

SAMOA

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2011, No. 3

AN ACT to make provision for the effective and sustainable management of Samoa's forestry resources, and for related purposes. *[28th January 2011]*

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART I
PRELIMINARY

1. Short title and commencement-(1) This Act may be cited as the Forestry Management Act 2011.

(2) This Act shall come into force on the date that it is assented to by the Head of State.

2. Interpretation-(1) In this Act, unless the context otherwise requires:

“authorised officer” means any officer or employee of the Ministry appointed under section 23 to be an authorised forestry officer or any other type of officer appointed under that section, and includes all forest officers employed by the Ministry;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry;

“Convention” and “international convention” includes any forum, association, meeting, agency or programme of an international or regional agency in which Samoa is entitled to membership or participation;

“commencement date” means the date on which this Act comes into force;

“forest land” means any lands of the classes of land for forestry stated in section 33 which is used for forestry or available to be used for forestry;

- “forest produce” means any part of the forestry resources which are logged, harvested, transported, processed, offered for sale, utilised in any manufacturing process or used as firewood or for the production of energy;
- “forestry” means the application of business methods and technical forestry principles to operations on lands for the establishment, culture, protection and maintenance of forests or for the production, extraction or conversion of forestry resources, including the provision of access to such lands;
- “forestry operation” means any activity involving the logging or harvesting of forestry resources (whether undertaken under a licence or permit or not), and includes the taking of forest produce for sale as firewood;
- “forestry resources” includes all trees utilised or able to be utilised as processed timber, posts or firewood and other produce of trees which are not agricultural crops or products;
- “licence” means a Forestry Harvesting Licence granted or required to be granted under section 39;
- “Minister” means the Minister responsible for forestry resource management;
- “Ministry” means the Ministry responsible for forestry resource management under section 3;
- “native forestry resources” means any area of forestry land comprising predominantly naturally growing species of tree which are indigenous to Samoa, but for the purposes of this definition poumuli (*Flueggea flexuosa*) shall not be regarded as a native forestry resource;
- “permit” means a Forestry Harvesting Permit granted or required to be granted under section 40;
- “production forests” means all forestry resources situated on forest lands (including plantations and farm agro-forestry developments) that are:
- (a) not reserved or protected in accordance with section 47, the provisions of Part VIII or any other law providing for national parks and reserves; and

(b) which are or may be harvested under a licence or permit issued under this Act.

“protected forests” means all forestry resources situated on forest lands that are reserved or protected in accordance with section 47, the provisions of Part VIII or any other law providing for national parks and reserves, and:

(a) which may not be harvested by reason of any lawful prohibition applying under this Act or any other applicable law; or

(b) may be harvested only in accordance with any lawful condition or restriction.

“State forest land” means any forest land that is forest lands under the control of the Ministry as at the commencement of the Act, and includes all lands leased to the Ministry by the Land Board (or otherwise lawfully vested in the Ministry) for any forestry related purposes as provided for in section 36.

(2) Where any obligation is imposed on the holder of a licence or permit under this Act, the obligation shall also apply to any approved logging contractor operating under the authority of the licence or permit.

PART II

THE MINISTRY RESPONSIBLE FOR FORESTRY RESOURCES

Division 1

Designation of the responsible Ministry

3. The Ministry responsible for forestry resource management-(1) The Ministry responsible for the management of Samoa’s forestry resources under this Act shall be the Ministry referred to in the law establishing the structure of Ministries in Samoa and which is determined from time to time by the Prime Minister, acting in accordance with the powers conferred by Part IV of the Constitution, to be the Ministry responsible for forestry resource management.

(2) The Ministry shall be charged with the administration of this Act and any other law under which it is given responsibility, together with such other functions as may from time to time be lawfully conferred upon it.

(3) Nothing in this Act shall prevent the allocation under any law to any other Ministry of roles, functions, responsibilities and powers relevant to the management of Samoa's forestry resources.

(4) Where any law relating to the management of forestry resources does not specify a ministry responsible for its administration and implementation then the Ministry responsible for this Act shall have responsibility in relation to the other law.

(5) The Ministry responsible for this Act may be vested with functions and responsibilities under laws applying to matters other than the management of Samoa's forestry resources, and in such cases the provisions of this Act relating to the administration of the Ministry shall be applied in conjunction with any other arrangements relating to the administration of the Ministry prescribed in the other laws.

Division 2

Administration of the Ministry

4. The Minister responsible for forestry resource management-(1) The Minister responsible for forestry resource management in accordance with this Act shall be the Minister appointed in accordance with Article 32 of the Constitution and charged with the responsibility for administering the Ministry responsible for forestry resource management by the Prime Minister under Article 35 of the Constitution.

(2) Nothing in this Act shall affect the powers of the Minister to perform responsibilities vested in the Minister by the Prime Minister or any other Act which do not relate to matters of forestry resource management.

5. The Chief Executive Officer-(1) The Chief Executive Officer shall be the administrative head of the Ministry.

(2) The Chief Executive Officer of the Ministry shall be appointed and shall hold office in accordance with applicable laws, procedures, and terms and conditions applying to Chief Executive Officers of the public service.

6. Appointment of other officers and employees-(1) There may from time to time be appointed as public servants (or otherwise in accordance with any law relating to the appointment of government workers) and assigned to the Ministry, such officers and employees of the Ministry as may be necessary for the proper discharge of its functions and powers in relation to forestry management.

(2) The officers and employees of the Ministry shall be appointed and shall hold office in accordance with applicable laws, procedures, and terms and conditions applying to officers and employees of the public service.

7. Officers to act under the direction of the Chief Executive Officer - All officers and employees of the Ministry shall act under the direction of the Chief Executive Officer in the discharge of their lawful functions, powers and duties.

8. The Divisions of the Ministry-(1) Subject to subsection (3), for the purposes of discharging the functions stated in Division 3 of this Part, the Ministry shall be comprised of:

- (a) any Division necessary for the Ministry to exercise any function under any law relating to the management of forestry resources;
- (b) any other Division which is necessary for the proper administration of the Ministry; and
- (c) units of any Division determined by the Minister to facilitate the implementation of any law relating to the management of forestry resources, and the performance of the functions of the Ministry.

(2) Each of the Divisions shall be headed by an Assistant Chief Executive Officer, and the Minister may approve titles for any head of a Division.

(3) The Minister may approve any change of title of any Division and any unit of a Division provided for in subsection (1), and may with the approval of Cabinet, vary the number of Divisions of the Ministry.

(4) The functions of each of the Divisions of the Ministry shall be as determined from time to time by the Chief Executive Officer.

(5) In establishing Divisions under this section, and determining titles for the heads of each Division, all laws relating to the management of the public service must be complied with.

9. Powers of the Minister - The Minister shall have power to do all things necessary or convenient to be done to implement the provisions of this Act, and any law related to the management of Samoa's forestry resources which prescribes functions of the Ministry, including power to:

- (a) give approvals or grant any licence, permit or authority as provided by any law;
- (b) approve appropriate representatives of the Ministry at international meetings and forums related to forestry resource management issues, and any other meeting related to the work of the Ministry;
- (c) approve any report required to be prepared by the Ministry on behalf of the Government;
- (d) appoint a Forest Board and technical committees under section 12;
- (e) set fees under section 19; and
- (f) do any other related act or thing.

10. Powers of the Chief Executive Officer - The Chief Executive Officer shall have power to do all things necessary or convenient to be done in relation to the proper administration of the Ministry and the implementation of the provisions of this Act, and any other law prescribing a function of the Ministry and relating to any such function, including the power to:

- (a) do any act or thing authorised by this Act or any other law;

- (b) prepare reports as required by the Cabinet or the Minister, or which are required under any international convention applying in Samoa which relates to forestry resource management issues;
- (c) engage consultants, in compliance with the government's processes, for the purpose of assisting the Ministry to perform its functions;
- (d) arrange for the investigation or monitoring of any activity that relates to a function of the Ministry;
- (e) recommend to the Minister appropriate representatives of the Ministry at relevant meetings and conferences; and
- (f) do any other related act or thing.

