

[Legal Notice No. 144]

PROVINCIAL GOVERNMENT ACT 1981
(No. 7 of 1981)

THE ISABEL PROVINCE MARINE AND
FRESHWATER AREAS ORDINANCE 1993

AN
ORDINANCE
TO

PROVIDE FOR THE MANAGEMENT OF MARINE AND
FRESHWATER RESOURCES.

Enacted by the Provincial Assembly.

ARRANGEMENT OF SECTIONS

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Short title
and commence-
ment.

1. This Ordinance may be cited as the Isabel Province Marine and Freshwater Areas Ordinance 1993 and will come into effect following passage by the Isabel Provincial Assembly, assent by the Minister in accordance with section 32 of the Provincial Government Act 1981 and publication in the Solomon Islands Gazette.

Interpre-
tation.

2. In this Ordinance, unless the context requires otherwise -
- “Area Council” means the local representative body established under the Isabel Province Area Council Ordinance 1991 for the area concerned;
 - “Assembly” means the Isabel Provincial Assembly;
 - “Marine Area” means an area which does not extend landwards further than mean high water springs and which does not extend seawards further than the extent of any customary rights;
 - “Customary Rights” means any rights over a resource which a person is regarded as having according to custom;
 - “Executive” means the Isabel Province Executive;
 - “Fisheries Officer” means the public officer or provincial employee designated by the Executive to be in charge of fisheries throughout the Province;
 - “Freshwater” means any body of fresh water including any river, stream, lake or spring but does not include any artificial watercourse, bore or well;
 - “Owners” in relation to a registered interest in land, means the person or persons in whose name the interest is registered; in relation to customary land, means the person or persons who is or are, according to current customary usage, regarded as the owner or owners of the land;
 - “Person” means any person and includes any public body, company or association, customary land or right holding group, and any other body of persons whether incorporated or not;
 - “Province” means Isabel Province;
 - “Provincial Employee” means any person holding a paid position in the service of the Province and who is not a public officer;
 - “Public Officer” means any person from time to time posted to the Province and holding a paid position in the public service;
 - “Recorded Freshwater Area” means all or part of a freshwater body approved under section 6 of this Ordinance;
 - “Recorded Marine Area” means a marine area approved under section 6 of this Ordinance;

“Serve” means either -

- (a) Delivering personally to the person; or
- (b) Delivering or sending by prepaid post to the usual or last known place of residence or business of the person;

“Village Chief” means the person who according to custom is regarded as the head of the village or other local community concerned and where there is no such customary head of a village or local community, means a person regarded by the people with the village or community as their leader in relation to the matter concerned.”

3. The purpose of this Ordinance is to assist persons with customary rights over marine or fresh water resources to protect and sustainably manage the use of these resources.

Purpose.

4. (1) Any person with customary rights over a marine area may apply to the Area Council for all or part of that area to be approved as a Recorded Marine Area.

Making an application.

(2) Any owner of land adjacent to a body of freshwater, or person with customary rights over a body of freshwater, may apply to the Area Council for all or part of that area to be approved as a Recorded Freshwater Area.

(3) Applications under subsections (1) and (2) must be in form 1 in the First Schedule, or to like effect, and must include -

- (a) A description of the area for which the Recorded Marine Area or Recorded Freshwater Area status is sought; and
- (b) The rules which are proposed to apply to the use of the resources within such area; and
- (c) The date when the Recorded Marine Area or Recorded Freshwater Area is proposed to come into effect; and
- (d) The signature of 3 bona fide representatives of each customary land or right holding group with rights within such area, provided that no person must sign an application as a bona fide representative of a customary land or right holding group unless -
 - (i) That person is according to custom regarded as a person able to speak on behalf of the customary land or right holding group; and
 - (ii) That person has consulted, as fully as reasonably practicable, with all persons with customary rights over the affected area.
- (e) Where the application affects any customary rights, a description of the consultation undertaken pursuant to subsection (3)(d)(ii).

- (4) An application made under subsections (1) or (2) must be lodged at the Area Council office and must be accompanied by:
- (a) A plan defining as accurately as practicable the boundaries of the proposed Recorded Marine Area or Recorded Freshwater Area; and
 - (b) Any application fee which is required by the Area Council.

Amendment to,
or removal of,
Recorded Area
status.

5. (1) Any person with customary rights over a marine area which has Recorded Marine Area status may apply to the Area Council to amend the Recorded Marine Area.

