeds of Crime Act provides that where, upon application by the Director of Public Prosecutions, the Court is satisfied that property is tainted property in respect of a serious offence for which a person has been convicted, the Court may order that specified property be confiscated.

In determining whether property is tainted property the Court may infer, in the absence of evidence to the contrary:

- (a) that the property was used in or in connection with the commission of the offence if it was in the person's possession at the time of, or immediately after the commission of the offence for which the person was convicted; or
- (b) that the property was derived, obtained or realised as a result of the commission of the offence if it was acquired by the person before, during or within a reasonable time after the period of the commission of the offence for which the person was convicted, and the Court is satisfied that the income of that person from sources unrelated to criminal activity of that person cannot reasonably account for the acquisition of that property.

Pecuniary penalty order on conviction

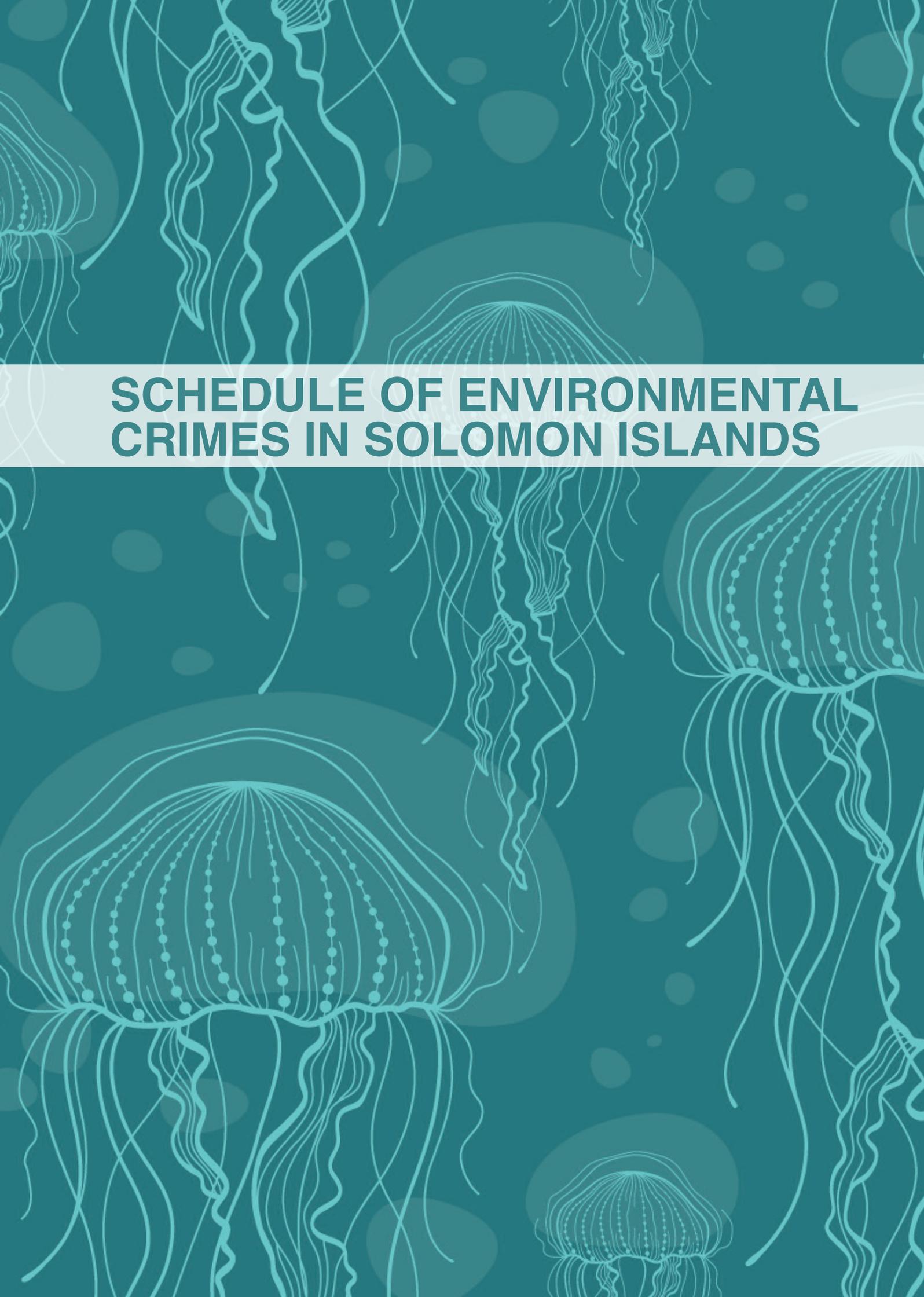
Where the Director of Public Prosecutions applies to the Court for a pecuniary penalty order against a person in respect of that person's conviction for a serious offence the Court shall, if it is satisfied that the person has benefited from that offence, order him to pay to the Government of Solomon Islands an amount equal to the value of his benefit from the offence, or such lesser amount as the Court certifies to be the amount that might be realised at the time the pecuniary penalty order is made. (Section 41 of the Proceeds of Crime Act).

Restraining orders

Where the Director of Public Prosecutions applies to the Court for a restraining order against property and the Court is satisfied that:-

- (a) the defendant has been convicted of a serious offence, or has been charged or is about to be charged with a serious offence,
- (b) where the defendant has not been convicted of a serious offence, there are reasonable grounds for believing that the defendant committed the offence,
- (c) there is reasonable cause to believe that the property is tainted property in relation to an offence, or that the defendant derived a benefit directly or indirectly from the commission of the offence,
- (d) where the application seeks a restraining order against property of a person other than the defendant, there are reasonable grounds for believing that the property is tainted property in relation to an offence and that the property is subject to the effective control of the defendant, or
- (e) there are reasonable grounds for believing that a confiscation order or a pecuniary penalty order is likely to be made under this Part in respect of the property,

the Court may make an order prohibiting the defendant or any person from disposing of, or otherwise dealing with, the property or such part thereof or interest therein as is specified in the order, except in such manner as may be specified in the order (Section 56 Proceeds of Crime Act).

The background is a solid teal color. It features several stylized white line-art illustrations of jellyfish of various sizes and orientations. Some jellyfish have long, flowing tentacles, while others are more compact. Interspersed among the jellyfish are several semi-transparent, light teal circles of varying diameters, resembling bubbles or light reflections. A white horizontal band is positioned across the middle of the page, containing the title text.

SCHEDULE OF ENVIRONMENTAL CRIMES IN SOLOMON ISLANDS

THE PENALTIES THAT ARE LISTED IN THIS SCHEDULE ARE EXPRESSED IN SOLOMON ISLANDS DOLLARS. SOME LAWS HAVE FIXED MONETARY PENALTIES AND OTHERS ARE EXPRESSED IN 'PENALTY UNITS'. AT THE TIME OF PUBLICATION ONE PENALTY UNIT WAS EQUAL TO ONE DOLLAR, HOWEVER THIS MAY CHANGE. YOU SHOULD ALWAYS CHECK TO MAKE SURE THE MOST RECENT AMOUNT OF THE FINE OR TERM OF IMPRISONMENT THAT WILL APPLY.

TABLE 1

DEVELOPMENT CONTROL AND DISCHARGE OFFENCES

- **Environment Act 1998 (EA)**
- **Environment Regulations 2008 (ER)**

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
No development consent	<p>A developer commencing or continuing to carry out any prescribed development unless a development application has been submitted to the Director, together with either a public environmental report or an environmental impact statement (as specified by the Director in section 17), and either:</p> <ul style="list-style-type: none"> • the developer has been issued with a development consent; or • the Director has exempted the development. <p>Sections 19 (1) and 19(2) EA</p>	<p>Fine: up to \$10,000; and/or</p> <p>Imprisonment: up to one year</p>
Breaching development consent	<p>A developer carrying on any development except in accordance with the development consent.</p> <p>Sections 25 and 54 EA</p>	<p>Fine: up to \$1,000; or (if fine not paid)</p> <p>Imprisonment: up to one year</p>
Providing false or misleading information in a public environmental report or environmental impact statement	<p>A developer knowingly providing false or misleading information to the Director or to any public authority concerning matters to be addressed in a public environmental report or in an environmental impact statement.</p> <p>Sections 25 and 54 EA</p>	<p>Fine: up to \$10,000; and/or</p> <p>Imprisonment: up to one year</p>
Emitting noise and odour	<p>A person emitting or causing to be emitted from any premises noise, odour or electromagnetic radiation which unreasonably interferes with the health, welfare, convenience, comfort or amenity of any person.</p> <p>Section 34 and 37 EA</p>	<p>Fine: up to \$10,000; and/or</p> <p>Imprisonment: up to one year</p>
Pollution from waste	<p>A person causing or allowing waste to be placed in any position from which the waste could reasonably be expected to gain access to any part of the environment and is likely to result in pollution.</p> <p>Section 35 and 37 EA</p>	<p>Fine: up to \$10,000; and/or</p> <p>Imprisonment: up to one year</p>

TABLE 1: DEVELOPMENT CONTROL AND DISCHARGE OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Discharge of waste, noise or odour	<p>The occupier of any premises failing to:</p> <ul style="list-style-type: none"> comply with an prescribed standard for the discharge of waste or the emission of noise, odour or electromagnetic radiation from the premises; or take all reasonable and practicable measures to prevent or minimise the discharge of waste and the emission of noise, odour or electromagnetic radiation from the premises. <p>Section 35 and 37 EA</p>	<p>Fine: up to \$1,000; or (if fine not paid) Imprisonment: up to one year</p>
Discharge of waste, noise, odour from prescribed premises	<p>An occupier of a prescribed premises:</p> <p>(a) causing or increasing, or permitting to be caused or increased, the discharge of waste or the emission of noise, or electromagnetic radiation from the prescribed premises; or</p> <p>(b) altering or permitting to be altered the nature of the waste discharged or noise, odour or electromagnetic radiation emitted from the prescribed premises, unless in accordance with any conditions of the licence.</p> <p>Section 38 EA</p>	<p>Fine: up to \$5,000; and/or Imprisonment: up to 6 months</p>
Failing to comply with a licence	<p>Occupier of a prescribed premises failing to comply with the conditions of a licence.</p> <p>Section 41 and 54 EA</p>	<p>Fine: up to \$1,000; or (if fine not paid) Imprisonment: up to one year</p>
Failure to transfer a licence	<p>New occupier of a prescribed premises failing to apply for a transfer of the licence to him</p> <p>Section 41 and 54 EA</p>	<p>Fine: up to \$1,000; or (if fine not paid) Imprisonment: up to one year</p>
Not complying with a pollution abatement notice	<p>Failing to comply with a pollution abatement notice issued by the Director</p> <p>Section 43 EA</p>	<p>Fine: up to \$5,000; and/or Imprisonment: up to 6 months</p>
Not complying with a stop notice	<p>Failing to comply with a stop notice</p> <p>Section 45 EA</p>	<p>Fine: up to \$5,000; and/or Imprisonment: up to 6 months</p>
Discharge from vehicle	<p>A person driving a vehicle capable of discharging any matter into the environment on a road, public place or reserve unless the vehicle complies with the prescribed discharge standards.</p> <p>Section 49(1) and (3) EA</p>	<p>Fine: up to \$5,000; and/or Imprisonment: up to 6 months</p>

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Vessel not complying with discharge standards	A person sailing or conducting a vessel capable of discharging any matter into the environment unless the vessel complies with the prescribed discharge standards. Section 49(2) and (3) EA	Fine: up to \$5,000; and/or Imprisonment: up to 6 months
Interfering with a device on a vehicle or vessel to prevent discharge	A person removing, disconnecting or impairing a device fitted to a vehicle or vessel for the purpose of preventing the discharge of waste matter or controlling noise. Section 50(1) and (3) EA	Fine: up to \$5,000; and/or Imprisonment: up to 6 months
Interfering with a device on a vehicle or vessel resulting in discharge or emission	A person adjusting or modifying, or permitting to be adjusted or modified, a device fitted to a vehicle or vessel, if the adjustment or modification results in the discharge into the environment of any waste matter or in the emission of any noise that does not comply with the prescribed standard. Section 50(2) and (3) EA	Fine: up to \$5,000; and/or Imprisonment: up to 6 months
Installing noisy equipment	A person installing on or in any premises any equipment which, when operated, emits unreasonable noise, or which the person knows or would reasonably have known to emit that noise when installed and operated. Section 51 EA	Fine: up to \$5,000; and/or Imprisonment: up to 6 months

<p>TABLE</p> <p>2</p>

FORESTRY OFFENCES

- **Forest Resources and Timber Utilisation Act (Cap 40) (FTRU Act)**
- **Forest Resources and Timber Utilisation (Felling Licences) Regulations 2005 (Felling Regulations)**
- **Timber (Levy and Mill Licensing) Regulations (Cap 40) and the Timber (Levy and Mill Licensing) Regulations 2005 (Milling Regulations)**

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Logging without a licence, or not complying with a licence	<p>Any person who fells any tree or removes any timber from any land for the purpose of sale thereof or of the products thereof otherwise than –</p> <p>(a) for use within Solomon Islands as firewood or unmilled timber;</p> <p>(b) for supplying logs for milling to a mill licensed under section 18, from within the area that mill is by its licence authorised to draw unmilled timber;</p> <p>(c) for such other purpose declared by the Minister by notice to be exempt from the provisions of this section; or</p> <p>(d) under and in accordance with the terms and conditions of a valid licence issued under section 5.</p> <p>Section 4 FRTU Act</p>	<p>Fine: \$3,000 and/or Imprisonment: up to two years</p>
Milling without a licence, or not complying with a licence	<p>Any person who installs or operates a mill otherwise than under and in accordance with the terms and conditions of a valid licence issued under section 18 of the FRTU Act.</p> <p>Section 17 FRTU Act</p>	<p>Fine: \$3,000 and/or Imprisonment: up to two years</p>