11. Delegation of powers by the Minister and the Chief Executive Officer-(1) The Minister may, by notice in writing, delegate to the Chief Executive Officer any of the powers provided for under section 9.

(2) The Chief Executive Officer may, by notice in writing, delegate to any officer of the Ministry any of the powers provided for under section 10.

(3) Neither the Minister nor the Chief Executive Officer may delegate this power of delegation.

(4) Any power delegated under this section must be exercised in accordance with any requirement stated in the notice of delegation.

(5) Any notice of delegation made under this section shall apply until the date specified for its expiry, or upon the giving of a written notice to that effect.

12. Forestry Board and Technical Committees-(1) To assist the Ministry to discharge its functions, the Minister may from time to time appoint a Forestry Board and technical committees, and define their functions, roles, duties and powers.

(2) The involvement of forest industry participants, and of non-government organisations and the general community in aspects of the proper forest management and the effective utilisation of the forestry resource in Samoa may be facilitated by the appointment of representatives to a Forestry Board or technical committees established under this section.

(3) The Forestry Board or a technical committee established under subsection (1) which comprises representatives of Government ministries and agencies and of the community (including forest industry representation), may be designated by the Minister as the competent authority or implementing authority for the purpose of any international convention applying in Samoa and relating to forestry resource management, and such Committee may lawfully perform any function and exercise any power required to be performed or exercised in accordance with the relevant Convention, and any law which seeks to give effect to the Convention in Samoa.

(4) The powers which may be exercisable by the Forestry Board or a technical committee shall be any powers:

(a) delegated to the Board or committee by any person having lawful authority to exercise a power and to delegate the exercise of that power, and including any power under this Act or any other law related to forestry management exercisable by the Minister, the Chief Executive Officer and the Assistant Chief Executive Officer - Forestry of the Ministry;

(b) vested in the Board or committee by Regulations made under this Act, or any other law related to forestry management.

(5) Members appointed to the Forestry Board or a committee established under subsection (1) may be paid fees, allowances and reimbursement of expenses as determined by Cabinet.

(6) Payments to members under subsection (5) shall only be made if approved by the Minister, and shall be paid from monies appropriated to the Ministry by the Legislative Assembly for purposes consistent with such a payment.

13. Reporting and other requirements-(1) The Chief Executive Officer shall as soon as practicable after the end of each financial year furnish to the Minister an Annual Report on the operations of the Ministry for that year, and on any issues relevant to the management of Samoa's forestry resources of significance to the governance of Samoa.

(2) A copy of the report shall be laid before the Legislative Assembly within 28 days after it has been furnished to the Minister if the Assembly is in session, and if not, shall be laid before the Assembly within 28 days after the commencement of the next session.

(3) The Chief Executive Officer shall prepare a written report on any activity of the Ministry, or any reform proposal affecting its responsibilities, at such times or intervals as the Minister or Cabinet may require.

Division 3 Functions of the Ministry

14. General functions of the Ministry-(1) The Ministry shall be responsible for any function, role or responsibility:

- (a) provided for in sections 15 to 17 (inclusive), or any matter incidental to any of those functions;
- (b) provided for by any other Act or Regulation; or
- (c) as directed by Cabinet.

(2) The Ministry shall be responsible for the formulation and implementation of policies and management plans relating to any of the functions stated in this Part, and for the collection and dissemination of information relating to its functions.

15. Management of forestry resources-(1) The Ministry shall have the principal responsibility for the management of the forestry resources in Samoa, and shall have the sole power to issue rights to exploit the forestry resources in accordance with this Act.

(2) No other law may make provision for granting any right to undertake forestry operations on any lands for forestry.

(3) In relation to management of the forestry resources in Samoa the Ministry shall:

- (a) have responsibility for the administration of this Act and for formulating and implementing approved forest related policies and operational codes of practice;
- (b) have the primary control and management over production forests, including -
 - (i) management and control over State forest lands; and
 - (ii) regulating the production, extraction, conversion, transport, sale or other disposal of forest produce from production forests in accordance with approved forest policies and the provisions of this Act; and
 - (iii) formulating, applying and enforcing forestry related covenants, conditions and stipulations in forestry licences and permits granted under this Act, and in land leases and licences applying to production forests; and
 - (iv) the granting of licences and permits over production forests under this Act; and
 - (v) ensuring that all fees and levies payable under licences, permits, rights and authorities granted in respect of forest land are duly paid and accounted for; and
 - (vi) the enforcement of all other covenants, conditions and stipulations of forestry licences and permits, and land leases and licences applying to production forests;
- (c) ensure that adequate arrangements are made for the reservation of lands from forestry in accordance with Part VIII, and for the conservation and protection of protected forests in accordance with this Act and any other law relating to the management of national parks and reserves; and
- (d) managing and regulating activities relating to protected forests in accordance with the requirements of this Act and any other relevant law.

16. Promotion of plantation and farm agro-forestry-(1)

In conjunction with the Ministry responsible for agriculture, the Ministry shall formulate policies and implement programs and activities to support the development of forest plantations and farm agro-forestry in Samoa.

(2) Farm agro-forestry in Samoa shall be promoted and managed in accordance with the provisions of Part VI.

17. Implementation of international forestry related agreements-(1) Subject to any other law making specific provision in relation to the implementation of any international convention applying in Samoa, the Ministry shall be responsible for the effective implementation in Samoa of any international convention, agreement or arrangement applying in Samoa and relating to the management of forestry resources, and for ensuring that Samoa observes its obligations and fully enjoys its rights.

(2) In this section “Convention to which this section applies” includes any forestry related convention, agreement, arrangement, forum, association, meeting, agency or programme of an international or regional agency in which Samoa is entitled to membership or participation.

(3) The role of the Ministry in relation to a Convention to which this section applies shall include:

- (a) liaising with and providing assistance to the Ministry of Foreign Affairs and Trade in relation to identifying international Conventions relating to forestry and forestry resources that are in Samoa’s interests to become a party to, and consulting with other ministries and agencies, and the broader community, in relation to the obligations that Samoa will assume under any such Convention;
- (b) liaising with relevant government ministries and agencies, and securing necessary approvals, to ensure Samoa’s effective representation at meetings of the Parties of a Convention to which this section applies and other relevant meetings;

- (c) liaising with relevant regional and international bodies to ensure that Samoa meets its obligations under a Convention to which this section applies;
 - (d) managing or participating in any project, or part of a project, aimed at implementing any aspect of a Convention to which this section applies;
 - (e) disseminating information in relation to the subject matter of any Convention to which this section applies, and creating public awareness about the provisions of any such Convention;
 - (f) preparing any necessary Report, and reporting on a regular basis to the Minister and Cabinet in relation to the implementation of any Convention to which this section applies;
 - (g) sharing information and otherwise providing such cooperation as is required by a Convention to which this section applies;
 - (h) recommending that any law be amended or enacted in order to effectively implement any requirement of a Convention to which this section applies; and
 - (i) working in conjunction with relevant government ministries and agencies to implement any obligation or enjoy any right under a Convention to which this section applies, and in particular to support the work of the Department of Environment in relation to the Convention on Biological Diversity and programs under that Convention which seek to conserve Samoa's biodiversity and control access to its genetic resources.
- (4) Where any law gives to another government ministry or agency a responsibility for any matter related to a Convention to which this section applies, the Ministry shall perform its functions and exercise any related power in conjunction with the other ministry or agency.

Division 4
Powers of the Ministry

18. General powers of the Ministry-(1) The Ministry, and any authorised or appropriate officer of the Ministry, may exercise any power and do any act relating to a function of the Ministry, and which is necessary for or incidental to the performance by the Ministry of that function.

(2) Where the Ministry exercises any power in relation to a function that the Ministry has in conjunction with another government ministry or agency, the Ministry shall ensure that the other ministry or agency is informed of the exercise of that power and is consulted in relation to any aspect or implication of it.

(3) No person may challenge the exercise of any power by the Ministry on the grounds of non-compliance with subsection (2).

19. Powers in relation to fees-(1) Where any service, approval, permission, certification or inspection is provided, performed or undertaken by the Ministry in relation to any of its functions, the Ministry may:

- (a) impose a fee that is fixed by any law, or by any regulation made under this Act; or
- (b) where no law or regulation sets the fee, impose a fee that is set by the Minister by written Order.