(2) Any owner of land adjacent to a body of freshwater or person with customary rights over a body of freshwater, where such body of freshwater has Recorded Freshwater Area status, may apply to the Area Council to amend the Recorded Freshwater Area.

(3) An application under subsection (1) must be in form 2 in the First Schedule, or to like effect, and must contain -

- (a) A description of the area to which the Recorded Marine Area or Recorded Freshwater Area status applies; and
- (b) Where the application seeks an amendment to the rules applying to a Recorded Marine Area or Recorded Freshwater Area, the amendments sought and when they should come into effect; and
- (c) Where the application seeks to remove an area from, or add an area to, a Recorded Marine Area or Recorded Freshwater Area, a description of the area proposed to be so removed or added and when such amendment should come into effect; and
- (d) The matters set out in sections 4(3)(d) and (c).

Approval of
Recorded
Area.

6. (1) After receipt of an application lodged under sections 4 or 5, the Area Council or its designated officer must, subject to section 10, approve the application, provided that the Area Council or its designated officer is satisfied that the requirements for such application as set out in this Ordinance have been fully complied with and that the rules proposed are enforceable.

(2) Any approval granted under this section will have no bearing whatsoever over the issue of ownership of any area.

Commence-
ment.

7. (1) A Recorded Marine Area or Recorded Freshwater Area, or any amendments to such area, will come into effect 1 month after approval is granted under subsection 6(1) or at such later time as stated in the application.

8. (1) Following the approval of any area as a Recorded Marine Area or a Recorded Freshwater Area to the Area Council must as soon as practicable -

Notification
of
approval.

- (a) Serve a copy of the approved application on the applicant, the Fisheries Officer, the Village Chiefs within the Area Council's area of jurisdiction and the provincial employee or public officer in charge of policing within the Province; and
- (b) Display copies of the notice within the Area Council's area of jurisdiction where it can be readily seen by members of the public; and
- (c) Hold a public meeting in the village closest to the Recorded Marine Area or Recorded Freshwater Area to describe such area and the rules applying to the use of it;

(2) Approval of an application under section 6 will have full legal force irrespective of any failure to carry out the notification required under subsection (1).

9. (1) The Fisheries Officer must, as soon as practicable, establish and maintain at the Assembly Offices, a Record of Recorded Marine Areas and Recorded Freshwater Areas, which must -

Establish-
ment of
Record.

- (a) Define as accurately as practicable the boundaries of each Recorded Marine Area and Recorded Freshwater Area; and
- (b) State the rules which are to apply to the use of each Recorded Marine Area and Recorded Freshwater Area; and
- (c) Include maps marked with the places protected by this Ordinance.

(2) The Record established under subsection (1) must be open for public inspection at the Assembly offices during regular business hours.

10. (1) The Area Council or its designated officer must not approve any application for a Recorded Marine Area or Recorded Freshwater Area if it has knowledge of any dispute over the ownership or usage rights over the area unless bona fide representatives of all disputing owners or right holders have signed the application under section 4.

Ownership
disputes.

Offences.

11. (1) Any person who contravenes, or permits the contravention of, any of the rules applying to the use of a Recorded Marine Area or a Recorded Freshwater Area is guilty of an offence against this Ordinance and will be liable to the penalties set out in section 13.

Liability
of company
officers.

12. Where a company commits an offence under this Ordinance, every director and every person concerned in the management of the company, will be guilty of the same offence if it is proved -

- (a) That the act that constituted the offence took place with his or her authority, permission, or consent; or
- (b) That he or she knew or could reasonably be expected to have known that the offence was to be or was being committed and failed to take reasonable steps to prevent or stop it.

Penalties.

13. (1) Where the person committing the offence is an individual and the activity constituting the offence was not carried out for monetary benefit, that person will be liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$500 and, if the offence is a continuing one, to a further fine not exceeding \$10 for every day or part of a day during which the offence continues.

(2) Where the person committing the offence is an individual and the activity constituting the offence was carried out for monetary benefit, that person will be liable to imprisonment for a term not exceeding 2 years or a fine not exceeding \$1,000, and, if the offence is a continuing one, to a further fine not exceeding \$50 for every day or part of a day during which the offence continues.

(3) Where the person committing the offence is a body corporate, that person will be liable to a fine not exceeding \$10,000, and, if the offence is a continuing one, to a further fine not exceeding \$100 for every day or part of a day during which the offence continues and the officers of the body corporate will also be liable under section 12 to imprisonment for a term not exceeding 2 years.