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Forestry activities in a State Forest	<p>Any person who within a state forest, otherwise than under and in accordance with a valid permit issued under section 23, or in pursuance of any right which existed prior to the declaration of that state forest (the onus of proving which shall lie on such person) -</p> <ul style="list-style-type: none"> (a) fells, cuts, taps, damages, burns, removes, works or sells any tree; (b) causes any damage therein by negligence in felling any tree, dragging any timber, lighting any fire or otherwise howsoever; (c) clears or breaks up any land for cultivation or any other purposes; (d) resides or erects any building, shelter or structure; (e) grazes or permits to be grazed any livestock; (f) has in his possession any machinery, equipment or implement for cutting, taking, working or removing any forest produce, without being able to show that such machinery, equipment or implement is in his possession for a lawful purpose; or (g) constructs or re - opens any road, saw-pit or workplace. <p>Section 22 FRTU Act</p>	<p>Fine: \$2,000 and/or Imprisonment: up to one year</p>
Logging activities in a Forest Reserve	<p>Any person who within a forest reserve otherwise than under and in accordance with a valid permit issued under section 28:</p> <ul style="list-style-type: none"> (a) fells, cuts or removes any forest produce otherwise than for his own personal or domestic use; (b) clears or breaks up any land for cultivation, or any other purpose; (c) resides or erects any building, shelter or structure; or (d) grazes or permits to be grazed any livestock. <p>Section 27 FRTU Act</p>	<p>Fine: \$3,000 and/or Imprisonment: up to two years</p>

TABLE 2: FORESTRY OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Fraud in relation to logging	<p>Any person who:</p> <p>(a) knowingly counterfeits upon any tree or timber, or has in his possession any implements for counterfeiting, any mark used by enforcement officers or forest officers to indicate that such tree or timber may lawfully be felled or removed by some person; or</p> <p>(b) unlawfully or fraudulently affixes to any tree or timber any mark used by enforcement officers or forest officers; or</p> <p>(c) alters, defaces or obliterates any such mark placed on any tree or timber by or under the authority of an enforcement officer or a forest officer; or</p> <p>(d) wastes timber by such acts or operations as are specified in the regulations.</p> <p>Section 29 FRTU Act</p>	<p>Fine: \$3,000</p> <p>and/or</p> <p>Imprisonment: up to two years</p>
Receiving illegal timber	<p>Any person who receives any forest produce knowing or having reasonable cause to believe it to have been obtained in contravention to the FRTU Act.</p> <p>Section 30 FRTU Act</p>	<p>Fine: \$1,500</p> <p>and/or</p> <p>Imprisonment: up to one year</p>
Building or planting in State Forest or Forest Reserve	<p>When any person is convicted of erecting any unauthorised building, shelter or structure or of planting any unauthorised crops in a state forest or forest reserve, the court may in addition to any penalty it may impose, order such building, shelter, structure or crops to be removed and the land restored to its previous condition within such time as it shall fix.</p> <p>Any person who fails to obey such an order within the time fixed, shall unless he satisfies the court that he has used all diligence to carry out such order, be liable to a fine not exceeding \$100 for every day during which the default continues.</p> <p>Section 31 FRTU Act</p>	<p>Fine: up to \$100 for every day during which the default continues</p>
Logging without an annual harvest plan or coupe plan	<p>A licensee, or a person acting for or on behalf of a licensee, shall not carry out felling operations under the licensee's felling licence in a year during the term of the licence unless he has prepared, in accordance with the code of logging practice, an annual harvesting plan for the year and the Commission of Forest Resources has approved the plan.</p> <p>A licensee, or a person acting for or on behalf of a licensee, shall not commence felling operations in a coupe unless he has prepared, in accordance with the code of logging practice, a coupe plan for the coupe and the forest officer authorised to do so has approved the coupe plan.</p> <p>Regulation 12 Felling Regulations</p>	<p>Fine: \$100; or</p> <p>Imprisonment: 3 months</p>

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
<p>Carrying out logging in certain areas, including in areas 400m above sea level, or close to villages</p>	<p>A licensee, or a person acting for or on behalf of a licensee, shall not carry out felling operations under the licensee's felling licence in, or allow timber felled under the licence to fall inside, any of the following areas:</p> <ul style="list-style-type: none"> (a) a State Forest or a Forest Reserve; (b) areas that have ecological or scientific importance, including outer reef and lagoon islands, swamps, wetlands and mangroves vital for the protection of important marine resources; (c) areas which are 400 meters above sea level unless approved by the Commissioner of Forest Resources; (d) areas within 30 meters from a tambu area; (e) areas within 30 meters from a garden of an owner of the land; (f) areas within 100 meters from a village; (g) subject to paragraph (h), areas within 100 meters from the ocean, a lagoon or a lake; (h) areas within 50 metres from a log pond; (i) areas where there is a landslip, including the area where the soil that slipped lies; (j) areas within 50 meters from the bed of a stream that is 10 metres or more wide; (k) areas within 25 meters from the bed of a stream that is less than 10 meters wide; (l) areas within 10 metres from a gully; (m) in any other area identified by the owner or owners of the land in the approved timber rights agreement as an area where they do not want felling to occur. <p>A licensee, or a person acting for or on behalf of a licensee, may carry out felling operations under the licensee's licence in an area referred to above if he has the approval to do so of the Commissioner of Forest Resources or a forest officer authorised to do so by the Commissioner of Forest Resources.</p> <p>Regulation 13 Felling Regulations</p>	<p>Fine: \$100; or Imprisonment: 3 months</p>

TABLE 2: FORESTRY OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Constructing logging roads	<p>A licensee, or a person acting for or on behalf of a licensee, shall construct roads in a manner that complies with the following:</p> <ul style="list-style-type: none"> (a) the survey line along which a road shall be constructed shall be marked out in accordance with the following guidelines: <ul style="list-style-type: none"> (i) the cleared edge of the road shall be located at least 40 meters from the edge of a buffer; (ii) the road shall not pass over a buffer; (iii) there shall be as few watercourse crossings as possible; (iv) the road shall be located on high ground; (v) the survey line shall avoid side slopes that need side cutting or benching and balance cut and fill; (b) the maximum area that shall be cleared for a roadline is 40 meters; (c) a road shall be constructed with adequate drainage to avoid erosion, including by using the following drainage systems to prevent water running onto the road and drain water off the road: <ul style="list-style-type: none"> (i) table or V drains; (ii) drain turnouts; (iii) cross fall from the centre of the road to the edge of the road; (iv) culverts for moving water across the road; (d) drains shall be constructed so that: <ul style="list-style-type: none"> (i) they do not run directly into watercourses or onto landings; (ii) they run onto forested areas; and (iii) where possible, they run onto flat areas; (e) the road surface shall be compacted with rollers, trucks and any other heavy equipment that is available. <p>Regulation 14 Felling Regulations</p>	<p>Fine: \$100; or Imprisonment: 3 months</p>

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
<p>Constructing logging landings</p>	<p>A licensee, or a person acting for or on behalf of a licensee, shall construct landings in a manner that complies with the following:</p> <ul style="list-style-type: none"> (a) the cleaned edge of a landing shall be located at least 40 meters from the edge of a buffer; (b) a landing shall not be constructed in a buffer; (c) a landing shall be located on high ground; (d) a landing shall be sloped or constructed with adequate drainage to avoid erosion so that the water runs into forested areas or onto a road; (e) the surface of a landing shall be compacted with rollers, trucks and any other heavy equipment that is available; (f) the maximum size for a landing is 40 meters by 40 meters; (g) a roadside landing shall be measured from the road edge it is contiguous to; (h) the maximum area that shall be cleared for a landing is 1,600 square meters and for a roadside landing 80 meters wide by 30 meters long; (i) there shall not be more than 5 landings constructed for each 100 hectares of forested land subject to the license. <p>When a licensee, or a person acting for or on behalf of a licensee, completes operations on a landing he must do the following:</p> <ul style="list-style-type: none"> (a) remove from the landing and adjacent forested land any excess bark or waste; (b) rip the surface of the landing to a depth of at least 60 centimetres; (c) after ripping the surface in accordance with paragraph (b), return topsoil removed during construction of the landing and spread evenly across the ripped surface of the landing; (d) ensure that the landing is effectively drained; (e) replant the whole or part of it as required by the forest officer who inspects the landing. <p>Regulation 15 Felling Regulations</p>	<p>Fine: \$100; or Imprisonment: 3 months</p>

TABLE 2: FORESTRY OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Logging in buffer zones	<p>A licensee, or a person acting for or on behalf of a licensee, shall not:</p> <ul style="list-style-type: none"> (a) fell timber in a buffer; (b) allow timber felled outside a buffer to fall inside the buffer; (c) subject to paragraph (d), operate skidding machinery within a buffer; (d) skid timber within a buffer unless using a temporary crossing within the buffer that complies with regulation 4F; or (e) conduct any operations within a buffer on the request of the owner of the land unless approved by the Commissioner of Forest Resources or a forest officer authorised to give approval by the Commissioner of Forest Resources. <p>Regulation 16 Felling Regulations</p>	<p>Fine: \$100; or Imprisonment: 3 months</p>
Temporary logging crossings	<p>A licensee, or a person acting for or on behalf of a licensee, shall not construct or use a temporary crossing unless the crossing has been identified on a coupe harvesting plan and marked out on the ground.</p> <p>A licensee, or a person acting for or on behalf of a licensee, shall construct a temporary crossing in a manner that complies with the following:</p> <ul style="list-style-type: none"> (a) temporary crossings shall be located in the flattest location possible; (b) temporary crossings should be constructed with logs or piper logs; (c) temporary crossings that are constructed with logs shall not be covered with soil. <p>When a temporary crossing that is constructed with logs is no longer being used, the licensee shall remove the logs.</p> <p>Regulation 17 Felling Regulations</p>	<p>Fine: \$100; or Imprisonment: 3 months</p>

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
<p>Logging skidding operations</p>	<p>A licensee, or a person acting for or on behalf of a licensee, shall carry out skidding operations under the licensee's licence that complies with the following:</p> <ul style="list-style-type: none"> (a) the width of the skid blade shall be not more than 4.5 meters wide; (b) roading blades shall not be used as skid blades in forested areas; (c) subject to paragraph (d), a skid track shall be 5.5 meters or less wide; (d) if side cutting is required, the area distributed by the skidder shall be not more than 7 meters wide; (e) the skidder shall travel back and forth on the same skid track; (f) if skidding on a slope that is less than 12 degrees, the skidding must be done with the blade raised; (g) if skidding on a slope that is 12 degrees or more, the skid blade may be used but its use should be kept to a minimum. <p>When a licensee, or a person acting for or on behalf of a licensee, has finished using a skid track he must:</p> <ul style="list-style-type: none"> (a) if the skid track is on a slope that is less than 10 degrees, construct at least one whoa boy every 40 meters along the skid track; or (b) if the skid track is on a slope that is 10 degrees or more, construct at least one whoa boy every 20 meters along the skid track. <p>In addition, the licensee shall construct a whoa boy where there is any change in slope along the skid track.</p> <p>Regulation 18 Felling Regulations</p>	<p>Fine: \$100;</p> <p>or</p> <p>Imprisonment: 3 months</p>

TABLE 2: FORESTRY OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Wasting timber when logging	<p>A licensee, or a person acting for or on behalf of a licensee, shall conduct his felling operations under the licensee's licence in a manner that maximises log value and avoids wastage of timber, including by:</p> <ul style="list-style-type: none"> (a) directionally felling trees to minimise crown and truck breakage; (b) directionally felling trees so they are in position for easy skidding; (c) directionally felling into the same gap to minimise canopy opening; (d) keeping stumps as low as possible; (e) ensuring log ends are cut straight, not at an angle; (f) trimming side branches and buttresses; and (g) maximising the highest value log length before the tree is cross cut. <p>Regulation 19 Felling Regulations</p>	<p>Fine: \$100; or Imprisonment: 3 months</p>
Logging in bad weather	<p>A licensee, or a person acting for or on behalf of a licensee, shall not carry on felling operations in weather conditions that increase the risk of personal injury occurring and the level of damage to soil, water and forest resources to more than the usual risk or level of damage expected for well planned harvest operations.</p> <p>Examples of weather conditions when operations shall cease are when:</p> <ul style="list-style-type: none"> (a) the wind strength prevents accurate directional falling of timber; (b) the ground becomes too slippery for chainsaw operators to move easily and quickly; (c) water flows along any length of a skid track; (d) water lies on the surface of a landing; and (e) a truck is not able to move along a road without the assistance of other machines. <p>Regulation 20 Felling Regulations</p>	<p>Fine: \$100; or Imprisonment: 3 months</p>

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Fixing log pond after logging	<p>When a licensee, or a person acting for or on behalf of a licensee, completes his operations in a log pond he must do the following:</p> <ul style="list-style-type: none"> (a) remove from the log pond and adjacent forested land any excess bark or waste; (b) rip the surface of the log pond to a depth of at least 60 centimetres; (c) after ripping the surface in accordance with paragraph (b), return topsoil removed during construction of the log pond and spread evenly across the ripped surface of the log pond; (d) ensure that the log pond is effectively drained; (e) replant the whole or part of the log pond as required by the forest officer who inspects the landing. <p>Regulation 21 Felling Regulations</p>	<p>Fine: \$100; or Imprisonment: 3 months</p>
Milling without annual harvesting plan or coupe plan	<p>Any person who:</p> <ul style="list-style-type: none"> (a) fells 1,000 cubic metres of timber or more in a year to be supplied for milling to a licensed mill; or (b) uses extraction machinery for the purposes of operating a licensed mill. <p>shall not :</p> <ul style="list-style-type: none"> (a) commence felling timber in a year unless he has prepared, in accordance with the code of logging practice, an annual harvesting plan for the year and the Commission of Forest Resources has approved the plan. (b) commence felling operations in a coupe unless he has prepared, in accordance with the code of logging practice, a coupe plan for the coupe and the forest officer authorised to do so has approved the coupe plan. <p>Regulation 4A Milling Regulations</p>	<p>Fine: \$100; or Imprisonment: 3 months</p>