(2) Fees for applications for and granting of any licence or permit under this Act may be imposed in accordance with regulations made under this Act, and such fees may include fees for necessary inspections and assessments required prior to the grant of any licence or permit.

(3) Notice of fees set under subsection (1)(b) shall be published in the Savali and may have retrospective effect so as to validate any fees already incurred.

(4) Nothing in this section shall prevent the Chief Executive Officer from setting and imposing a charge in relation to the professional services provided by any officer of the Ministry, or for the performance of any inspection or the grant of any certification.

20. Certification of certain matters-(1) The Chief Executive Officer, and any officer of the Ministry authorised by the Chief Executive Officer, may provide a certificate stating any fact known to the Ministry, or indicating the content of any record or register maintained by the Ministry.

(2) If signed by the Chief Executive Officer, or any officer purporting to be authorised by the Chief Executive Officer, a certificate issued under subsection (1) shall be admissible in a court of law and any other judicial or quasi-judicial body, and shall be accepted as prime facie evidence of the facts or contents stated in the certificate.

(3) The issuance of a certificate under this section shall be sufficient discharge of the Ministry's obligation to answer a summons issued by a court to give evidence or to produce documentation, but a request may be made for an officer to appear in the proceedings for the purpose of examination.

21. Validation of acts - All actions and decisions of the Chief Executive Officer (or a person acting under the authority of the Chief Executive Officer), or of any other officer of the Ministry under the provisions of this Act or any other law relating to a function of the Ministry, shall be deemed to have been validly done or made notwithstanding the subsequent discovery of any defect, expiration or lapse in the appointment of that person.

22. Protection of the Chief Executive Officer and officers – The Chief Executive Officer or any other officer of the Ministry shall not be liable for any loss or damage, or be subject to any criminal prosecution, in relation to the reasonable exercise of any power under this Act, or any other law.

Division 5 Powers of Enforcement

23. Appointment of authorised officers-(1) Notwithstanding the provisions of any other Act, the Chief Executive Officer may appoint any officer or employee of the Ministry:

- (a) to be an authorised forestry officer for the purposes of this Act or any regulation made under it; or
 - (b) to perform the function of any authorised officer, inspector, ranger or other officer under any other law that is the responsibility of the Ministry to implement or administer.
- (2) An officer or employee appointed under subsection (1) shall have the right to exercise any power:
- (a) given to an officer under any Act identified by the Chief Executive Officer in the notice of appointment applying to the officer; and
 - (b) any power stated in section 24.
- (3) The Chief Executive Officer and all employees of the Ministry in the position of forest officer (of any seniority) shall be authorised forestry officers for the purposes of this Act.

24. Powers of authorised officers-(1) In addition to powers conferred by this or any other law, authorised officers shall have power, on producing (if so required) evidence of appointment under this Act, to enter at any time any land, premises, vessel, ship, aircraft, vehicle or other conveyance for the purpose of:

- (a) monitoring the impact of any activity, matter or thing relating to a function of the Ministry;
- (b) investigating the commission of any offence or the breach of any lawful obligation under a law relating to a function of the Ministry;
- (c) enforcing this Act or any other law relating to a function of the Ministry.

PROVIDED THAT no authorised officer shall enter a dwelling-house unless authorised to do so by a warrant issued by a Judge, who shall not grant the warrant unless satisfied that the officer has reasonable grounds for requiring entry to the premises.

- (2) In the exercise of the powers conferred by subsection (1), an authorised officer may:
- (a) conduct such investigations and examinations as are necessary to monitor the effects of any activity, matter or thing, or to determine whether any offence has been committed;

- (b) take samples for the purpose of analysis and testing;
 - (c) take photographs or measurements;
 - (d) require any person apparently associated with an activity under investigation to state his or her full name, occupation and usual place of residence;
 - (e) require the production of any document relevant to the activity, matter or thing under investigation, including any licence or permit required by law; and
 - (f) require from any person any assistance that is relevant to the investigation or monitoring activity; and
 - (g) seize any item or forestry resource used in or in connection with the commission of an offence against any law relating to a function of the Ministry.
- (3) Authorised officers may enter lands for the purpose of:
- (a) conducting any inventory of the forestry resources;
 - (b) confirming any information for the purposes of mapping or recording the forestry resources; and
 - (c) conducting any scientific research or analysis, or implementing any program of control relating to the forestry resource, and any threat to the forestry resources, including threats from invasive species.
- (4) Any person who:
- (a) hinders or obstructs an authorised officer in the performance of his or her duties, or the exercise of a power, under this Act or any other law related to a function of the Ministry;
 - (b) induces or incites any other person to hinder or obstruct an authorised officer;
 - (c) by words or conduct falsely represents that he or she is an authorised officer, or otherwise impersonates an authorised officer;
 - (d) fails to comply with a requirement made by an authorised officer under subsection (2)(d), (e) or (f); or

- (e) provides false or misleading information to an authorised officer when required under subsection (2) to provide information – commits an offence, and shall be liable upon conviction to a fine not exceeding 20 penalty units if the person is an individual, or to a fine of 40 penalty units if the offence is committed by a corporation, or to a term of imprisonment not exceeding three (3) months, or both.

25. Precautionary Notice-(1) Where an authorised forestry officer suspects that a forestry operation, or any activity of a licence or permit holder, may:

- (a) be in breach of -
 - (i) any requirement applying to the forestry operation under this Act, the regulations or any applicable Code of Practice; or
 - (ii) any environmental or development control affecting the forestry operation;
- (b) be adversely impacting upon water resources or any other aspect of the environment;
- (c) cause disaffection amongst land owners or any village or community being affected by the operation or activity; or
- (d) give rise to a risk of fire or other threat to the forest resource in the vicinity of the forest operation - the officer may issue a notice requiring that any person apparently in control of or associated with the activity, matter or thing comply with any requirement specified in subsection (2).

(2) A notice issued under subsection (1) may require all or any of the following:

- (a) that information be provided in relation to the operation or activity to satisfy the Assistant Chief Executive Officer - Forestry of the Ministry that no such breach, adverse impact, risk of disaffection or threat to the forest resource is occurring, or likely to occur;

- (b) that alternative operating techniques or activities be considered and employed to avoid the breach or decrease the adverse impact, risk of disaffection or threat to the resource;
 - (c) that improvements or alterations be made in relation to the operation or activity to the satisfaction of the Assistant Chief Executive Officer - Forestry of the Ministry, to avoid the breach or decrease the adverse impact, risk of disaffection or threat to the resource; and
 - (d) any other requirement, as determined by the Assistant Chief Executive Officer - Forestry of the Ministry, to ensure due compliance with any requirement, avoid the adverse impact, disaffection or threat of damage to the forest resource.
- (3) Any person served with a notice under this section shall ensure that the requirements stated in the notice are complied with within the time stipulated, and shall satisfy the Assistant Chief Executive Officer - Forestry of the Ministry, prior to the expiration of that time, that the activity, matter or thing is not adversely affecting the environment.

26. Notice to cease activity-(1) A Notice may be issued under this section whether or not a Precautionary Notice has been served under section 25.

(2) Where, after receiving advice from the Chief Executive Officer, the Minister is of the opinion that there is occurring, or may occur, an act or activity which involves a breach of any requirement or an immediate risk of disaffection or threat to the forestry resource as provided for in section 25(1), the Minister may issue a Notice under this section.

- (3) A Notice issued under this section shall:
- (a) be directed to the licence or permit holder, or any person believed to be carrying out the operation or activity, or apparently has some control over it;
 - (b) specify any act or activity which warrants the issue of the notice; and

(c) require that the act or activity cease, or not be done, until the Minister is satisfied that the breach, the risk of disaffection or threat to the resource no longer exists.

(4) A Notice may be served under this section notwithstanding that any approval, licence or permit has been granted in relation to the operation or activity.

(5) The Minister and the Government shall not be liable in respect of any loss or damage arising from, or in any way connected with, the issuing of a Notice under this section.