(4) In addition to the penalties set out in subsections (1), (2) and (3), the Court may order that -

- (a) Any property used in the commission of an offence, any marine or freshwater resources taken in the commission of an offence, and any proceeds from the sale of such resources, be forfeit to the Crown; and
- (b) Any business licence held by the offender, authorising the carrying out of any business activity within the Province, be suspended and that the offender be

disqualified from obtaining a new licence for up to 5 years.

14. (1) The Primary responsibility for enforcing the rules governing the use of a Recorded Marine Area or Recorded Freshwater Area is with the persons holding customary rights over that area.

Enforcement.

(2) It is lawful for any person holding customary rights over the area, Police Officer, Village Chief, provincial employee, or public officer, to make enquiries at all reasonable times to ascertain whether any offence under this Ordinance is being or has been committed.

15. The Magistrates Court will have jurisdiction to impose the penalties set out in section 13 as may be amended by ordinance or regulation from time to time.

Jurisdiction to impose penalties.

16. (1) Any offender under this Ordinance may agree to pay a penalty to a Village Chief of up to \$300.

Defences.

(2) It will be a defence to a prosecution for an offence under this Ordinance, if the offender has fully paid any penalty for the offence imposed by a Village Chief.

17. (1) Unless specified otherwise in this Ordinance, all fines must be paid to the Government of the Province.

Payment of fines.

(2) All fines paid under this Ordinance are recoverable as a debt due to the Province.

(3) Where a Court imposes a fine under this Ordinance, it must direct that at least half of the fine be paid to the persons with customary rights over the affected area.

(4) When determining what portion of a fine must be paid to the persons with customary rights over the affected area under subsection (3) the Court must take into account the amount of damage suffered by such persons as a result of the offence.

18. The Ordinance does not affect any civil right to claim for damages.

Civil liability.

19. No right may be granted, whether under any statute, subsidiary legislation, common law or customary law, to carry out an activity in contravention of the rules established for a Recorded Marine Area or Recorded Freshwater Area.

Grant of other rights.

Regulations.

20. The Assembly may make regulations for the better carrying out of the purposes of this Ordinance including regulations to amend the penalties prescribed under section 13.

Passed by the Isabel Provincial Assembly this day of 1993.

Clerk to Assembly

Assented to this day of 1993.

Minister of Provincial Government

FIRST SCHEDULE

Form 1

APPLICATION FOR RECORDED MARINE AREA OR
RECORDED FRESHWATER AREA

To: (Name of Area Council)

1. Description of the boundaries of the proposed Recorded Marine Area or Recorded Freshwater Area.
2. Rules proposed to apply to the Recorded Marine Area or Recorded Freshwater Area.
3. Name of the owner(s) of land or the customary right holding group(s).
4. Name(s) and signature(s) of owner(s) of land, or 3 bona fide representatives of each customary right holding group (whichever applies).
5. Description of consultation undertaken (if the application affects customary rights).

(Date application lodged)

Approval by Area Council or its designated officer

(Date of approval)

(Address for service of applicant)

FIRST SCHEDULE - continued

Form 2

APPLICATION FOR AMENDMENT TO, OR REMOVAL OF,
RECORDED MARINE AREA OR RECORDED
FRESHWATER AREA STATUS

To: (Name of Area Council)

1. Description of the boundaries of the Recorded Marine Area or Recorded Freshwater Area.
2. Whether amendments are sought to the rules applying to the use of the Recorded Marine Area or Recorded Freshwater Area, or an area is sought to be removed or added.
3. Amendments proposed to the rules applying to the Recorded Marine Area or Recorded Freshwater Area (where amendments are sought).
4. Description of the area to be removed from or added to a Recorded Marine Area or Recorded Freshwater (where this applies).
5. Name of the owner(s) of land or the customary right holding group(s).
6. Name(s) and signature(s) of owner(s) of land, or 3 bona fide representatives of each customary right holding group (whichever applies).
7. Description of consultation undertaken (if the application affects customary rights).

(Date application lodged)

Approval by Area Council or its designated Officer

(Date of approval)

(Address for service or applicant)

Passed by the Isabel Provincial Assembly this tenth day of March 1993.

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

D. DARA

Clerk to the Provincial Assembly

Assented to by the Honourable Minister for Provincial Government this twenty-third day of June 1993.

E. SERI

Minister of Provincial Government