TABLE 2: FORESTRY OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
<p>Milling in certain areas, including 400 metres above sea level, close to villages and close to water</p>	<p>Any person who fells timber to be supplied for milling to a licensed mill shall not allow timber he fells to fall inside, any of the following areas:</p> <ul style="list-style-type: none"> (a) a State Forest or a Forest Reserve; (b) areas that have ecological or scientific importance, including outer reef and lagoon islands, swamps, wetlands and mangroves vital for the protection of important marine resources; (c) areas which are 400 meters above sea level unless approved by the Commissioner of Forest resources; (d) areas within 30 meters from a tambu area; (e) areas within 30 meters from a garden of an owner of the land; (f) areas within 100 meters from a village; (g) subject to paragraph (h), areas within 100 meters from the ocean, a lagoon or a lake; (h) areas within 50 metres from a log pond; (i) areas where there is a landslip, including the area where the soil that slipped lies; (j) areas within 50 meters from the bed of a stream that is 10 metres or more wide; (k) areas within 25 meters from the bed of a stream that is less than 10 meters wide; (l) areas within 10 metres from a gully; (m) in any other area identified by the owner or owners of the land in the approved timber rights agreement as an area where they do not want felling to occur. <p>A person may fell timber to be supplied for milling to a licensed mill in a buffer if he has the approval to do so of the Commissioner of Forest Resources or a forest officer authorised to give approval by the Commissioner of Forest Resources.</p> <p>Regulation 4B Milling Regulations</p>	<p>Fine: \$100; or Imprisonment: 3 months</p>

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Constructing milling roads	<p>Any person who fells timber to be supplied for milling to a licensed mill shall construct roads in a manner that complies with the following:</p> <p>(a) the survey line along which a road shall be constructed shall be marked out in accordance with the following guidelines:</p> <ul style="list-style-type: none"> i. the cleared edge of the road shall be located at least 40 meters from the edge of a buffer; ii. the road shall not pass over a buffer; iii. there shall be as few watercourse crossings as possible; iv. the road shall be located on high ground; v. the survey line shall avoid side slopes that need side cutting or benching and balance cut and fill; <p>(b) the maximum area that shall be cleared for a roadline is 40 meters;</p> <p>(c) a road shall be constructed with adequate drainage to avoid erosion, including by using the following drainage systems to prevent water running onto the road and drain water off the road:</p> <ul style="list-style-type: none"> i. table or V drains; ii. drain turnouts; iii. cross fall from the centre of the road to the edge of the road; iv. culverts for moving water across the road; <p>(d) drains shall be constructed so that;</p> <ul style="list-style-type: none"> (i) they do not run directly into watercourses or onto landings; (ii) they run onto forested areas; and (iii) where possible, they run onto flat areas; <p>(e) the road surface shall be compacted with rollers, trucks and any other heavy equipment that is available.</p> <p>Regulation 4C Milling Regulations</p>	<p>Fine: \$100;</p> <p>or</p> <p>Imprisonment: 3 months</p>

TABLE 2: FORESTRY OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
<p>Constricting milling landings</p>	<p>Any person who fells timber to be supplied for milling to a licensed mill shall construct roads in a manner that complies with the following:</p> <ul style="list-style-type: none"> (a) the survey line along which a road shall be constructed shall be marked out in accordance with the following guidelines: <ul style="list-style-type: none"> i. the cleared edge of the road shall be located at least 40 meters from the edge of a buffer; ii. the road shall not pass over a buffer; iii. there shall be as few watercourse crossings as possible; iv. the road shall be located on high ground; v. the survey line shall avoid side slopes that need side cutting or benching and balance cut and fill; (b) the maximum area that shall be cleared for a roadline is 40 meters; (c) a road shall be constructed with adequate drainage to avoid erosion, including by using the following drainage systems to prevent water running onto the road and drain water off the road: <ul style="list-style-type: none"> i. table or V drains; ii. drain turnouts; iii. cross fall from the centre of the road to the edge of the road; iv. culverts for moving water across the road; (d) drains shall be constructed so that; <ul style="list-style-type: none"> (i) they do not run directly into watercourses or onto landings; (ii) they run onto forested areas; and (iii) where possible, they run onto flat areas; (e) the road surface shall be compacted with rollers, trucks and any other heavy equipment that is available. <p>Regulation 4C Milling Regulations</p>	<p>Fine: \$100; or Imprisonment: 3 months</p>

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Buffer zones for milling	<p>Any person who fells timber to be supplied for milling to a licensed mill shall not:</p> <ul style="list-style-type: none"> (a) fell timber in a buffer; (b) allow timber felled outside a buffer to fall inside the buffer; (c) subject to paragraph (d), operate skidding machinery within a buffer; (d) skid timber within a buffer unless using a temporary crossing within the buffer that complies with regulation 4F; or (e) conduct any operations within a buffer on the request of the owner of the land unless approved by the Commissioner of Forest Resources or a forest officer authorised to give approval by the Commissioner of Forest Resources. <p>Regulation 4E Milling Regulations</p>	<p>Fine: \$100;</p> <p>or</p> <p>Imprisonment: 3 months</p>
Temporary milling crossings	<p>Any person who fells timber to be supplied for milling to a licensed mill shall not construct or use a temporary crossing unless it has, before the person commences felling the timber, been identified on a coupe harvesting plan and marked out on the ground.</p> <p>Any person who fells timber to be supplied for milling to a licensed mill shall construct a temporary crossing in a manner that complies with the following:</p> <ul style="list-style-type: none"> (a) temporary crossings shall be located in the flattest location possible; (b) temporary crossings should be constructed with logs or piper logs; (c) temporary crossings that are constructed with logs shall not be covered with soil. <p>When a temporary crossing that is constructed with logs is no longer being used, the licensee shall remove the logs.</p> <p>Regulation 4F Milling Regulations</p>	<p>Fine: \$100;</p> <p>or</p> <p>Imprisonment: 3 months</p>

TABLE 2: FORESTRY OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Milling skidding operations	<p>Any person who fells timber to be supplied for milling to a licensed mill shall carry out skidding operations in a manner that complies with the following:</p> <ul style="list-style-type: none"> (a) the width of the skid blade shall be not more than 4.5 meters wide; (b) roading blades shall not be used as skid blades in forested areas; (c) subject to paragraph (d), a skid track shall be 5.5 meters or less wide; (d) if side cutting is required, the area distributed by the skidder shall be not more than 7 meters wide; (e) the skidder shall travel back and forth on the same skid track; (f) if skidding on a slope that is less than 12 degrees, the skidding must be done with the blade raised; (g) if skidding on a slope that is 12 degrees or more, the skid blade may be used but its use should be kept to a minimum. <p>When a person who fells timber to be supplied to a licensed mill has finished using a skid track he must --</p> <ul style="list-style-type: none"> (a) if the skid track is on a slope that is less than 10 degrees, construct at least one whoa boy every 40 meters along the skid track; or (b) if the skid track is on a slope that is 10 degrees or more, construct at least one whoa boy every 20 meters along the skid track. <p>In addition the person must construct a whoa boy where there is any change in slope along the skid track.</p> <p>Regulation 4G Milling Regulations</p>	<p>Fine: \$100; or Imprisonment: 3 months</p>

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Wasting timber when milling	<p>Any person who fells timber to be supplied for milling to a licensed mill shall conduct his felling operations in a manner that maximises log value and avoids wastage of timber, including by:</p> <ul style="list-style-type: none"> (a) directionally felling trees to minimise crown and truck breakage; (b) directionally felling trees so they are in position for easy skidding; (c) directionally felling into the same gap to minimise canopy opening; (d) keeping stumps as low as possible; (e) ensuring log ends are cut straight, not at an angle; (f) trimming side branches and buttresses; and (g) maximising the highest value log length before the tree is cross cut. <p>Regulation 4H Milling Regulations</p>	<p>Fine: \$100; or Imprisonment: 3 months</p>
Milling in bad weather	<p>Any person who fells timber to be supplied for milling to a licensed mill shall not conduct his felling operations in weather conditions that increase the risk of personal injury occurring and the level of damage to soil, water and forest resources to more than the usual risk or level of damage expected for well planned harvest operations.</p> <p>Examples of weather conditions when operations shall cease are when --</p> <ul style="list-style-type: none"> (a) the wind strength prevents accurate directional falling of timber; (b) the ground becomes too slippery for chainsaw operators to move easily and quickly; (c) water flows along any length of a skid track; (d) water lies on the surface of a landing; and (e) a truck is not able to move along a road without the assistance of other machines. <p>Regulation 4I Milling Regulations</p>	<p>Fine: \$100; or Imprisonment: 3 months</p>

TABLE 2: FORESTRY OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Fixing log pond related to milling	<p>When a person who fells timber to be supplied for milling to a licensed mill completes his operations in a log pond he must do the following:</p> <ul style="list-style-type: none"> (a) remove from the log pond and adjacent forested land any excess bark or waste; (b) rip the surface of the log pond to a depth of at least 60 centimetres; (c) after ripping the surface in accordance with paragraph (b), return topsoil removed during construction of the log pond and spread evenly across the ripped surface of the log pond; (d) ensure that the log pond is effectively drained; (e) replant the whole or part of the log pond as required by the forest officer who inspects the landing. <p>Regulation 4J Milling Regulations</p>	<p>Fine: \$100; or Imprisonment: 3 months</p>

TABLE
3

MINING OFFENCES

- **Mines and Minerals Act 1996 (MMA)**
- **Mines and Minerals Regulations 1996 (MMR)**
- **Penal Code (Cap 26) (Penal Code)**

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Exploring or developing minerals in breach of the law	Exploring for or developing mineral resources except in accordance with the MMA and MMR Sections 2(2)(a) and 2(5) MMA	Fine: up to \$10,000; and/or Imprisonment: up to one year
Reconnaissance, prospecting or mining operations in breach of the law	Carrying out reconnaissance, prospecting or mining operations in respect of minerals except in accordance with the MMA and MMR, including without (as appropriate): (a) a reconnaissance permit; (b) a prospecting licence; or (c) a mining lease Sections 2(2)(b) and 2(5) MMA	Fine: up to \$1,000; or (if fine not paid) Imprisonment: up to one year
Reconnaissance, prospecting or mining operations in Reserved areas	Carrying out of reconnaissance, prospecting or mining in a reserved area Sections 4(1) and 2(5) MMA	Fine: up to \$1,000; or (if fine not paid) Imprisonment: up to one year

TABLE 3: MINING OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Reconnaissance, prospecting or mining operations in certain areas, including villages, tambu sites, state forests and public land	<p>Carrying out reconnaissance, prospecting and mining in or on:</p> <ul style="list-style-type: none"> (a) any village, place of burial, tambu or other site of traditional significance, inhabited house or building, except with the consent in writing of the owner or occupier thereof, and within such distance as may be prescribed by the Minister; (b) any cultivated land or land rendered fit for planting and habitually used for the planting of crops, except with the consent in writing of the owner or occupier thereof; (c) any land designated as town land, under the Lands and Titles Act, except with the consent in writing of the owner of the surface rights; (d) any state forest or controlled forest within the meaning of the Forest Resources and Timber Utilisation Act, except with the consent in writing of the Commissioner of Forest Resources and subject to such terms and conditions as the Commissioner may impose; or (e) any land used for public purposes. <p>Sections 4(2), 2(2)(b) and 2(5) MMA</p>	<p>Fine: up to \$1,000; or (if fine not paid) Imprisonment: up to one year</p>
Prospecting licence requirements, including backfilling and removal of equipment	<p>The holder of a prospecting licence must:</p> <ul style="list-style-type: none"> (a) on receipt of the prospecting licence, commence prospecting in accordance with the work programme as specified in the licence; (b) expend on prospecting, in direct expenditure, not less than the amount specified in the licence; (c) as soon as practicable notify the Director of any commercial discovery made; (d) backfill or otherwise make safe any drill hole or excavation made during the course of his prospecting operations, to the satisfaction of the Director; and (e) unless the Director otherwise stipulates, remove, within ninety days of the expiry of his prospecting licence, any camp, buildings or machinery erected or installed by him, and repair or otherwise make good any damage to the surface of the ground occasioned by such removal, to the satisfaction of the Director. <p>Sections 27(1)(a), 2(2)(b), 2(5) MMA</p>	<p>Fine: up to \$1,000; or (if fine not paid) Imprisonment: up to one year</p>

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
<p>Prospecting licence reporting</p>	<p>The holder of a prospecting licence shall keep complete and accurate books and records of his prospecting and shall, not later than thirty days after each six month period of the licence, submit to the Director a report, in such form as may be prescribed, on his prospecting during the previous six months.</p> <p>The holder of a prospecting licence shall, within three months of the expiration of the licence, submit to the Director a final report on his prospecting unless -</p> <ul style="list-style-type: none"> (a) he has made application for renewal; or (b) he has made application for a mining lease, in which case the provisions of section 31(1) shall apply. <p>Section 27(5) prescribes the form and content of the reports.</p> <p>Any person who fails to keep or submit any records in accordance with section 7 of the MMA, or who knowingly supplies false or misleading information, shall be guilty of an offence.</p> <p>Sections 27(4), 27(5), 27(6), 27(7), 27(8) MMA</p>	<p>Fine: up to \$1,000; or (if fine not paid) Imprisonment: up to 6 months</p>