27. Offences and penalties related to notices-(1) Any person who, having been served with a Notice issued pursuant to section 25, fails to comply with a requirement stated in the Notice commits an offence, and shall be liable upon conviction to a fine not exceeding 100 penalty units, or to imprisonment for a term not exceeding one (1) year, or both.

(2) Any person who:

- (a) having been served with a Notice issued under section 26, fails to comply with any of its terms;
- (b) having been served with a Notice issued under section 26, causes or permits any other person to act in breach of its requirements; or
- (c) knowingly acts in breach of the requirements of a Notice given under section 26, whether or not that person has been served with the Notice – commits an offence and shall be liable upon conviction to a fine not exceeding 100 penalty units, or to a term of imprisonment not exceeding six (6) months, or both.

(3) In addition to any other penalty imposed under this section, a court may order that any person convicted of an offence pay compensation for any resulting loss or damage to the Government, or to any other person affected by the offence.

(4) Where a corporation is guilty of an offence under this Act or the Regulations, any officer, Chief Executive Officer or agent of the corporation who authorised, assented to or participated in, or by his or her neglect or omission contributed to the commission of the offence, is a party to and may be found

guilty of the offence, and is liable to the penalty provided for the offence.

28. Prosecution of offences-(1) The Chief Executive Officer and any authorised officer may commence and conduct any prosecution in relation to any offence committed against this Act or any other law relating to a function of the Ministry.

(2) Where a corporation is guilty of any offence under this Act, or any Regulation made under it, any officer, director or agent of the corporation who authorised, assented to or participated in the commission of the offence, or who by his or her neglect or omission contributed to the commission of the offence, shall be a party to the offence and may be found guilty in relation to its commission, and shall be liable to the penalty provided for in relation to it.

PART III

FORESTRY PLANNING AND SUSTAINABLE DEVELOPMENT

29. National Forest Plan-(1) The Ministry shall prepare a National Forest Plan to provide for the sustainable management of forestry resources in Samoa.

(2) The National Forest Plan shall:

- (a) be consistent with the national forest policy and other relevant Government policies;
- (b) be based on a certified National Forest Inventory which shall include particulars of -
 - (i) remaining native forestry resources;
 - (ii) areas and species of planted trees on plantations and farm forests;
 - (iii) areas determined to be protected forests and production forests;
 - (iv) areas of national parks and reserves;
 - (v) forestry resources in water catchment areas;
 - (vi) other particulars required by the Minister or prescribed by regulations made under this Act;

(c) be reviewed every five (5) years and shall be submitted to the Cabinet for approval.

(3) The National Forest Plan shall be prepared after consultation with relevant government ministries and agencies, and representatives of the forestry industry, non-government organisation and forestry resource owners.

30. Forestry resources to be managed on a sustainable basis-(1) For the purposes of this Part - “sustainable development” means promoting development at a rate and in such a way as to ensure that the quality of the environment and the supply of resources is maintained and, wherever practicable, enhanced to meet the needs of the present generation without compromising the needs of future generations.

(2) The Ministry shall ensure that the principles of sustainable development are applied to the management and development of the forestry resources.

(3) The principles of sustainable development are to be applied to the management and development of the forestry resources by:

- (a) the formulation, approval and application of policies and programmes which are based on those principles;
- (b) the declaration and effective management of protected areas, protected lands and forestry reserves under Part VIII;
- (c) promoting farm agro-forestry projects and re-planting of trees;
- (d) promoting a viable industry based upon the processing of forest produce in Samoa;
- (e) maximising benefits that may become available from the conservation of the forestry resource and the resultant financial benefits of such conservation through arrangements for trading in carbon credits and related opportunities;
- (f) protecting Samoa’s forestry related genetic resources, and ensuring that Samoa receives an equitable share of the benefits from such resources; and

- (g) otherwise meeting Samoa's obligations under international conventions that relate to the forestry resources.

31. The precautionary principle-(1) All persons and agencies having responsibilities under this Act, or whose functions and powers may relate to any matter or thing involving the management of forestry resources in Samoa, or the regulation, control, or management of any substance, matter or thing which may adversely impact upon Samoa's forestry resources, shall apply the precautionary approach when discharging their responsibilities and functions, or exercising their powers.

(2) To clarify the application of subsection (1), the precautionary approach is applied if, in the event of a threat of damage or risk to Samoa's forestry resources, forest lands or environment, or a risk to human health in Samoa, a lack of full scientific certainty regarding the extent of adverse effects is not used as a reason for not acting to prevent or minimise the potential adverse effects or risks arising in any way from a matter or thing regulated under any law.

32. Matters relating to climate change and carbon trading-(1) The Ministry shall formulate, apply and implement policies and programs in support of the implementation of the United Nations Framework Convention on Climate Change, the Kyoto Protocol and any other Protocol made under the Framework Convention.

(2) The Ministry shall consult, liaise and cooperate with any other Ministry, division or government agency having roles to play in relation to the implementation of the United Nations Framework Convention on Climate Change, and the Kyoto Protocol, or any instrument which replaces or complements the Kyoto Protocol.

(3) Regulations may be made under this Act for any purpose related to the part that forestry resources may play in the implementation of schemes, arrangements, systems or mechanisms for carbon trading through carbon credits and off-

sets, or arising from any other climate change responses, including regulations relating to:

- (a) preparing inventories of Samoa's forestry resources, and effectively mapping or recording such resources;
- (b) promoting reforestation and planting of forestry resources so as to maximise benefits from such schemes, arrangements, systems or mechanisms;
- (c) entering into agreements with any party to participate in any such schemes, arrangements, systems or mechanisms; and
- (d) the sharing of benefits from any such scheme, arrangement, system or mechanism.

PART IV **LANDS FOR FORESTRY**

33. The classes of land for forestry-(1) The classes of land upon which forestry operations may be undertaken in accordance with the procedures prescribed in Part V are:

- (a) public land designated by the government ministry or agency having lawful ownership of the land as being available for forestry operations;
- (b) freehold land which the owner has determined to be used for forestry operations; and
- (c) customary land which the lawful owners have determined to be used for forestry operations.

PROVIDED THAT the forestry resources situated on the forest lands are not reserved or protected in accordance with section 47, the provisions of Part VIII or any other law providing for national parks and reserves.

(2) For the purposes of this Part, lands belonging to the Samoa Land Corporation and which are identified by the Corporation as being available to be transferred to the Ministry for purposes of forest conservation and forestry operations shall be considered to be public lands.

34. Public lands may be leased for forestry related purposes - The Ministry may take a lease of any public lands or lands held by any government agency or corporation for the purposes of:

- (a) managing or protecting any forest;
- (b) appraising, cutting and selling or utilising any timber or other forestry resources;
- (c) conducting any field trials, tests or scientific research; or
- (d) any other purpose of forestry.

35. Public lands may be vested in the Ministry for forestry - The Ministry responsible for lands may make arrangements for the transfer of any public land to the Ministry to be managed as State forest land if:

- (a) the land is lawfully owned by a Ministry or agency of the government (including the Samoa Land Corporation) and the owner has consented to the land becoming State forest land; or
- (b) the land is unallocated public land and the Land Board has approved the land to be transferred to the Ministry for a forestry related purpose.

36. Use of State forest lands for forestry related purposes - Subject to the approval of the Minister, State forest lands may:

- (a) be developed and managed as forest plantations by the Ministry, and for this purpose the Ministry may enter into joint venture arrangements with the private sector, or with local residents or communities;
- (b) be made protected lands under Part VIII, or declared to be conservation reserves under any relevant law;
- (c) leased or licensed for purposes of implementing programs of farm agro-forestry or the development of forestry plantations;

- (d) used for purposes of scientific research or for pilot projects for programs of farm agro-forestry or related developments;
- (e) used for any other forestry related purpose.

PART V
FORESTRY RESOURCE MANAGEMENT

37. Application for Forestry Harvesting Licences and Forestry Harvesting Permits-(1) Subject to subsection (2), forestry operations may only be undertaken on the authority of a licence or a permit granted under this Part.

(2) Nothing in this Act prevents an owner of timber or other forestry resources from harvesting, without a licence or permit granted under this Act, any timber or other forestry resources for his or her own non-commercial use.

(3) All persons harvesting timber or other forestry resources under subsection (2) must comply with all requirements of any approved Codes of Practice relating to logging and harvesting, and any person who breaches any provision of an applicable Code of Practice commits an offence against this Act.

(4) Nothing in this section affects the powers of authorised officers to enforce the requirements specified in any approved Code of Practice, or to prevent damage to public infrastructure or to the environment in any way from any forestry operation undertaken under the authority of this section.

(5) Nothing in this section prevents any regulations or approved Code of Practice from requiring persons conducting forestry operations under the authority of this section from having to notify the Assistant Chief Executive Officer - Forestry of the Ministry prior to commencing the logging or harvesting.

(6) Nothing in this Act relieves an applicant or holder of a licence or permit issued under this Act from the obligation to comply with all other legal requirements applying to the forestry operation, including requirements relating to land use and planning, business and investment and the protection of the environment.

38. Assessment reports-(1) No licence or permit application shall be considered until the Ministry has undertaken a full assessment of the proposed harvesting operations and produced an assessment report.

(2) The assessment undertaken under subsection (1) shall give full consideration to all relevant aspects of the proposed operations and report on:

- (a) the proposed forestry harvesting contract;
- (b) the logging, sawmilling, product reselling and financial plans under the forestry harvesting contract;
- (c) in the case of a licence, a preliminary calculation of the Natural Resource Fee levied under section 52;
- (d) rights of access to the forest resources to persons intending to lawfully conduct forestry operations under the licence or permit.

(3) For the purposes of giving effect to the provisions of this section, regulations may be made under this Act to prescribe the form of a forestry harvesting contract, and a logging, sawmilling, product reselling or financial plan, so that the matters referred to in subsection (2) are given full effect.

39. Forestry Harvesting Licences-(1) A Forestry Harvesting Licence granted under this section is required for the commercial logging or harvesting of native forestry resources on any forest lands, including any customary land under a lease or licence made under the Alienation of Customary Land Act 1965.

(2) A licence may be granted for any period necessary for the forestry operations to be undertaken.

(3) Applications for a licence under this section must be made by the owner or owners of the timber or other forestry resources which are to be harvested, and shall:

- (a) be in a form approved by the Chief Executive Officer;
- (b) be lodged with the Assistant Chief Executive Officer - Forestry of the Ministry;

- (c) be accompanied by the fee fixed in accordance with this Act;
 - (d) nominate not less than one (1) person as the principal contact on behalf of the licensee, and at least one (1) person as the principal contact on behalf of any approved logging contractor;
 - (e) provide details of the logging, harvesting or clearing that is proposed;
 - (f) provide details of the qualifications held by and registration of persons proposed to be employed for the purposes of the forestry operations;
 - (g) verify the ownership of the land and the forestry resource, and provide details confirming the arrangements that have been made to identify all persons having an interest in the resources and to ensure that they are entitled to receive their due share of any monies paid for the resources (if applicable);
 - (h) include the written consent of all the landowner(s) and any person having any interest in the forestry resource; and
 - (i) include details of any agreements relating to the harvesting and sale of the forest produce.
- (4) Licences granted under this section shall:
- (a) be in the form approved by the Chief Executive Officer;
 - (b) include a description of the land or lands where the forestry operation is to take place;
 - (c) identify the nominated representatives;
 - (d) specify the amount of forestry resource which may be logged or harvested;
 - (e) specify the term that the licence shall be valid for;
 - (f) specify any conditions applying to the licence, which shall give effect to the matters ascertained in any assessment report done under section 39;
 - (g) specify any protected areas;

- (h) specify any performance bond that the Chief Executive Officer requires to be lodged by the holder of the licence, or by any nominated logging contractor; and
- (i) be signed by the Minister.

(5) No licence may be granted under this section so as to permit any forestry operation by a logging contractor who is required to be registered under the provisions of this Act, and who does not hold such registration.

(6) The validity of a licence granted under this section shall not be affected by the failure to specify any condition applying to the permit by reason of any provision of this Act.

(7) A performance bond applied to a licence in accordance with subsection (4)(h) shall:

- (a) be in a form approved by the Chief Executive Officer;
- (b) be lodged with a bank approved by the Chief Executive Officer;
- (c) subject to subsection (2), authorise the Ministry to draw directly on the bond in the event of non-performance by the holder of the licence.

(8) The Ministry may draw directly on a bond only in accordance with procedures prescribed by Regulations made under this Act.

(9) No licence shall commence or be in effect until the performance bond that has been stated in the licence has been lodged with the Ministry, and if the bond is not lodged within 21 days of the date of grant of the licence then the licence shall cease to have valid effect.

40. Forestry Harvesting Permits-(1) A Forestry Harvesting Permit granted under this section is required for:

- (a) harvesting of forestry resources from any registered farm agro-forestry development;
- (b) harvesting mature coconut trees for processing;
- (c) clearing forestry resources for the development of lands for agricultural, commercial development or public purposes; and
- (d) harvesting forestry resources from plantations.

(2) A permit may be granted for any specific harvesting or clearing, or may authorise harvesting and clearing for a period stated in the permit, which shall not exceed 12 months.

(3) Applications for a permit under this section must be made by the owner or owners of the timber or other forestry resources which are to be harvested, and shall:

- (a) be in a form approved by the Chief Executive Officer;
 - (b) be lodged with the Assistant Chief Executive Officer - Forestry of the Ministry;
 - (c) be accompanied by the fee fixed in accordance with this Act;
 - (d) nominate not less than one (1) person as the principal contact on behalf of the permit holder, and at least one (1) person as the principal contact on behalf of any approved logging contractor;
 - (e) provide details of the harvesting or clearing that is proposed;
 - (f) provide details of the qualifications held by and registration of persons proposed to be employed for the purposes of the forestry operations;
 - (g) verify the ownership of the land and the forestry resource, and provide details confirming the arrangements that have been made to identify all persons having an interest in the resources and to ensure that they are entitled to receive their due share of any monies paid for the resources (if applicable);
 - (h) include the written consent of all the landowner(s); and
 - (i) include details of any agreements relating to the harvesting and sale of the forest produce.
- (4) Permits granted under this section shall:
- (a) be in the form approved by the Chief Executive Officer;
 - (b) include a description of the land or lands where the harvesting or clearing is to take place;
 - (c) identify the nominated representatives;

- (d) specify the amount of forestry resource which may be harvested or cleared;
 - (e) specify the term that the permit shall be valid for;
 - (f) specify any conditions applying to the permit, which shall give effect to the matters ascertained in any assessment report done under section 38;
 - (g) specify any protected areas; and
 - (h) be signed by the Chief Executive Officer (or any authorised officer delegated the power to issue a permit by the Chief Executive Officer).
- (5) The validity of a permit granted under this section shall not be affected by the failure to specify any condition applying to the permit by reason of any provision of this Act.
- (6) The need for a formal application may be dispensed with and a permit may be granted for harvesting on a registered farm agro-forestry development upon the application of a registered farm agro-forestry operator to a forest officer.

41. Licence and permit conditions-(1) It is a condition of every licence and permit granted under this Act that the holder of the licence or permit shall comply with:

- (a) all requirements provided for in any approved Code of Practice under section 45;
- (b) all requirements provided for in any forestry harvesting plan applying to the relevant forestry operation under section 46;
- (c) any Order made under section 47 for the protection of the forestry resources;
- (d) requirements to pay fees under Part VII;
- (e) all laws relating to national parks and reserves, and all provisions of management plans for any national park or reserve;
- (f) all laws relating to the protection of water catchments and water resources, including the Water Resources Management Act 2008;
- (g) requirements relating to protected areas identified in the licence or permit;

- (h) any notices and requirements relating to the prevention and control of fires under the Fire and Emergency Service Act 2007 and under Part XI of this Act; and
 - (i) any other special conditions stated in the licence or permit, including conditions which may require the replanting of trees.
- (2) Licences and permits granted under this Act are not transferable.
- (3) No licence or permit may be amended during the term of its validity.
- (4) All conditions applying to a licence or permit shall bind any approved logging contractor operating under the authority of the licence or permit.