TABLE 3: MINING OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
<p>Mining lease requirements, including payment of surface rental and compensation for damage</p>	<p>A mining company with a mining lease must:</p> <ul style="list-style-type: none"> (a) pay, either in accordance with the agreement made pursuant to section 32 or the provisions of section 33(6), a surface rental and compensation for damage; (b) commence production on or before the date specified in the mining lease unless circumstances beyond its reasonable control which could not have been foreseen or avoided, prevent the commencement of production; (c) carry out the mining plan specified in the mining lease, using appropriate technology and effective equipment, machinery, methods and materials, with due diligence, efficiency and economy, in accordance with sound conservation, technical and engineering practices generally used in the mining industry; (d) keep the mining area demarcated in the prescribed manner; (e) maintain an office in Solomon Islands to which all communications and notices may be addressed, at which shall be kept - <ul style="list-style-type: none"> (i) complete and accurate records of mining in such form as the Board may approve; (ii) copies of all maps, profiles, diagrams, charts and geological reports, including interpretations; (iii) accurate and systematic financial records of operations in the mining area and such other books of accounts and financial records as the Board may require; (iv) a register of the names and addresses of all persons employed; and (f) submit to the Director such reports, records and other information as may be prescribed or as the Board may require from time to time. <p>The reports, records and other information provided for in subsection (1)(e) shall be submitted at such times and be subject to such periods of confidentiality as shall be:</p> <ul style="list-style-type: none"> (a) prescribed under the terms and conditions of the mining lease; or (b) specified in the agreement reached pursuant to section 30(4). <p>Sections 44, 2(2)(b) and 2(5) MMA</p>	<p>Fine: up to \$1,000; or (if fine not paid) Imprisonment: up to one year</p>

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Alluvial mining methods	<p>An alluvial miner shall:</p> <ul style="list-style-type: none"> (a) employ panning or washing techniques using hand-operated equipment or mechanical suction dredges with a capacity of less than four cubic metres per hour using water in rivers or streams; (b) not use bulldozers, scrapers, excavators or any other mechanised earth-moving equipment; (c) not use engine-driven rock crushers nor employ any mineral extraction techniques requiring cyanide, mercury or any other poisonous substance; (d) not dig underground shafts, drives, adits or pits unless all such excavations are vertical, not deeper than two meters from the surface and not greater than ten square metres in area at the surface, unless the Director otherwise directs; and (e) not use explosives. <p>Section 53(2), s2(2) and s2(5) MMA</p>	<p>Fine: up to \$1,000; or (if fine not paid) Imprisonment: up to one year</p>
Alluvial mining in prospecting licence areas and within a mining lease	<p>In areas subject to a prospecting licence or mining lease, there shall be no alluvial mining without the consent in writing of the holder of the prospecting licence or mining lease, as the case may be.</p> <p>Sections 53(3), 2(2) and 2(5) MMA</p>	<p>Fine: up to \$1,000; or (if fine not paid) Imprisonment: up to one year</p>
Alluvial mining obligations, including in relation to backfilling and pollution	<p>An alluvial miner shall:</p> <ul style="list-style-type: none"> (a) not dispose of any gold obtained other than to a gold dealer licensed under Part VII, who may export gold on behalf of the alluvial miner; (b) backfill all excavations and not leave any part of the area covered by the permit in an unsafe condition; (c) not pollute or interrupt or adversely affect the flow of any water; and (d) comply with such rules and procedures as may be prescribed by the Director. <p>Sections 54(1), 2(2) and 2(5) MMA</p>	<p>Fine: up to \$1,000; or (if fine not paid) Imprisonment: up to one year</p>
Selling alluvial gold	<p>Gold obtained by members of an alluvial miners group shall be disposed of only by the permit holder on behalf of the group and only to a licensed gold dealer.</p> <p>Sections 54(2) and s78 MMA</p>	<p>Fine: up to \$500; or (if fine not paid) Imprisonment: up to three months</p>
Alluvial permit membership cards	<p>Each person holding an alluvial miner's permit on behalf of a group shall issue, to each member of the group, a membership card in the prescribed form.</p> <p>Sections 54(3) and s78 MMA</p>	<p>Fine: up to \$500; or (if fine not paid) Imprisonment: up to three months</p>

TABLE 3: MINING OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Production of alluvial membership card to police and inspectors	<p>The holder of an alluvial miner's permit or member of an alluvial miner's group shall produce his permit, or membership card, as the case may be, upon request by the Director, any police officer, any inspector or other officer authorised under the MMA.</p> <p>Sections 54(4) and 79(a) MMA</p>	<p>Fine: up to \$1,000; and/or Imprisonment: up to one year</p>
Gold dealing	<ol style="list-style-type: none"> 1) The holder of a gold dealer's licence shall maintain a balance capable of weighing up to 500 grams to the nearest 0.1 of a gram and furnish proof of such accuracy to the Director. 2) The holder of a gold dealer's licence shall issue numbered receipts for all gold purchased in such form as may be prescribed. 3) The holder of a gold dealer's licence shall at all times keep at his registered place of business in Solomon Islands his gold dealer's licence and shall produce such licence upon request by the Director or any authorised inspector. 4) Each purchase of gold by a dealer shall be recorded by the holder of a gold dealer's licence in a register in such form as shall be prescribed, in which shall be recorded - <ol style="list-style-type: none"> (a) the receipt number and date of purchase; (b) the name and address of the seller and his alluvial miner's permit number or his gold dealer's licence number, as the case may be; (c) the weight of the gold purchased; and (d) the purchase price paid to the seller. 5) Each sale of gold by a dealer shall be recorded by the holder of a gold dealer's licence in a register in such form as shall be prescribed, in which shall be recorded - <ol style="list-style-type: none"> (a) the date of the sale; (b) the name and address of the purchaser; (c) the weight of gold sold; and (d) the price paid to the dealer. 6) Each sale or purchase of gold recorded in a gold dealer's register shall be signed by the servant or agent of the dealer who makes the sale or purchase and by either the seller or the purchaser, as the case may be. 7) A gold dealer who uses any purchased gold in the manufacture of any articles for trade or other purposes, shall keep records in such form as may be prescribed, of any such use. <p>Section 59 MMA</p>	<p>Fine: up to \$1,000; and/or Imprisonment: up to one year</p>

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Buying, selling, exporting gold in breach of the law	<p>Any person who purchases, sells, exports or otherwise deals in gold contrary to the provisions of Part VII of the MMA shall be guilty of an offence and liable, on conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.</p> <p>Section 63 MMA</p>	<p>Fine: up to \$20,000; and/or Imprisonment: up to five years</p>
Building materials permits	<p>The holder of a building materials permit shall:</p> <ul style="list-style-type: none"> (a) pay such surface access fees and compensation for damage as may have been agreed pursuant to section 65(2); (b) mine building materials within the area covered by the permit in accordance with good mining industry practice; (c) pay royalties at the prescribed rate per cubic metre for all building materials extracted; (d) submit a report to the Director on the expiration of the permit, or where the permit is for a period exceeding one year, submit annual reports stating the quantity of building materials mined and its disposition, including the names of any purchasers and sales prices; (e) on termination of the permit, clear the area and make it safe to the satisfaction of the Director; and (f) comply with such rules and procedures as may be prescribed. <p>Section 68(1) and 68(2) and 68(3) MMA.</p> <p>Note section 69 of the MMA contains certain exceptions.</p>	<p>Fine: up to \$1,000; or (if fine not paid) Imprisonment: up to six months</p> <p>A further penalty of \$50 per day for continuing offences. If the fine is not paid then imprisonment for up to 6 months.</p>
Interfering or obstructing the Director and Ministry officials	<p>Unlawfully interfering with or obstructing the Director, any inspector or any other authorised officer in the exercise of any rights under the MMA</p> <p>Section 79(a) MMA</p>	<p>Fine: up to \$1,000; and/or Imprisonment: up to one year</p>
Interfering or obstructing a permit, licence or lease holder	<p>Unlawfully interfering with or obstructing any holder of a permit, licence or lease or their servants or agents in the exercise of any rights acquired under the MMA</p> <p>Section 79(b) MMA</p>	<p>Fine: up to \$1,000; and/or Imprisonment: up to one year</p>
Records in relating to mines	<p>Before a mine or any part of a mine is closed down or rendered inaccessible, all plans and records required to be kept under the provisions of the MMR shall be brought up to date and, within 3 months after the closing down or abandonment of such mine, or, 3 months after the cessation of operations of such mine, copies of all such plans and records, together with all calculation books and survey notebooks kept by the holder of the mining lease, shall be sent by such holder to the Director.</p> <p>Regulation 46(1) and 46(3) MMR</p>	<p>Fine: up to \$250,000</p>

TABLE 3: MINING OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Filling up and securing excavations	<p>The following requirements shall, unless otherwise instructed by the Director in writing, apply to all excavations which any person is required under the provisions of the Act to fill up or secure in a permanent manner:</p> <ul style="list-style-type: none"> (a) all prospecting pits and trenches shall be filled up; (b) all shafts shall be filled up or capped with reinforced concrete and marked by monument or shall be surrounded by substantial fences of a height adequate to secure the safety of persons and livestock; (c) all steep faces in alluvial or detrital workings shall be broken down sufficiently to be safe; (d) all water furrows shall be filled up; (e) all steep faces in rocks shall be surrounded by substantial fences. <p>Regulation 47 MMR and section 2(2) and 2(5) MMA</p>	<p>Fine: up to \$1,000; or (if fine is not paid) Imprisonment: up to one year</p>
Not helping an authorized officer	<p>Fails, neglects or refuses to allow or provide all reasonable facilities and assistance to an authorised officer.</p> <p>Regulation 67(1)(a), 67(5) and 67(6) MMR</p>	<p>First offence: up to 6 months imprisonment Later convictions: Fine: up to \$10,000; or (if fine not paid) Imprisonment: up to one year</p>
Not complying with a direction	<p>Fails, neglect or refuses to comply with any direction given under the MMA.</p> <p>Regulation 67(1)(b), 67(5) and 67(6) MMR</p>	<p>First offence: up to 6 months imprisonment Later convictions- Fine: up to \$10,000; or (if fine not paid) Imprisonment: up to one year</p>
Obstructing or hindering an authorized officer	<p>Obstructs, hinders or delays an authorised officer in the performance of his duties under the MMR.</p> <p>Regulation 67(1)(c), 67(5) and 67(6) MMR</p>	<p>First offence- Imprisonment: up to 6 months Later offences- Fine: up to \$10,000; or (if fine not paid) Imprisonment: up to one year</p>

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Mining activities without holding mineral rights	<p>Conducts reconnaissance, prospecting or mining without being a holder of appropriate mineral rights.</p> <p>Regulation 67(1)(d), 67(2) and 67(3) MMR</p>	<p>First offence-</p> <p>Fine: up to \$10,000 and/or</p> <p>Imprisonment: up to one year</p> <p>Later offences-</p> <p>Fine: up to \$20,000; and/or</p> <p>Imprisonment: up to two years</p>
Breaching the regulations	<p>Conducts reconnaissance, prospecting or mining otherwise than in accordance with the provisions of the MMR.</p> <p>Regulation 67(1)(e), 67(4) MMR</p>	<p>Upon conviction a fine not exceeding \$20,000 or imprisonment for a term not exceeding two years, or to both such fine and imprisonment.</p>
Making false or misleading statements	<p>In making an application for any permit, licence, lease or membership card in an alluvial miner's group, or any renewal thereof, knowingly makes a statement which is false or misleading in any material particular</p> <p>Regulation 67(1)(e), 67(4) MMR</p>	<p>First offence:</p> <p>Imprisonment: up to 6 months</p> <p>Later offences-</p> <p>Fine: up to \$10,000; or (if fine not paid)</p> <p>Imprisonment: up to one year</p>
False or misleading information in reports, returns or affidavit	<p>In any report, return or affidavit submitted in pursuance of the provisions of the regulations, knowingly includes any information which is false or misleading in any material particular.</p> <p>Regulation 67(1)(g), 67(2) and 67(3) MMR</p>	<p>First offence:</p> <p>Fine: up to \$10,000 and/or</p> <p>Imprisonment: up to one year</p> <p>Later offences:</p> <p>Fine: up to \$20,000; and/or</p> <p>Imprisonment: up to two years</p>
Failure to notify Director	<p>Fails to notify the Director in pursuance of the provisions of the MMR</p> <p>Regulation 67(1)(h), 67(5) and 67(6) MMR</p>	<p>First offence:</p> <p>Imprisonment: up to 6 months</p> <p>Later offences:</p> <p>Fine: up to \$10,000; or (if fine not paid)</p> <p>Imprisonment: up to one year</p>

TABLE 3: MINING OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Removes, destroys or disposes of minerals, cores or samples	Removes, destroys or disposes of any mineral, core or sample contrary to the provisions of the MMR Regulation 67(1)(i), 67(5) and 67(6) MMR	First offence: Imprisonment: up to 6 months Later offences: Fine: up to \$10,000; or (if fine not paid) Imprisonment: up to one year
Exports minerals	Exports any minerals in contravention of the MMR Regulation 67(1)(j), 67(2) and 67(3) MMR	First offence: Fine: up to \$10,000 and/or Imprisonment: up to one year Later offences: Fine: up to \$20,000; and/or Imprisonment: up to two years
Erecting building or structures	Erects any building or other structure in contravention of the MMR Regulation 67(1)(k), 67(5) and 67(6) MMR	First offence: Imprisonment: up to 6 months Later offences: Fine: up to \$10,000; or (if fine not paid) Imprisonment: up to one year
Removing buildings, fixed machinery or movable property	Removes any buildings, fixed machinery or other movable property contrary to the provisions of the MMR Regulation 67(1)(l), 67(5) and 67(6) MMR	First offence: Imprisonment: up to 6 months Later offences: Fine: up to \$10,000; or (if fine not paid) Imprisonment: up to one year