42. Suspension and cancellation of licences and permits-

- (1) The Chief Executive Officer may suspend any licence or permit granted under this Act if a report of an authorised forestry officer reveals that the holder of the licence or permit, or any approved logging contractor operating under the authority of the licence or permit, has:
- (a) breached any condition of the licence or permit; or
 - (b) committed any offence which has had a detrimental impact on the forestry resources or the environment; or
 - (c) failed to comply with the requirements of any notice served under sections 25 or 26 on the holder of the licence or permit, or any person appearing to have any control over those operations.
- (2) The period of suspension, sufficient to enable the holder of the licence or permit to rectify the breach, shall be determined by the Chief Executive Officer and shall be stated in a written notice of suspension given to the holder of the licence or permit.
- (3) The written notice of suspension may specify requirements to be implemented by the holder of the licence or permit during the period of suspension and before the suspension may be lifted.

(4) A person who undertakes any forestry operations after the relevant licence or permit applying to those operations has been suspended under subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding 1000 penalty units or to a term of imprisonment not exceeding two (2) years, or both.

(5) The Minister may order that a licence or permit granted under this Act be cancelled if a report of an authorised forestry officer confirms that the holder of the licence or permit has:

- (a) failed to take any sufficient action to comply with the conditions of the licence or permit, or any requirements imposed under subsection (3) within a reasonable time after a period of suspension has been imposed under subsection (1);
- (b) committed any offence which has had a detrimental impact on the forestry resources or the environment, and continues to commit the offence after a period of suspension has been imposed under subsection (1); or
- (c) failed to comply with the requirements of any notice served under sections 25 or 26 on the holder of the licence or permit, or any person appearing to have any control over those operations, and that the failure has continued after a period of suspension imposed under subsection (1).

(6) The suspension or cancellation of a licence or permit under this section shall immediately operate to suspend or cancel, as the case may be, all contractual rights of a logging contractor operating under the authority of the licence or permit.

43. Registration of logging, sawmilling and product re-selling operators-(1) The registration of logging contractors, sawmill operators and other forestry related businesses may be required in accordance with Regulations made under this Act.

(2) The regulations providing for the registration of operators and businesses under subsection (1) may make provision for:

- (a) the types of forestry related operations and businesses that are required to be registered;
- (b) the registration procedures and the fees to be paid for registration;
- (c) the obligations of registered persons, including the provision of information and the filing of returns;
- (d) any other conditions to be placed on the registered operators and businesses concerning their forestry related operations and activities;
- (e) standards of operation and of forest products, and procedures for certifying compliance with such standards, and for certifying that principles of sustainable forestry have been complied with in relation to any forest product; and
- (f) offences for breaches of the regulations and penalties being fines not exceeding 10 penalty units.

(3) The Chief Executive Officer may approve the form of applications and licences for the purposes of this section, and in the absence of a fee being set by regulations, may with the approval of the Minister and Revenue Board, set the fees for applications and licences under this section.

(4) The Chief Executive Officer may impose any conditions on a licence issued under this section which are additional to the conditions set by the regulations, and such conditions may be imposed at any time during the currency of a licence.

44. Forestry harvesting contracts-(1) All forestry resource owners shall sign a forestry harvesting contract with selected forestry operators for the logging, sawmilling or resource reselling of forestry resources.

(2) Conditions of the forestry harvesting contracts in subsection (1) shall be monitored by the Ministry.

45. Codes of Practice-(1) The Minister may approve Codes of Practice prepared by the Ministry and relating to any aspect of forestry, forestry operations and the processing of forest products.

(2) Codes of Practice applying under subsection (1) shall have the objectives of:

- (a) ensuring that logging and harvesting of the forestry resource is done on a sustainable basis and with due regard to the protection of the environment and minimising adverse impacts on human health and the rights of persons owning land or residing in the vicinity of forestry operations;
- (b) maximising yields and returns;
- (c) promoting the reputation of Samoa's forest products;
- (d) protecting watersheds and the water resources of Samoa;
- (e) minimising land degradation from forestry operations, ensuring that waste forest produce is appropriately dealt with and that steps are taken to reinstate forest lands;
- (f) implementing accepted international best practice in relation to any aspect of forestry; and
- (g) ensuring that all requirements applying under laws dealing with occupational health and safety are applied to forestry operations under the Codes of Practice.

(3) Upon approving any Code of Practice under this section the Minister shall publish a notice to that effect in the Savali, and the Ministry shall give written notification by post to the registered address of all holders of current licences and permits granted under this Act.

(4) The requirements stated in Codes of Practice relating to logging and harvesting of forestry resources shall be deemed to be conditions of all licences and permits granted under this Act, and shall apply to all licences and permits granted prior to the publication made under subsection (3).

(5) The requirements stated in Codes of Practice relating to processing of forestry produce shall be deemed to be conditions of the registration applying to sawmill operators and forestry related businesses under this Act, and may apply to all registered operators and businesses prior to the publication made under subsection (3).

(6) Copies of each approved Code of Practice may be made available on the internet or for purchase from the Ministry at a price fixed by the Chief Executive Officer.

46. Forestry harvesting plans-(1) The Assistant Chief Executive Officer - Forestry of the Ministry may require any holder of a licence or permit granted under this Act, or any approved logging contractor acting under the authority of such a licence or permit, to prepare and submit for approval operational plans for any forestry operation.

(2) The requirement to submit a plan may be made before the commencement of forestry operations, or at any time during forestry operations under a licence or permit.

(3) All operational plans submitted under this section must comply with the provisions of:

- (a) this Act;
- (b) any regulations made under this Act;
- (c) any condition imposed on the licence or permit to which the plan relates;
- (d) any applicable Code of Practice approved under this Act,

and in the event of any inconsistency between any aspect of an approved plan and any provision of this Act or the regulations, conditions or Code of Practice the provisions of this Act and the regulations, conditions and Code of Practice shall prevail.

(4) The Minister may give approval to any operational plan under this section if the Assistant Chief Executive Officer - Forestry of the Ministry certifies that it is in compliance with subsection (3).

(5) The provisions of all approved operational plans shall be deemed to be conditions of any licence or permits granted under this Act to which the plan relates.

47. Protection of the forestry resources-(1) The Minister may, by written determination published in the Savali and notified to the registered address of all holders of current licences and permits granted under this Act, impose prohibitions or restrictions (applying either generally throughout Samoa or at any specific location) in relation to:

- (a) the logging of any specific species of tree;
 - (b) the harvesting of any other specific forestry resource;
 - or
 - (c) the application or use of any logging practice or any specific equipment, either generally or in relation to the logging or harvesting of any specific species of tree or other specific forestry resource.
- (2) The exercise of the power under subsection (1) may impose restrictions on:
- (a) logging and harvesting specific trees and other specific forestry resources of a stated size or state of maturity; or
 - (b) the use of certain machinery and equipment in the logging, harvesting, cutting, processing or transporting of forest produce which do not meet standards based on effective utilisation of the forest produce or issues of safety;
 - (c) the right to conduct harvesting operations on areas of certain gradients, or which are in the vicinity of water or other resources or which may cause land erosion or otherwise degrade forest lands.
- (3) The Minister may exercise the powers under subsection (1) in order to:
- (a) conserve any species of tree or other forestry resource;
 - (b) maximise production of forestry resources, and to avoid loss and wastage;
 - (c) protect the environment, either generally or in any specific location; or
 - (d) protect any person involved in the logging, harvesting, cutting, processing or transporting of any forest produce.
- (4) Any prohibition or restriction imposed under subsection (1) shall immediately upon its publication in the *Savali* become a condition of all licences and permits granted under this Act, and shall apply to all licences and permits granted prior to its publication.

(5) The Minister shall not exercise the powers under this section with the effect that all logging of forests in Samoa is prohibited unless Cabinet has first given approval to the prohibition.

48. Returns and provision of information-(1) All holders of licences and permits granted under this Act, and all persons conducting any forestry related operation, business or activity must:

- (a) provide all information, statistics and copies of records relating to any forestry operation that is required to be provided by the Chief Executive Officer from time to time; and
- (b) file any returns required by the Chief Executive Officer giving accurate information concerning any forestry related matter required to be provided in the returns.

(2) When providing any information or filing any return under subsection (1) the provider of the information or return may indicate that certain information is of a confidential nature, if it is information that should not be available to commercial competitors of that person.

(3) If the Chief Executive Officer is satisfied that the nature of the information justifies it being kept confidential, the information may only be provided to government officials performing official duties in relation to Samoa's forestry resource.

(4) No person to whom the information has been provided under subsection (2) may disclose it to any person who is not authorised by the Chief Executive Officer to receive the information, and it may not be used for any commercial purpose within Samoa, except with the written consent of the person providing the information or return.

(5) If the Chief Executive Officer is not satisfied that the nature of the information justifies it being kept confidential:

- (a) the person providing the information or return shall be advised of the Chief Executive Officer's decision;

- (b) reasons for the decision shall be provided upon request from the person providing the information or return, or a person authorised by that person;
- (c) the Chief Executive Officer shall consult with the person if requested; and
- (d) the decision may be reviewed by the Minister.

PART VI
FARM AGRO-FORESTRY

49. Policies and programs to support farm agro-forestry-(1) The Ministry shall formulate and apply policies and programs in support of farm agro-forestry in Samoa.

(2) The Ministry may register persons who undertake farm agro-forestry in accordance with any program developed and implemented under this section, and who undertake to adhere to any policy formulated under this section.

(3) The Ministry shall liaise with other Ministries and government agencies to:

- (a) promote incentives for farm agro-forestry;
- (b) remove disincentives to farm agro-forestry;
- (c) support farmers to develop farm forests;
- (d) market forest produce from farm forests so as to maximise returns to forest farmers;
- (e) promote value adding in the utilisation and sale of forest produce from farm forests;
- (f) develop and offer training programs and access to business development assistance to persons undertaking farm agro-forestry activities; and
- (g) provide any other support to registered farm agro-forestry operations.

50. Farm forests to enjoy certain benefits – Persons who develop farm agro-forestry on their lands and who are registered with the Ministry in accordance with section 50(2) may be entitled to:

- (a) have the status of primary producers for the purposes of any law applying tax concessions or exemptions from taxation for primary producers;
- (b) have the status of resource owners under arrangements implemented by the government for schemes relating to carbon credits and carbon trading in which a share of the benefits may accrue to resource owners who participate in reforestation and the preservation of trees;
- (c) receive extension services provided by the Ministry;
- (d) access market related information from the Ministry concerning current prices for timber and forest products, and opportunities to maximise returns from the utilisation or conservation of their farmed forests;
- (e) exemptions from fees imposed under Part VII in accordance with regulations made under section 56;
- (f) the immediate grant of a permit to harvest farm forestry produce upon application to a forest officer who is satisfied that the harvesting shall be done in a manner which complies with the applicable Codes of Practice; and
- (g) any other incentives, benefits or support provided for by any other law or by regulations made under this Act.

51. Streamlining of planning and development requirements-

(1) All sustainable management plans applying under the Planning and Urban Management Act 2004 must be harmonised with any approved policy relating to farm agro-forestry, and in the event of any inconsistency the provisions of the approved policy shall prevail.

(2) The Ministry and the Board of the Planning and Urban Management Agency shall make arrangements for the streamlining of processes for the granting of development consents under Part V of the Planning and Urban Management Act 2004 for any registered farm agro-forestry development undertaken in accordance with an approved policy.

PART VII
FINANCIAL PROVISIONS

52. Natural Resource Fee-(1) It is deemed to be a condition of all licences that the owners of any forestry resource covered by the licence shall pay a natural resource fee for the right to harvest native forestry resources.

(2) The natural resource fee may be fixed at different rates for different species of native tree from time to time by the Minister by written Order published in the Savali and one (1) other newspaper in Samoa.

(3) Monies payable under this section may be retained as government revenue.

(4) There shall be no deduction or waiver of the obligation to pay the natural resource fee, where all owners of the forestry resource are the holders of the licence and undertake the harvesting and sale of the harvested forestry produce.

53. Forestry Application Fee-(1) A forestry application fee shall be payable to the Ministry by the holder of every licence or permit granted under this Act.

(2) The amount of the forestry application fee shall be set by the Minister by written Order which shall be published in the Savali and one (1) other newspaper in Samoa.

(3) The forestry application fee shall comprise:

(a) a nominal fixed amount to cover the administration costs of the application for a licence or permit; and

(b) an amount charged at a rate fixed by written Order to meet the cost of the assessment reports undertaken under section 38 and the monitoring or operations undertaken by officers of the Ministry.

54. Forestry levies-(1) Holders of licences and permits granted under this Act shall pay levies fixed by regulations made under this Act which may be in the nature of:

(a) a reforestation levy;

(b) a research levy;

(c) an environmental levy.

(2) Regulations made to impose any levy under this section may make any provision necessary for the calculation, imposition, payment and recovery of any such levy, and for the maintenance and administration of any Trust Fund to ensure that the levies are applied to the purposes for which they are imposed.

55. Exemptions from fees - Regulations made under this Act may exempt any specific type of forest development from the fees and levies provided for in this Part.

PART VIII **PROTECTED AREAS**

56. Forestry operations affecting national parks and reserves-(1) No licence or permit granted under this Act shall authorise any forestry operation that is inconsistent with:

- (a) any law relating to the declaration or management of national parks or reserves, or to the protection of places of national, historic, legendary or archaeological interest; or
- (b) any provision of any management plan approved under any law relating to the management of national parks and reserves.

(2) The obligations to act in compliance with any law or management plan referred to in subsection (1) shall be deemed to be conditions of any licence or permit granted under this Act.

57. Protected areas on forest lands-(1) It may be a condition of any licence or permit granted under this Act that no forestry operations be undertaken within the boundaries of any land designated under the licence or permit to be protected areas.

(2) Lands may be designated as protected areas under this section for the purposes of:

- (a) protecting the biodiversity of Samoa;
- (b) providing protection for endangered species;

- (c) otherwise implementing international conventions applying in Samoa, and which require that steps be taken to provide protection and conservation measures relevant to the forestry resources;
- (d) providing for the protection of any area determined to be of national, religious, historic, legendary or archaeological significance; or
- (e) protecting any water catchment or water resource; and
- (f) preserving sites of significance for tourism or public recreation.

(3) The Ministry may establish a system for government ministries and agencies, resource owners and landowners, non-government organisations and individuals to request that areas of significance be noted on the maps of the forestry resources maintained by the Ministry.

(4) If the Assistant Chief Executive Officer - Forestry of the Ministry accepts that a request justifies the protection of any land or site, or any feature on the land or site, in accordance with this section, the area of significance may be noted and shall be designated as a protected area for the purposes of this section.

58. Land may be declared protected land-(1) The Head of State, acting on the advice of Cabinet, may by proclamation, declare any land of any class to be protected land under the provisions of this Part for a period not exceeding five (5) years.

(2) Lands may be protected under this section for the purposes of:

- (a) protecting any particular forestry resource;
- (b) permitting scientific research to be undertaken into any forestry resource;
- (c) propagating any species of the forestry resource, or undertaking field trials; or
- (d) protecting the genetic resources of Samoa's forests and regulating access to them; or
- (e) any other forestry related practice or development.

(3) The Head of State, acting on the advice of Cabinet, may by proclamation, revoke or vary any proclamation declaring land to be protected land.

(4) The expiration or revocation of any proclamation made under this section shall not prevent a further proclamation being made under this section in relation to that land.

59. Status of protected land - Land which is declared to be protected land under section 58 shall not become State forest land or vest in the State by force merely of the declaration, but the declaration shall not be any impediment to the land becoming State forest land through acquisition in accordance with due legal process.

60. Restrictions on dealings with protected land-(1) It shall not be lawful or competent for any person to make any alienation or disposition of any protected land, and any purported alienation or disposition shall be null and void.

(2) It shall not be lawful for any owner of protected land, without the prior consent in writing of the Minister:

(a) to clear or break up any of that land for cultivation, or any other purpose; or

(b) to fell or lop any tree growing in that land; or

(c) to remove any forest produce from that land, except for the construction or repair -

(i) of a dwelling or supplementary building on land lawfully occupied by that person for the permanent abode or use of that person and his or her family; or

(ii) of fences on or around that land; or

(iii) of any fishing stakes; or

(iv) of canoes or landing places; or

(v) for firewood to be consumed by that person or his or her family for domestic purposes.