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Misleading a person as to the mineral possibilities of a place	Places or deposits, is accessory to the placing or depositing of any mineral in any place with the intent to mislead any other person as to the mineral possibilities of such place. Regulation 67(1)(m), 67(2), 67(3) MMR	First offence: Fine: up to \$10,000 and/or Imprisonment: up to one year Later offences: Fine: up to \$20,000; and/or Imprisonment: up to two years
Intending to cheat, deceive or defraud	Mingles or causes to be mingled with any sample of ore any substance which will enhance the value or in any way change the nature of such ore with intent to cheat, deceive or defraud Regulation 67(1)(n), 67(2) and 67(3) MMR	First offence: Fine: up to \$10,000 and/or Imprisonment: up to one year Later offences: Fine: up to \$20,000; and/or Imprisonment: up to two years
False or fraudulent scales and weights	Being engaged in the business of milling, leaching, sampling, concentrating, reducing, assaying, transporting, buying, selling or otherwise dealing in ores, metals or minerals and (a) keeping or using any false or fraudulent scales or weights for weighing such ores, metals or minerals; or (b) using any false or fraudulent assay scales or weights or enriched fluxes used for ascertaining the assay value of minerals, knowing them to be false or fraudulent Regulation 67(1)(o), 67(2) and 67(3) MMR	First offence: Fine: up to \$10,000 and/or Imprisonment: up to one year Later offences: Fine: up to \$20,000; and/or Imprisonment: up to two years
Stealing minerals	Any person who steals or severs with intent to steal any mineral as defined in MMA is guilty of a felony. Section 256 Penal Code	Imprisonment: 5 years

TABLE
4

FISHERIES OFFENCES

• **Fisheries Management Act 2015 (FMA)**

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Conflict of Interest	The Minister or any other person discharging responsibilities or functions or duties that fall within the scope of the FMA (and their immediate families) must disclose conflicts of interest. Sections 16(1)(a) and (b), 16(5) FMA	Fine: up to \$3,000,000 (individual) or \$9,000,000 (company)
Declaration of national Marine Protected Area and Marine Managed Areas	The Minister may declare a national Marine Protected Area or a national Marine Managed Area. No person shall engage, or permit or allow any other person to engage in any activity that is prohibited under any such declaration, or which results in destruction or adverse impacts on the fishery resource in the declared area. Sections 19(5) and (6) FMA	Fine: up to \$5,000,000 (individual) or \$15,000,000 (company); and/or Imprisonment: up to 2 years Where there is destruction or adverse impacts on the fishery resource in the declared area, then the offender is also liable to pay full compensation and restoration of the area to its original state
Recognition of customary rights	No person shall, without permission given by the relevant customary rights holders, use a vessel other than a vessel used for customary fishing to engage in fishing, otherwise enter, or directly or indirectly cause destruction to an area subject to customary fishing rights. Sections 21(2) and (3) FMA	Fine: up to \$1,000,000 (individual) or \$3,000,000 (company); and/or Imprisonment: up to 1 year Where it is proved that customary rights have been breached, the High Court may order compensation be paid to the customary rights holder
Breach of prohibition relating to fishing and related activities	The Director may make an Order prohibiting a number of actions, including in relation to fishing times, fish size, fishing methods and gear and equipment. Contravening an Order is an offence. Section 22(4) FMA	Fine: up to \$5,000,000 (individual) or \$15,000,000 (company); and/or Imprisonment: up to 2 years

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Fishing with prohibited substances	<p>Subject to any relevant Provincial Ordinance, no person shall, for the purpose of killing, taking, stunning, stupefying or disabling fish or in any way rendering fish more easily caught:</p> <ul style="list-style-type: none"> (a) use, permit to be used or attempt to use; (b) carry, permit to be carried, possess or committed; or (c) place in the water or assist in placing in the water any chemical, poison or noxious substance, bomb, electric device, or material (whether of manufactured or of natural origin), dynamite or explosive substance or device. <p>No person shall:</p> <ul style="list-style-type: none"> (a) land, tranship, buy, sell, deal in, transport, receive or possess any fish or fish product taken by any means which contravenes section 23; or (b) fail or refuse to give, on request to any authorised officer, information regarding – <ul style="list-style-type: none"> (i) an activity described above, or the support of or any contribution to such activity; or (ii) the source of the supply of any fish or fish product referred to in paragraph (a). <p>Sections 23(3),(5) and (6) FMA</p>	<p>Fine: up to \$3,000,000 (individual) or \$9,000,000 (company); and/or</p> <p>Imprisonment: up to 3 years (with an additional 3 month term added to the penalty for further offences)</p> <p>All fish and fish products seized are forfeited, and any vessel or vehicle used to transport such fish or fish products may be forfeited to the Solomon Islands government</p>
Drift net fishing	<p>No person shall engage in or assist any driftnet fishing activities in the fisheries waters, or permit or use a vessel for such activities.</p> <p>No person shall permit, use or assist a vessel that is registered in Solomon Islands, to participate in or provide support to any driftnet fishing activities in the areas beyond the fisheries waters.</p> <p>No Solomon Islands national shall engage or assist in any driftnet fishing activities in areas beyond the fisheries waters.</p> <p>Sections 24(1),(2),(3) and (4) FMA</p>	<p>Fine: up to \$4,000,000 (individual) or \$12,000,000 (company); and/or</p> <p>Imprisonment: up to 4 years</p> <p>Fishing vessel and gear is forfeited to the Solomon Islands government</p>
Tampering with or destruction of property in fisheries waters	<p>No person shall, within the fisheries waters, remove any fish from any fishing gear, pond, enclosure or storage device unless he or she is the owner or is acting with the authority of the owner.</p> <p>No person shall destroy, damage or knowingly or intentionally impair the functioning of any fishing gear, pond, enclosure or storage device which belongs to another person.</p> <p>No person shall destroy, damage or take any part of a fish aggregating device, artificial reef, mooring buoy, float, tray or other device which belongs to another person and has been authorised and deployed in accordance with the FMA.</p> <p>Sections 25(1), (2), (3) and 5 FMA</p>	<p>Fine: up to \$1,000,000 (individual) or \$3,000,000 (company); and/or</p> <p>Imprisonment: up to 1 year</p>

TABLE 4: FISHERIES OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Use, possession on vessel import, purchase or sale of prohibited gear	<p>No person shall use for fishing any fishing gear which does not conform to requirements of the FMA and no operator of a vessel shall, where it is prohibited, permit such fishing gear on board any vessel in the fisheries waters.</p> <p>No person shall import, buy or sell a driftnet or any other fishing gear prohibited by the FMA.</p> <p>Sections 26(1), (2), and (3) FMA</p>	<p>Fine: up to \$5,000,000 (individual) or \$15,000,000 (company); and or</p> <p>Imprisonment: up to 3 years</p> <p>The prohibited gear is forfeited to the Solomon Islands government</p>
Possession and trade in fish, fish product or other fisheries resources	<p>No person shall buy, sell, possess or otherwise trade in fish, fish products, or any other fishery resource taken or obtained in contravention of the FMA.</p> <p>Sections 27(1) and (2) FMA</p>	<p>Fine: up to \$2,000,000 (individual) or \$6,000,000 (company); and/or</p> <p>Imprisonment: up to 2 years</p> <p>All fish or fish products are forfeited to the Solomon Islands government</p>
Sale or export of adulterated or contaminated fish or fish products	<p>Any person who sells or exports fish or fish products intended for human consumption shall comply with all applicable food quality, health and sanitation standards and shall not sell or export such fish or fish products if they:</p> <ul style="list-style-type: none"> (a) are adulterated; (b) are contaminated with or contain a poisonous or harmful substance or pathogenic micro-organisms; (c) have not met lawful inspection standards; or (d) are otherwise injurious to human health. <p>Sections 28(1) and (2) FMA</p>	<p>Fine: up to \$2,000,000 (individual) or \$6,000,000 (company); and/or</p> <p>Imprisonment: up to 2 years</p> <p>All fish or fish products that do not comply with the standards are forfeited to the Solomon Islands government</p>
Interference with inspected fish or fish products	<p>No person shall, except with the written permission of the Director:</p> <ul style="list-style-type: none"> (a) remove, alter or interfere with a trade description, seal, stamp or other mark applied to a container or a container system unit containing fish or fish products that has been inspected by an authorised officer; (b) add to, remove from, or otherwise change the composition of any consignment of fish that has been certified as inspected by an authorised officer; or (c) unseal or leave unsealed any boxes that have been inspected by an authorised officer. <p>Sections 29(1) and (2) FMA</p>	<p>Fine: up to \$2,000,000 (individual) or \$6,000,000 (company); and/or</p> <p>Imprisonment: up to 2 years</p> <p>All fish or fish products are forfeited to the Solomon Islands government</p>

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Deploying or maintaining a fish aggregating device without permission or in contravention of requirements	<p>No person shall deploy or maintain a fish aggregating device in the fisheries waters, and no Solomon Islands fishing vessel shall deploy or maintain a fish aggregating device in areas beyond national jurisdiction, except with the permission of the Director and in accordance with such conditions as he or she may specify or as are otherwise specified in the FMA and an applicable access agreement.</p> <p>Sections 30(1) and (2) FMA</p>	<p>Fine: up to \$5,000,000 (individual) or \$15,000,000 (company); and/or</p> <p>Imprisonment: up to 2 years</p>
Protected or endangered species	<p>The Minister may, on the advice of the Director and in consultation with the Minister responsible for environment, by Order in the Gazette, declare as protected or endangered any fish:</p> <p>(a) that are designated as protected or endangered under an international agreement; or</p> <p>(b) that the Director recommends be declared as protected or endangered, based on the best available scientific evidence.</p> <p>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.</p> <p>Sections 31(2) and (3) FMA</p>	<p>Fine: up to \$500,000 (individual) or \$1,500,000 (company); and/or</p> <p>Imprisonment: up to 6 months</p> <p>The fish or fish products are forfeited to the Solomon Islands government</p>
Pollution of the fishery waters	<p>No person shall attempt to introduce, prepare for the introduction of or introduce into the fisheries waters, directly, indirectly, deliberately or accidentally, any deleterious substance, including substances which may have toxic, hazardous or other harmful properties or effects in relation to fish or the aquatic environment, and which may adversely affect the habitat or health of the fish.</p> <p>Sections 32(1) and (2) FMA</p>	<p>Fine: up to \$5,000,000 (individual) or \$15,000,000 (company); and/or</p> <p>Imprisonment: up to 6 months</p> <p>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.</p>
Records, returns, data and information	<p>Certain persons (such as licence holders) may be required to keep, furnish and communicate true, complete and accurate information, accounts, records, returns, documents and any other information in relation to activities falling within the scope of the FMA.</p> <p>Sections 33(5) and (6) FMA</p>	<p>Fine: up to \$3,000,000 (individual) or \$9,000,000 (company); and or</p> <p>Imprisonment: up to 3 years</p> <p>If the person is a licence holder, then their licence is cancelled.</p>

TABLE 4: FISHERIES OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Foreign fishing vessels	<p>The owner and the operator of a foreign fishing vessel that enters the fisheries waters or is used for fishing or related activities in the fisheries waters, except in compliance with the FMA, Solomon Islands law, or, where there is no applicable provision, international law, each commits an offence</p> <p>An owner or operator who contravenes the above does not commit an offence if he or she enters the fisheries waters or uses such vessel for fishing or related activities in the fisheries waters for a lawful purpose recognised by the FMA, Solomon Islands law or, where there is no applicable provision, by international law as recognized by Solomon Islands.</p> <p>Sections 37(1) and (2) FMA</p>	<p>Fine: up to \$12,000,000 (individual) or \$36,000,000 (company);</p> <p>and or</p> <p>Imprisonment: up to 5 years</p>
Carrying out certain activities without a valid and applicable licence or authorisation	<p>No person shall engage in any of the following activities without a valid and applicable licence or authorisation issued in accordance with the FMA –</p> <ul style="list-style-type: none"> (a) using a fishing vessel for fishing related activities in the fisheries waters, including – <ul style="list-style-type: none"> (i) transshipment; (ii) bunkering at sea; and (iii) supply of spare parts to fishing vessels; (b) using a Solomon Islands fishing vessel for fishing or related activities in areas beyond the fisheries waters, including fishing on the high seas or fishing in waters under the jurisdiction of another State; (c) artisanal fishing in direct or indirect association with a registered company, except for recreational fishing; (d) the export or import of fish, live fish or fish products; (e) operating export facilities for the export or import of fish, live fish or fish products; (f) operating fish and fish product processing or storage facilities; (g) any activity relating to processing for purposes of export; (h) commercial aquaculture; (i) subject to section 3 of the Research Act (Cap. 152), research into fisheries, fishery resource or related activities within the fisheries waters; (j) introduction into the fisheries waters of any genetically modified fish; (k) commercial sport fishing; or (l) such other activities as may be prescribed. <p>Section 43 FMA</p>	<p>Fine: up to \$100,000 (individual) or \$300,000 (company)</p> <p>(see section 99(2) FMA)</p>

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Fish processing for export without a fish export licence	<p>No person shall engage in any activity relating to fish processing for the purposes of export without a licence.</p> <p>Sections 44(1) and (2) FMA</p>	<p>Fine: up to \$5,000,000 (individual) or \$15,000,000 (company); and/or</p> <p>Imprisonment: up to 5 years</p>
Buying fish from an unlicensed storage facility, buying or selling in contravention of the FMA	<p>No person shall:</p> <p>(b) buy fish from an unlicensed storage facility or an unlicensed fish processing facility; or</p> <p>(c) buy or sell fish where there are reasonable grounds to believe that it has been caught in contravention of the FMA.</p> <p>Sections 44(1) and (3) FMA</p>	<p>Fine: up to \$2,000,000 (individual) or \$6,000,000 (company); and/or</p> <p>Imprisonment: up to 2 years</p>
Terms and conditions of licences	<p>The holder of a licence issued under the FMA shall:</p> <p>(a) comply with the terms and conditions of the licence;</p> <p>(b) comply with the FMA, the laws of Solomon Islands, any applicable Access Agreement and any applicable international conservation and management measure;</p> <p>(c) comply with all relevant provisions of the laws of Solomon Islands relating to navigational standards and the safety of vessels at sea; and</p> <p>(d) not engage in fishing, except as authorised under the licence, or exceed the amount of fish or number of vessel days authorised.</p> <p>The holder of a licence shall ensure that the original licence, or a certified scanned electronic version or certified copy of it is on board the licensed vessel in the wheelhouse at all times during the period of validity and the master shall, upon request, produce it to an authorised officer or other person authorised under the FMA.</p> <p>The holder of a licence for any activity licensed under the FMA, other than for fishing vessels, shall:</p> <p>(a) display a certified copy of the licence in its registered business office; and</p> <p>(b) upon request, produce the licence to an authorised officer or other person authorised under the FMA to inspect it.</p> <p>Sections 49(2), (3), (4) and (7) FMA</p>	<p>Fine: up to \$2,000,000 (individual) or \$6,000,000 (company); and/or</p> <p>Imprisonment: up to 2 years</p> <p>The person's licence may be suspended or cancelled in addition to the penalties</p>

TABLE 4: FISHERIES OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Reporting	<p>The operator of a licensed vessel (or other vessels prescribed by the Director) must maintain certain log books and make certain reports.</p> <p>Sections 50(1), (2) and (3) FMA</p>	<p>Fine: up to \$3,000,000 (individual) or \$9,000,000 (company); and/or</p> <p>Imprisonment: up to 3 years</p> <p>The Court or summary administrative panel may order a ban from fishing in the fisheries waters or engaging in any other activity for which a licence is required for up to 5 years (section 107 FMA)</p>
Engaging in activities after suspension or cancellation of licence	<p>Any person who engages in any activity for which their licence or authorisation was granted after receiving notice of suspension or cancellation commits an offence.</p> <p>Section 52(6) FMA</p>	<p>Fine: up to \$5,000,000 (individual) or \$15,000,000 (company); and/or</p> <p>Imprisonment: up to 5 years</p>
Compliance with requirements and terms of licence or authorisation	<p>No person shall, except in accordance with a valid and applicable licence or authorisation granted under the FMA :</p> <ul style="list-style-type: none"> (a) on his or her own account or in any other capacity, engage in any activity; (b) cause or permit a person acting on his or her behalf to engage in any activity; or (c) use or permit a vessel to engage in fishing or a related activity, <p>that is of a kind or type, or at a time, or in a place or manner, for which a licence or authorisation is required under the FMA.</p> <p>Where a vessel is used in the commission of an offence, the operator, master and charterer of the vessel is deemed each to have committed the offence.</p> <p>Section 56(1) and (4) FMA</p>	<p>Fine: up to \$10,000,000 (individual) or \$30,000,000 (company); and/or</p> <p>Imprisonment: up to 10 years</p> <p>The Court or summary administrative panel may order a ban from fishing in the fisheries waters or engaging in any other activity for which a licence is required for up to 5 years (section 107 FMA)</p>

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Gear stowage and reporting	<p>The operator of a:</p> <ul style="list-style-type: none"> (a) fishing vessel in any place in the fisheries waters where it is not licensed for fishing or related activities; or (b) Solomon Islands fishing vessel when navigating in areas beyond fisheries waters where it has not been authorised for fishing or related activities pursuant to the FMA, <p>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 while the vessel remains unlicensed or unauthorised to engage in fishing or related activities in such area.</p> <p>Sections 57(1) and (5) FMA</p>	<p>Fine: up to \$3,000,000 (individual) or \$9,000,000 (company); and/or</p> <p>Imprisonment: up to 3 years</p>
Solomon Islands' vessels in areas beyond national jurisdiction	<p>No person shall use a Solomon Islands fishing vessel :</p> <ul style="list-style-type: none"> (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 – <ul style="list-style-type: none"> (i) does not comply with an applicable Access Agreement; or (ii) undermines the effectiveness of applicable international conservation and management measures in an area to which such measures apply. <p>Section 58(1) and (3) FMA</p>	<p>Fine: up to \$5,000,000 (individual) or \$15,000,000 (company); and/or</p> <p>Imprisonment: up to 3 years</p>
Import and export of live fish	<p>Any person who exports or imports live fish without a valid and applicable licence commits an offence.</p> <p>Section 59(6) FMA</p>	<p>Fine: up to \$1,000,000 (individual) or \$3,000,000 (company); and/or</p> <p>Imprisonment: up to 1 year</p>

TABLE 4: FISHERIES OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Transshipment at sea	No person shall engage in transshipment activities at sea, except in accordance with an authorisation as required under section 61 of the FMA. Section 60(1) and (2) FMA	Fine: up to \$8,000,000 (individual) or \$24,000,000 (company); and/or Imprisonment: up to 3 years The Court or summary administrative panel may order a ban from fishing in the fisheries waters or engaging in any other activity for which a licence is required for up to 5 years (section 107 FMA)
Requirements for transshipment	The operator of a fishing vessel intending to engage in, or engaging in, transshipment must obtain an authorization and comply with the requirements of section 61 of the FMA. Sections 61(1) and (2) FMA	Fine: up to \$5,000,000 (individual) or \$15,000,000 (company)
Requirements for bunkering activities	The operator of a fishing vessel intending to engage in, or engaging in bunkering activities within the fisheries waters shall only do so under a valid authorisation, must pay all required fees and shall comply with such conditions that may be prescribed or the Director may require. Sections 62(1), (2) and (3) FMA	Fine: up to \$2,000,000 (individual) or \$6,000,000 (company)
Requirements for fish and fish products processing and storage facilities	The operator of a fish and fish product processing and storage facility shall – (a) comply with all relevant health, sanitation and environmental laws and standards of Solomon Islands; and (b) not accept any fish for processing or storage that has been caught by fishing vessel that is on an IUU list. Sections 63(1) and (2) FMA	Fine: up to \$2,000,000 (individual) or \$6,000,000 (company); and/or Imprisonment: up to 2 years

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Removal of parts from seized vessels	<p>An authorised officer may remove any part from the vessel seized pursuant to the FMA for the purpose of immobilising that vessel. Any such parts must be kept safely and returned to the vessel upon its release.</p> <p>No person, otherwise than acting in accordance with a written direction from the Director, shall –</p> <ul style="list-style-type: none"> (a) possess or arrange to obtain any part or parts removed as above; (b) possess or arrange to obtain or make any replacement or substitute part or parts for those removed as above; 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 the FMA. <p>Sections 73(3) and (4) FMA</p>	<p>Fine: up to \$500,000 (individual) or \$1,500,000 (company); and/or</p> <p>Imprisonment: up to 6 months</p>
Observer and port sampling programs	<p>The Director may require as a condition of a licence issued under the FMA that, where a fishing vessel undertakes a fishing trip in the fisheries waters, the operator of the fishing vessel shall comply with port sampling requirements at a port designated by the Director or the Minister where the fish are offloaded.</p> <p>Section 74(6) FMA</p>	<p>Fine: up to \$2,000,000 (individual) or \$6,000,000 (company)</p> <p>The applicable licence in respect of the vessel or operator is cancelled and no further licence can be issued for at least 1 year from the date of commission of the offence.</p>
Duty of operators, licence holders and crew members to assist observers and port samplers	<p>The licence holder, operator and each crew member of any vessel on which an observer is placed or to which a port sampler has been assigned, shall allow and assist the observer or port sampler, in the performance of their duties, to do a number of things as set out in section 77(1).</p> <p>Section 77(3) FMA</p>	<p>Fine: up to \$8,000,000 (individual) or \$24,000,000 (company)</p>
Conditions or observers and port samplers	<p>The operator and licence holder in respect of any vessel on which an observer is placed or port sampler is assigned shall provide free of charge to that observer or port sampler full board, accommodation, work space and access to any cooking and toilet facilities and amenities, at officer level or at a similar standard approved in writing by the Director.</p> <p>Sections 78(1) and (2) FMA</p>	<p>Fine: up to \$1,000,000 (individual) or \$3,000,000 (company)</p> <p>The applicable licence may be suspended or cancelled</p>

TABLE 4: FISHERIES OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Notice of intention to place observer	<p>The operator of a licensed vessel shall, for purposes of observer placement and deployment:</p> <p>(a) notify the Director at the beginning of each licensing period of any port or ports in Solomon Islands where it intends to base operations, and if placement is not possible at such port or ports, be responsible to the Director for all and any extra costs incurred in observer placement; and</p> <p>(b) notify the Director of the intended time of entry into and subsequent departure from port at such reasonable time prior to such entry as the Director may direct.</p> <p>Sections 80(2) and (3) FMA</p>	<p>Fine: up to \$1,000,000 (individual) or \$3,000,000 (company)</p> <p>The applicable licence may be suspended or cancelled</p>
Authority and powers of fish quality control auditors	<p>Each fish quality control auditor has the authority in relation to any place, facility, and surroundings or vessel falling within the scope of the FMA which has been, is being, or is intended to be used for the commercial storage or preparation of fish or fish products to require the seizure, segregation or disposal of any fish or fish product that he or she has reason to believe does not conform to standards for fish quality control under the FMA.</p> <p>Sections 82(1) and (2) FMA</p>	<p>Fine: up to \$2,000,000 (individual) or \$6,000,000 (company); and/or</p> <p>Imprisonment: up to 2 years</p>
Obstruction of authorized persons	<p>There are a large number of actions relating to the obstructions of authorized officers that are prohibited by section 85 of the FMA.</p> <p>Sections 85(2) and (3) FMA</p>	<p>Fine: up to \$8,000,000 (individual) or \$24,000,000 (company)</p> <p>In some cases, the Court or summary administrative panel may order a ban from fishing in the fisheries waters or engaging in any other activity for which a licence is required for up to 5 years (section 107 FMA)</p>

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
<p>Vessel monitoring systems (conditions, measures when inoperative)</p>	<p>The Director shall require as a condition of any licence issued for the purpose of fishing for tuna or tuna-like species, and may require for other purposes within the scope of the FMA, that the operator of the licensed vessel supply, install, maintain and operate, in accordance with any specifications as may be prescribed or as may be required under an international agreement:</p> <ul style="list-style-type: none"> (a) a specified mobile transceiver unit; or (b) another device that forms an integral part of a vessel monitoring system; or (c) both such items in paragraphs (a) and (b). <p>If a mobile transceiver unit stops working, the operator of the licensed vessel on which it is installed shall immediately:</p> <ul style="list-style-type: none"> (a) notify the Director that the mobile transceiver unit has stopped working; and (b) proceed to do the following; <ul style="list-style-type: none"> (i) commence submission of manual reports to the Director, every 4 hours, or at such intervals as the Director requires, giving the vessel's name, call sign, position (expressed in latitude and longitude to the minutes of arc), and the date and time of the report; and (ii) cause the vessel to cease fishing and travel to the nearest suitable port within Solomon Islands or such other port as is approved by the Director. <p>Sections 86(2) and (3) FMA</p>	<p>Fine: up to \$5,000,000 (individual) or \$15,000,000 (company); and/or</p> <p>Imprisonment: up to 2 years</p>
<p>Vessel monitoring systems (renders inoperative or interferes with a mobile transceiver unit)</p>	<p>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 commits an offence.</p> <p>Section 86(5) FMA</p>	<p>Fine: up to \$3,000,000 (individual) or \$9,000,000 (company); and/or</p> <p>Imprisonment: up to 3 years</p>
<p>Vessel monitoring systems (divulges information to unauthorized persons)</p>	<p>Any person who divulges information from a vessel monitoring system to any other person not authorised to receive such information commits an offence.</p> <p>Section 86(6) FM</p>	<p>Fine: up to \$1,000,000 (individual) or \$3,000,000 (company); and/or</p> <p>Imprisonment: up to 1 year</p>

TABLE 4: FISHERIES OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
<p>Entry and use of designated ports</p>	<p>No foreign fishing vessel shall enter or use a port in Solomon Islands unless:</p> <ul style="list-style-type: none"> (a) the port is designated by the Director or Minister for use by foreign fishing vessels; (b) the operator gives at least 48 hours advance notice of his or her intention to enter or use the port, or such other advance notice as may be prescribed or as may be required by the Director; and (c) the operator provides to the Director such information as may be prescribed or as may be required by the Director. <p>Foreign fishing vessels that do not hold a valid and applicable licence for fishing or related activities in the fisheries waters shall not enter or use a port in Solomon Islands unless –</p> <ul style="list-style-type: none"> (a) the Director issues a written authorisation for entry into and use of the port; and (b) such authorisation is presented to an authorised officer or other competent officer upon the vessel's arrival at ports. <p>Section 87 FMA</p>	<p>Fine: up to \$3,000,000 (individual) or \$9,000,000 (company); and/or</p> <p>Imprisonment: up to 1 year</p>
<p>Denial of use of port</p>	<p>Where the use of a port has been denied, the operator, master and charterer of a vessel that uses a port commits an offence and on conviction is liable to a fine not exceeding the maximum amount described in the First Schedule or imprisonment to a term not exceeding 1 year, or to both.</p> <p>Sections 89(1), (2) and (4) FMA</p>	<p>Fine: up to \$8,000,000 (individual) or \$24,000,000 (company); and/or</p> <p>Imprisonment: up to 1 year</p>
<p>General offences</p>	<p>Every person who contravene or fails to comply with the FMA or any notice, direction, restriction, requirement or condition given, made or imposed under the FMA, other than a requirement to pay a sum of money, commits an offence.</p> <p>Every person who commits an offence under any section of the FMA for which no other penalty is provided is liable on conviction to a fine.</p> <p>Sections 99(1) and (2) FMA</p>	<p>Fine: up to \$100,000 (individual) or \$300,000 (company)</p>
<p>Banning order</p>	<p>It is an offence to contravene or fail to comply with a banning order.</p> <p>Section 107(1) and (2) FMA</p>	<p>Fine: up to \$4,000,000 (individual) or \$12,000,000 (company); and/or</p> <p>Imprisonment: up to 4 years</p>

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Summary administrative proceedings decision to proceed administratively	Where a person has consented to summary administrative proceedings, he or she shall not engage in fishing or any related activity in fisheries waters until the assessed administrative penalty is paid in full. Section 117(5) (as read with section 116(4)(b)) FMA	Fine: up to \$1,000,000 (individual) or \$3,000,000 (company), as well as costs as described in section 105(1)(a) to (c)
Interfering with evidence	No person shall interfere with evidence which may be related to an offence under the FMA. Sections 127(1) and (3) FMA	Fine: up to \$3,000,000 (individual) or \$9,000,000 (company); and/or Imprisonment: up to 3 years
Activities contrary to the laws of another State	No person shall, within Solomon Islands or in the waters, on their own account or in any other capacity: (a) cause or permit a person acting on their behalf to take, import, export, land, tranship, transport, sell, receive, acquire or buy any illegal fish or fish product; 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). Section 128(1) and (4) FMA	Fine: up to \$2,000,000 (individual) or \$6,000,000 (company); and/or Imprisonment: up to 2 years

TABLE 5

WILDLIFE IMPORT AND EXPORT OFFENCES

- **Wildlife Protection and Management Act 1998 (WPMA)**
- **Wildlife Protection and Management Regulations (WPMR)**

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Importing or exporting except for transshipment, or for diagnostic tests	<p>Importing or exporting an specimen, except where:</p> <p>(a) the specimen is brought into Solomon Islands as part of an aircraft or a vessel's stores or for the purpose of transshipment to another country; or</p> <p>(b) sent out or brought into Solomon Islands by a prescribed organisation for the purpose of using the specimen for diagnostic tests that are carried out in an endeavour to identify a disease of humans, animals or plants.</p> <p>Section 4 WPMA</p>	<p>Fine: up to \$5,000; and/or</p> <p>Imprisonment: up to 6 months</p>
Exporting Schedule I species without a scientific research permit	<p>A person exporting or attempting to export any plant or animal specimen specified in Schedule I, unless he is an approved person and has a valid export permit issued for scientific research purposes under section 14(5).</p> <p>Section 11(1) WPMA</p>	<p>Fine: up to \$5,000; and/or</p> <p>Imprisonment: up to 6 month</p>
Exporting a Schedule II species with out commercial export permit	<p>A person exporting or attempting to export any plant or animal specimen specified in Schedule II, unless he is an approved person and has a valid permit to export such specimen for commercial purposes or otherwise under section 14.</p> <p>Section 11 (2) WPMA</p>	<p>Fine: up to \$3,000; and/or</p> <p>Imprisonment: up to 3 months</p>
Importing prohibited or restricted species	<p>A person importing or attempting to import any plant or animal specimens declared by the Minister by Order to be prohibited or restricted import, unless such a person is an approved person and has a valid permit issued under section 14.</p> <p>Section 12 WPMA</p>	<p>No penalty prescribed. Section 4 WPMA may be applicable.</p>
Disposing of imported animals and their progeny without approval	<p>A permit holder selling or otherwise disposing of any imported animal or progeny of that animal to any other person, or releasing the imported animal or progeny from captivity, except in accordance with the written approval of the Director.</p> <p>Section 24(1) WPMA</p>	<p>Fine: up to \$5,000; and/or</p> <p>Imprisonment: up to 3 months</p>
Burying, disposing, cremating imported animal	<p>A permit holder failing to bury, cremate or dispose of the body of a dead imported animal in a satisfactory manner.</p> <p>Section 24(2) WPMA</p>	<p>Fine: up to \$5,000; and/or</p> <p>Imprisonment: up to 3 months</p>

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Selling, disposing, planting or sowing imported plants and their progeny	Except in accordance with the written approval of the Director, a permit holder selling or otherwise disposing of an imported plant or the progeny of that plant to any other person, or planting or sowing that imported plant or progeny of that plant in such a manner as to enable that plant to be in or spread to an area or place that is not under the effective control of the permit holder. Section 25(1) WPMA	Fine: up to \$5,000; and/or Imprisonment: up to 3 months
Burying, burning, disposing dead imported plants	A permit holder failing to bury, burn or otherwise dispose of a dead imported plant in a satisfactory manner. Section 25(2) WPMA	Fine: up to \$5,000; and/or Imprisonment: up to 3 months
Possessing illegal specimens	A person who without reasonable excuse has in his possession- (a) on board a vessel or aircraft any specimen obtained in contravention of the provisions of the WPMA; or (b) any specimen that he knows or has reasonable grounds to suspect has been imported or is to be exported in contravention of the provisions of the WPMA Section 26 WPMA	Fine: up to \$10,000; and/or Imprisonment: up to 5 years
Wilful obstruction and failure to comply with an order	A person who wilfully obstructs any inspector in the exercise of any of the powers conferred upon him under the WPMA; or fails to comply with any lawful order made by an inspector or to answer any question in the course of an inquiry made by any inspector the WPMA. Section 31 WPMA	Fine: up to \$2,000; and/or Imprisonment: up to one year
False or misleading statements and information	A person in connection with an application for a permit knowingly makes a false statement or knowingly furnishes an inspector information that is false or misleading. Section 33 WPMA	Fine: up to \$2,000; and/or Imprisonment: up to 2 years
Non-approved person taking, holding, exporting or importing specimens	Any person, except a person, institution or zoological organization declared as an approved person, taking and holding specimens, or exporting and importing specimens. Regulation 9(6) WPMR	Fine: up to \$3,000; and/or Imprisonment: 3 months

TABLE 6

PROTECTED AREAS OFFENCES

- **Protected Areas Act 2010 (PA Act)**
- **Protected Areas Regulations (PA Regulations)**

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Mining and logging	<p>No industrial or commercial extraction of timber, round logs, non-timber forest products or minerals (including quarry or gravels) by whatever means or method shall be carried out in a protected area or within a distance not more than 1 kilometre of the defined boundaries of such area, as determined by the Director taking into account the nature of the protected area.</p> <p>Regulation 61 PA Regulations</p>	<p>Fine: up to \$100,000 (individual)</p> <p>Up to \$500,000 (company)</p>
Restricted activities	<p>No person shall within the protected area, either intentionally or negligently do one or more of the following, except to the extent as authorised by the management committee or the management plan of a protected area:</p> <ol style="list-style-type: none"> Carry on any agricultural or gardening activities Build any dwelling house or unlawfully occupy the area Light or cause and open fire to be started Throw, litter, dump or release any effluent, sewage, refuse, rubbish or toilet waste Allow or introduce any grazing stock, animals or species Erect, install or display any billboard, advertisement or promotional material Cut, destroy or remove any plant or tree including firewood Remove, extract or excavate any soil, sand, gravel or other material Hunt, kill or slaughter any animal or other living creature Destroy or deface any cultural object or monument of biodiversity and cultural significance 	<p>Fine: up to \$10,000 (individual)</p> <p>Up to \$50,000 (company)</p>
Taking species	<p>No person shall take any organism, species, or other form of flora and fauna from a protected area except:</p> <ol style="list-style-type: none"> With the authorisation of the management committee In accordance with a bioprospecting or bioresearch permit issued under the Act and Regulations Pursuant to an agreement concluded with the management committee <p>Regulation 61 PA Regulations</p>	<p>Fine: up to \$10,000 (individual)</p> <p>Up to \$50,000 (company)</p>

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Flying aircraft in or over protected area without authority	No person shall fly an aircraft in or over a protected area at an altitude of less than 500 metres except in situation of emergency or distress, where an airfield or airstrip is located next to or within the protected area, or in the express instruction of the management committee. Regulation 63 PA Regulations	Fine: up to \$10,000 (individual) Up to \$50,000 (company)
Marine: boundary markers	Intentionally or negligently tampering with or removing a boundary marker. Regulation 48 PA Regulations	Fine: up to \$5,000 (individual) Up to \$25,000 (company)
Marine: travelling speed	Except in situations of emergency, disaster or distress, any vessel entering or transiting through an MPA shall reduce its cruising speed to 5 knots. Regulation 49 PA Regulations	Fine: up to \$5,000 (individual) Up to \$25,000 (company)
Marine: spawning seasons and aggregations	No harvesting of fish or other aquatic resources for commercial or subsistence purposes shall be undertaken in an MPA within clearly identified spawning aggregations or during a spawning season. Regulation 50 PA Regulations	Fine: up to \$5,000 (individual) Up to \$25,000 (company)
Marine: dredging and trawling	No dredging, trawling or dragging of nets or wire mesh on the sea floor. Regulation 52 PA Regulations	Fine: up to \$5,000 (individual) Up to \$25,000 (company)
Marine: dumping of wastes	No person shall, from vessel, dump or discharge any waste garbage or other polluting or harmful substance within a marine protected area. Regulation 53 PA Regulations	Fine: up to \$10,000 (individual) Up to \$50, 000 (company)
Marine: land based pollution	No person shall, whether intentionally or negligently, carry out any terrestrial activity or development that will or will not most likely release into an MPA effluent or polluting material that is harmful or destructive to the biodiversity, aquatic life or ecosystems of the area. It is an offence not to comply with an order from the Director ordering such activities to cease. Regulation 54 PA Regulations	Fine: up to \$100,000 (individual) Up to \$500,000 (company)
Marine: removing live coral	No person shall, by whatever means, remove, take, harvest or extract live coral from an MPA without the authority of the management committee. Regulation 55 PA Regulations	Fine: up to \$5,000 (individual) Up to \$25,000 (company)

TABLE 6: PROTECTED AREAS OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Marine: anchoring	No vessel shall be anchored in any place within a MPA other than a place designated for that purpose by the management committee. Regulation 56 PA Regulations	Fine: up to \$5,000 (individual) Up to \$25,000 (company)
Marine: grounding vessel	No person shall, either intentionally or negligently, ground a vessel on a reef within a protected area. Regulation 57 PA Regulations	Fine: up to \$10,000 (individual) Up to \$50,000 (company)
Marine: spilling oil or releasing harmful substance or causing damage -	Where the grounding of a vessel results in oil spillate or release of other harmful substance that destroys or threatens the ecosystems and marine life of the area, or damages the ecosystems and marine life of the area, the owner of the vessel is liable to the full cost of clean up and rehabilitation. In addition the owner commits an offence. Regulation 57(3) PA Regulations	Fine: up to \$100,000 (individual) Up to \$500,000 (company)
Wilful obstruction of a ranger	Wilfully obstructing a ranger when lawfully performing the functions and powers of the ranger under the PA Act and PA Regulations Regulation 67 PA Regulations	Fine: up to \$10,000 (individual) Up to \$50,000 (company)
Disclosure of a confidential report	Section 6(3) PA Act	Fine: up to \$2,000 (individual) Up to \$10,000 (company)
Undertaking biodiversity research or bioprospecting without a permit	Section 16(3) PA Act	Fine: up to \$500,000 (individual) Up to \$2,500,000 (company)
Obstruction of any person performing a function or exercising powers under the PA Act	Section 21 PA Act	Fine: up to \$10,000 (individual) Up to \$50,000 (company)

TABLE 7

NUISANCE AND GENERAL POLLUTION OFFENCES

- **Environmental Health Act (Cap 99) (EH Act)**
- **Environmental Health (Public Health Act) Regulations 1980 (EH Regulations)**
- **River Waters Act (Cap 135)**
- **Penal Code (Cap 26)**

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Causing a nuisance	No person shall cause a nuisance or shall suffer to exist on any land or premises owned or occupied by him or of which he is in charge any nuisance or other condition liable to be injurious or dangerous to health. Regulations 22 and 26(3) EH Regulations	Fine: \$40 Possible payment of costs incurred up to the time of the Court hearing or making of the order.
Failing to comply with an order relating to nuisance	Any person who fails to obey an order to comply with the requirements of the local authority or health inspector, or otherwise to remove the nuisance, shall, unless he satisfies the Court that he has used all diligence to carry out such order, be guilty of an offence. Regulation 27 EH Regulations	Fine: \$40, plus \$10 per day for continuing offences Also liable for costs of the authority in relation to expenses incurred in removing the nuisance.
Refusing access	Any person who fails to give or refuses access to any health officer, health inspector, medical officer or police officer if such health officer, health inspector, medical officer or police officer requests entry to any dwelling or premises, or obstructs or hinders him in the execution of his duties shall be guilty of an offence Regulation 30 EH Regulations	Fine: \$40
Offensive trades	Any person who, on any premises, without the consent in writing of both the local authority and the Director, establishes or carries on an offensive trade shall be guilty of an offence. Regulation 33 EH Regulations	Fine: \$200
Preventing access to a vessel	Any person who hinders or prevents a health officer or health inspector from making entry and inspection is guilty of an offence. Regulation 51 EH Regulations	Fine: \$100
Pollution of water	Every person who knowingly and wilfully in any way defiles or pollutes any water-course, stream, lake, pond, or reservoir shall be guilty of an offence. Regulation 49(1) EH Regulations	Fine: \$40

TABLE 7: NUISANCE AND GENERAL POLLUTION OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Interfering with water infrastructure	<p>Any person who wilfully injures or unlawfully interferes with any pump, cock, valve, water pipe, cistern, reservoir or storage tank maintained in whole or in part by the Government or a local authority, whether or not such pump, cock, valve, water pipe, cistern, reservoir or storage tank or any part thereof respectively is situated on land or premises the property of such person, shall be guilty of an offence.</p> <p>Regulation 49(2) EH Regulations</p>	Fine: \$40
Public sewer and drains	<p>Any person who:</p> <ul style="list-style-type: none"> (a) places or throws any solid matter, mud or refuse (except such as is contained in ordinary house sewage) in or into any public sewer or public drain or any sewer; drain, inlet or other drainage work communicating with any public sewer or public drain, or over any grate communicating with any public sewer or public drain; (b) causes or knowingly permits any such matter, mud or refuse to be placed or thrown, or to fall, or to be carried, in or into any public sewer or public drain or over any such grate; (c) causes or knowingly permits any such matter, mud or refuse to be placed in such a position as to be liable to fall or be carried as aforesaid; (d) discharges into any public sewer or public drain or into any sewer or drain which, not being a public sewer or public drain, communicates therewith, any chemicals, oil, petroleum or any manufacturing, trade or other refuse (not included as aforesaid) or any waste steam, or any heated liquid, which, either alone or in combination with other matter in any sewer or drain, causes or may cause nuisance or danger to persons entering or being in, or near to, any public sewer or public drain or danger to any public sewer or public drain itself; or (e) wilfully, except with the permission in writing of the local authority, or negligently damages, alters, disconnects or otherwise interferes with any public sewer or public drain or any connection therewith, <p>shall be guilty of an offence.</p> <p>Regulation 80 EH Regulations</p>	Fine: \$50
Prevention of nuisances from septic tanks, etc	<p>Any person who causes, or suffers or permits any person to cause, any septic tank, cesspool, trap, siphon or any sanitary convenience to be a nuisance or injurious or dangerous to health by wilfully destroying or damaging, or by otherwise interfering with, or by improperly using, the same or any water supply, apparatus, pipe or work connected therewith, shall be guilty of an offence.</p> <p>Regulation 88 EH Regulations</p>	Fine: \$100

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Restrictions on depositing refuse on beach or foreshore	<p>Except with the written permission of the local authority, no person shall throw or deposit or cause to be thrown or deposited on any beach or foreshore or into any harbour, estuary or creek, in any urban sanitary district, any box, bottle, tin, paper, or other refuse or matter capable of floating or which is likely to be washed up within the area of the urban sanitary district.</p> <p>Regulation 93 EH Regulations</p>	Fine: \$100
Refuse, etc. not to be deposited in watercourses in urban sanitary districts	<p>No person shall throw, empty or deposit, or cause to be thrown, emptied or deposited, into any part of any river, stream, creek or other watercourse which flows through or into any part of an urban sanitary district, any rubbish, refuse, waste products, raw sewage, or other noxious or offensive matter.</p> <p>Regulation 94 EH Regulations</p>	Fine: \$100
Sewage not to be discharged into water-course	<p>No person shall erect or cause to be erected any latrine over any river, stream, creek or other watercourse which flows into or through any urban sanitary district, and no person shall empty or discharge or cause to be emptied or discharged any raw sewage in any such watercourse, without the written permission of the local authority.</p> <p>Regulation 95 EH Regulations</p>	Fine: \$100
Interference with dustbins and refuse tips prohibited	<p>No person shall, without lawful authority or excuse, sort over, disturb, remove or otherwise interfere with:</p> <ul style="list-style-type: none"> (a) the contents of any dustbin placed in any street for the purpose of its contents being removed by the local authority; or (b) refuse deposited upon any refuse tip or other place provided by the local authority for the deposit of refuse. <p>Regulation 96 EH Regulations</p>	Fine: \$100

TABLE 7: NUISANCE AND GENERAL POLLUTION OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Declared Rivers	<p>Any person who, except under and in accordance with the terms and conditions of a permit issued under the River Waters Act:</p> <ul style="list-style-type: none"> (a) by means of a ditch, drain, channel, pipe or any other means whatsoever, diverts any water from a river; (b) fells any tree so that it falls into a river or river bed; (c) in any manner obstructs or interferes with a river or river bed; (d) builds any bridge, jetty or landing stage over or beside any river; (e) damages or interferes with the banks of any river; or (f) contravenes any order made under section 4 of the River Waters Act Act <p>is guilty of an offence.</p> <p>However, the Act only applies to rivers which have been declared by the responsible Minister (currently the Minister for Mines, Energy and Rural Electrification) to be subject to the Act. Six rivers on Guadalcanal have been declared as being covered by the Act.</p> <p>Section 5 River Waters Act</p>	<p>Fine: \$200; and/or Imprisonment: up to 6 months</p>
Injury, danger, annoyance	<p>To cause any common injury or danger or annoyance, or to obstruct or cause inconvenience to the public in the exercise of common rights.</p> <p>Section 172 Penal Code</p>	<p>Imprisonment: one year</p>
Pollution or obstruction of dams, watercourses, fountains etc	<p>Any person who pollutes or obstructs any aqueduct, dam, sluice, pipe, pump, watercourse or fountain, is guilty of a misdemeanour.</p> <p>Section 181 Penal Code</p>	<p>Fine: \$40; and/or Imprisonment: 2 months</p>
Atmospheric pollution	<p>Any person who voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, is guilty of a misdemeanour</p> <p>Section 186 and 41 Penal Code</p>	<p>Fine: not specified; and/or Imprisonment: up to 2years</p>
Noise and odour	<p>Any person who, for the purposes of trade or otherwise, makes loud noises or offensive or unwholesome smells in such places and circumstances as to annoy any considerable number of persons in the exercise of their common rights, commits and is liable to be punished as for a common nuisance</p> <p>Section 187 Penal Code</p>	<p>Imprisonment: one year</p>

TABLE 8

WATER POLLUTION OFFENCES

- **Maritime Administration Act 2009 (Maritime Administration Act)**
- **Shipping Act 1988 (Shipping Act)**
- **Shipping (Marine Pollution) Regulations 2011 (Marine Pollution Regulations)**
- **Shipping (Dangerous Goods and IMDG Code) Regulations 2011 (Dangerous Goods Regulations)**
- **Continental Shelf Act (Cap 94) (Continental Shelf Act)**
- **Petroleum (Exploration) Act (Cap 44) (Petrol Exploration Act)**
- **Petroleum Rules (made under the Petroleum Act (Cap 81) (Petroleum Rules)**
- **Port Rules (made under the Ports Act (Cap 161) (Port Rules)**
- **River Waters Act (Cap 135) (River Waters Act)**

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Not reporting the discharge of harmful substances into the sea	Where a vessel discharges into the sea a harmful substance, or effluents containing harmful substances, then the master of the vessel must as soon as practicable, report the event to the Principal Surveyor (or other person appointed under the Act). Section 2 and 82 of the Shipping Act	Fine: up to \$10,000
Discharging pollution or harmful substances from vessels, platforms or land into the sea	No pollutant or harmful substance may be discharged from a vessel, platform, or place on land into Solomon Islands waters, or from a Solomon Islands vessel into any waters. Regulation 9(2) and 9(3) Marine Pollution Regulations	Fine: up to \$5,000; and/or Imprisonment: up to one year A person is also liable to pay for the total costs of any clean up operations and all necessary action to restore the environment to its original condition
Discharge of ballast water	No ballast water containing non-indigenous harmful aquatic organisms or pathogens can be discharged from a vessel into Solomon Island waters. Any master of a vessel intending to discharge ballast water must obtain all necessary approvals and notify the Director of Marine. Regulation 10(1) and 10(5) Marine Pollution Regulations	Fine: up to \$5,000; and/or Imprisonment: up to one year

TABLE 8: WATER POLLUTION OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Scraping or cleaning the hull of a vessel	<p>A person cannot scrape or clean any hull or other external surface of a vessel in a manner:</p> <ul style="list-style-type: none"> (a) which permits the introduction of non-indigenous harmful aquatic organism or pathogens into Solomon Islands waters; (b) which is inconsistent with any requirements applying to the scraping and cleaning of hulls published by the International Maritime Organisation, or in prescribed Standards or Codes of Practice (c) which contravenes a direction given to the person by an authorised officer of the administration. <p>Regulation 11(3) Marine Pollution Regulations</p>	<p>Fine: up to \$5,000; and/or</p> <p>Imprisonment: up to one year</p>
Harmful anti-fouling systems	<p>The use and application of harmful anti-fouling systems containing organotin compounds and any other prescribed harmful substance on vessels in Solomon Islands waters or a man made structure is prohibited.</p> <p>Regulation 12(5),(6) and (7) Marine Pollution Regulations</p>	<p>Fine: up to \$5,000; and/or</p> <p>Imprisonment: up to 6 months</p>
Discharge, disposal or escape from vessel repair facilities	<p>The discharge, disposal or escape of:</p> <ul style="list-style-type: none"> (a) hull scrapings; (b) paints and paint residues; (c) abrasive blasting mediums; (d) any other pollutant or harmful substance; or (e) any effluent containing such pollutant or harmful substances, <p>into Solomon Islands waters from a vessel repair facility is prohibited.</p> <p>A vessel repair facility must put in place systems for the effective containment and recovery of all of the substances referred to above.</p> <p>Regulation 13(1) and (3) Marine Pollution Regulations</p>	<p>Fine: up to \$5,000; and/or</p> <p>Imprisonment: up to 6 months</p>
Dumping and incineration of waste at sea	<p>Wastes cannot be dumped at sea otherwise than in accordance with the regulations or a permit. They cannot be incinerated at sea. The owner or master of a vessel that does so is liable.</p> <p>Regulation 36 Marine Pollution Regulations</p>	<p>Fine: up to \$5,000; and/or</p> <p>Imprisonment: up to one year</p>

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Failure to report discharge from vessel, platform or land	<p>If any pollutant, harmful substance, non-indigenous harmful aquatic organism or pathogen is discharged into Solomon Islands waters from a vessel, platform or place on land then the owner, master, person in charge of the vessel or platform, or the occupier of the place on land must immediately and by the quickest available means report the occurrence to the Director of Marine and to the Permanent Secretary responsible for disaster management. Failure to so is an offence</p> <p>Regulation 16 Marine Pollution Regulations</p>	<p>Fine: up to \$5,000; and/or</p> <p>Imprisonment: up to 6 months</p>
Fire or spill or leak of dangerous goods	<p>Any person who commits or permits any act which causes any part of a ship or its cargo to catch fire, or causes any dangerous goods to spill or leak from its container, commits an offence.</p> <p>Regulation 27(1) Dangerous Goods Regulations</p>	<p>Fine: up to \$20,000; and/or</p> <p>Imprisonment: up to 3 months</p>
Failure to notify and report leakage or spillage of dangerous goods	<p>The master of a ship must ensure that where a ship that is in a Solomon Islands port or at a Solomon Islands offshore terminal and it has on board a package or receptacle from which there is actual or probable leakage or spillage of dangerous goods, the harbourmaster and the Director of Marine are notified as soon as possible of such leakage or spillage (Regulation 23 Dangerous Goods Regulations).</p> <p>The master of a ship must also report the particulars of the following incidents to the Director of Marine as soon as possible and to the fullest possible extent:</p> <ul style="list-style-type: none"> (a) any actual or probable loss or spillage into the sea of dangerous goods from any ship in Solomon Islands waters; (b) any actual or probable loss or spillage into the sea of dangerous goods from a Solomon Islands ship in any waters; (c) dangerous goods for which their receptacles have been found damaged on a ship coming into a Solomon Islands port or Solomon Islands offshore terminal, or on a Solomon Islands ship in any waters (Regulation 24 Dangerous Goods Regulations). <p>The penalty for failing to comply with these requirements is a fine of a maximum 20,000 penalty units and/or imprisonment for a maximum of three months (Regulation 278 Dangerous Goods Regulations).</p> <p>Regulation 23 and 27 Dangerous Goods Regulations</p>	<p>Fine: up to \$20,000; and/or</p> <p>Imprisonment: up to 3 months</p>

TABLE 8: WATER POLLUTION OFFENCES

OFFENCE	DESCRIPTION OF OFFENCE AND LEGISLATION	PENALTY
Discharge of oil from installations or pipeline associated with continental shelf exploration and exploitation	<p>If any oil or any mixture containing not less than one hundred parts of such oil in a million parts of the mixture is discharged or escapes into any part of sea within a designated area:</p> <p>(a) from a pipeline; or</p> <p>(b) as a result of any operations for the exploration of the continental shelf or the exploitation of natural resources thereof in a designated area,</p> <p>the owner of the pipeline or, as the case may be, the person carrying on the operations, shall be guilty of an offence.</p> <p>‘Oil’ means crude oil, fuel oil, lubricating oil and heavy diesel oil, as the same may be defined by the Minister by order, and to any other description of oil which may be so defined by the Minister having regard to the persistent character of that oil and the likelihood that it would cause pollution if discharged or allowed to escape into the sea.</p> <p>Section 8 Continental Shelf Act</p>	Fine: \$500
Petroleum prospecting	<p>No person can carry out in the offshore area any prospecting or development operations otherwise than under and in accordance with a licence.</p> <p>Petroleum cannot be removed from any area from where it has been obtained or disposed of in any manner except by a licensee for the purpose of sampling or analysis or in accordance with the terms of a licence.</p> <p>Section 39 Petroleum (Exploration Act) (Cap 44)</p>	<p>Fine: up to \$500; and/or</p> <p>Imprisonment: up to 6 months</p>
Escape of petroleum or ballast water	<p>No petroleum or ballast water or water mixed with any petroleum shall be permitted to escape from or be discharged from any vessel into any inland or tidal water, and no liquid of any kind shall be discharged into any inland or tidal water from bilges, tanks, or other spaces which have contained any petroleum unless such tanks or spaces have been cleaned of petroleum, or such liquid has been freed from petroleum by means of a separating apparatus.</p> <p>Section 5 of the Petroleum Rules, made under the Petroleum Act (Cap 81)</p>	One hundred dollars
Discharge of waste, etc. into and other pollution of port	<p>No person shall cause, suffer or permit any refuse, gas, petroleum oil, bilge water, ballast water or other offensive substance whatsoever its nature to be discharged, pumped or cast into or onto any waters or land within the limits of a port without the prior written permission of the Authority. It shall be lawful for the Authority to recover its costs in cleaning up, dispersing or otherwise dealing with any such offensive substance.</p> <p>Rule 49 of the Port Rules, made pursuant to the Ports Act (Cap 161)</p>	<p>Fine: \$1,000, plus \$10 per day for continuing offences; and/or</p> <p>Imprisonment: 3 months</p>