(3) A person who fails to comply with any provision of this section, or with any requirement imposed by the Minister as a condition of his or her consent under this section, commits an offence against this Act.

61. Compensation-(1) Any person having any estate or interest in any land which is declared to be protected land under this Part, and which is injuriously affected by that declaration shall be entitled to full and just compensation which shall be ascertained in the manner set out in Part III of the Taking of Land Act 1964:

PROVIDED THAT no compensation shall be awarded or payable under this section unless an application has been made for the consent of the Minister under section 60(2) and the Minister has refused consent, and in that event the amount of the compensation shall be limited to such injurious affection as shall have been caused by the refusal.

(2) Where any sum by way of compensation has been paid under this section, the amount of compensation shall be deducted from any sum which may be payable by way of compensation in respect of any subsequent taking of the land under the Taking of Land Act 1964.

62. Protected reserves on State forest lands-(1) The Minister may declare that certain areas of State forest lands be declared to be protected reserves for any purpose stated in section 58(2).

(2) The Ministry shall prepare a management plan for any areas declared to be protected reserves under this section, and all such management plans shall take effect upon being approved by the Minister.

(3) A person who:

- (a) conducts any forestry operation on a protected reserve that is inconsistent with an approved management plan applying to that reserve; or
 - (b) undertakes any other activity in breach of an approved management plan applying to that reserve,
- commits an offence against this Act.

PART IX
PROTECTION AGAINST FIRE

63. No affect to Fire and Emergency Service Act 2007-(1)

Nothing in this Part affects the powers, functions and responsibilities of the Fire and Emergency Service Authority, and the application of the Fire and Emergency Service Act 2007 to holders of licences and permits granted under this Act.

(2) In exercising the functions and powers under this Part, and when taking action to fight fires on forests lands, all forest officers shall render assistance to the officers of the Fire and Emergency Service Authority and shall act under the direction of the Commissioner for Fire and Emergency Service (or any officer acting under the authority of the Commissioner) when fighting fires on forest lands.

(3) The obligation to comply with any notice issued under the Fire and Emergency Service Act 2007 shall be deemed to be a condition of every licence and permit granted under this Act.

64. Control of fires during extreme fire hazard-(1)

When weather or other conditions arise which present an extreme fire hazard in any area, (whether forest land or not) so that an outbreak of fire would be likely to spread and endanger life and property, the Fire and Emergency Service Authority may publish by radio or newspaper or other effective means, an Order in respect of any area likely to be affected which:

- (a) prohibits the lighting of fires in the open air;
- (b) prohibits any operation which may cause an outbreak of fire;
- (c) directs that any operation be carried on or continued only with the prior written authority of an officer of the Fire and Emergency Service Authority or a forest officer (and subject to such conditions as any such officer may impose); or
- (d) prohibits or restricts the entry of persons into an affected area other than persons who normally reside or work at that place.

(2) Any Order under this section shall come into force immediately it is first published, and shall remain in force for such period (if any) as may be specified in the Order or until it is revoked.

(3) Any Order published under this section may be amended or revoked at any time by a subsequent Order published in the same manner as the original Order.

(4) A person who fails to comply with any Order published under this section, or with any condition imposed by an officer who is authorised under this section, commits an offence against this Act.

65. Causing fire to spread to forest land-(1) A person who:

- (a) causes or permits any fire to spread to any forest land; or
- (b) lights or kindles any fire in the open air which could spread or cause injury to forest land (or assists, aids or abets the lighting or kindling of such a fire) and then leaves the fire without having taken due precaution against the fire spreading or causing injury to forest land,

commits an offence against this Act.

(2) In any proceedings under this section:

- (a) a certificate given under section 20 that any land is forest land shall be sufficient without proof of that fact, unless the defendant (the onus being on the defendant) proves to the contrary; and
- (b) a map of the land certified under the hand of the Chief Executive Officer of the Ministry responsible for lands shall be sufficient evidence of its contents without production of original records and without the personal attendance of the Chief Executive Officer of the Ministry responsible for lands, or proof of his or her signature.

66. Offence to leave burning or smouldering substance -

A person commits an offence against this Act if he or she throws, leaves, or drops any lighted match, pipe ashes, lighted cigarette, lighted cigar, ashes from a gas producer, or other burning or smouldering substance on any land while an Order is in force under section 64 covering that land, and omits before leaving the spot to completely extinguish the fire of the burning or smouldering substance.

67. Requirement to provide fire fighting equipment-(1)

Any person who holds any licence or permit granted under this Act and any approved logging contractor operating under the authority of the licence or permit who lights any fire in the open air, or otherwise conducts any operation on forest land (or on any other land in the vicinity of forest land) which is likely to present a fire hazard, shall take all measures as may be necessary to prevent the occurrence or spread of any fire, and shall:

- (a) provide all such equipment as is suitable and adequate for the purpose of fighting fires, and for securing the safety of lives and property from fire on that land; and
- (b) place the equipment in localities and upon sites where it will be readily accessible and convenient for use; and
- (c) provide such structures and do all such things as may be necessary for the protection of the equipment; and
- (d) maintain the equipment in good working order and condition and ensure that it is readily available, accessible and convenient for effective use at all times.

(2) Where any person is conducting any operation which in the opinion of any officer of the Fire and Emergency Service Authority or forest officer is likely to present a fire hazard, and where in the opinion of the officer the provisions of subsection (1) are not being wholly complied with, the officer may require the person to take measures to prevent the cause of any fire within such time as the officer requires.

(3) If the person who has been required under subsection (2) to take action fails to take the required measures within the specified time, the officer may take any such measures as appear to be urgently required, and the cost of taking the measures shall be paid by the person, and if they are not paid they shall be recoverable in any Court of competent jurisdiction as a debt due to the State.

(4) A person who fails to comply with any requirements applying under subsection (1) or any requirements imposed under subsection (2) commits an offence against this Act.

68. Duty to extinguish fires-(1) Any person who holds any licence or permit granted under this Act and any approved logging contractor operating under the authority of the licence or permit, and who becomes aware of a fire burning unattended in the open air:

(a) on or within one (1) mile of forest land; or

(b) on any other land while an Order is in force under section 64 covering that land,

shall immediately cease the work or other activity on which he or she is engaged or employed and shall do everything reasonably within his or her power to extinguish the fire (whether or not there is an immediate danger of it causing damage).

(2) If a person acting in accordance with subsection (1) is unable to extinguish the fire he or she shall immediately cause the nearest available officer of the Fire and Emergency Service Authority or forest officer to be notified of the outbreak, and shall then continue so far as possible to try to control or extinguish the fire until it is brought under control or extinguished, or until he or she obtains the approval of an officer of the Fire and Emergency Service Authority or forest officer to cease the attempt.

(3) The obligations under this section apply to all persons who are managing any forestry operations on behalf of any person who holds any licence or permit granted under this Act.

(4) A person who fails to comply with any requirements imposed under this section commits an offence against this Act.

69. Requisition of assistance to extinguish fires-(1) In the event of a fire occurring on or within one (1) mile of any forest land, an officer of the Fire and Emergency Service Authority or a forest officer may require any fit male person over the age of 18 years residing or working on any forest land (or within five (5) miles of the boundary of any forest land on which the fire is burning or to which it is likely to spread) to assist in extinguishing the fire.

(2) In exercising any power under the provisions of this section, the officer shall leave available a sufficient number of men to protect other property.

(3) All persons who try to extinguish any fire or who render assistance in response to:

- (a) an obligation imposed by this Act; or
- (b) to a requirement imposed under this section; or
- (c) to an arrangement with the officer,

shall be deemed, for the purposes of any law dealing with rights of workers to compensation to be employed by the Forestry Division and to be being paid the same wage as a casual labourer employed by the Public Service Commission for the period that the person so responds.

(4) Every person who without sufficient cause (the proof of which shall lie on that person), fails to comply with the request of an officer authorised under this section, commits an offence against this Act.

70. Costs of fire fighting-(1) In any case where there has been an outbreak of fire which has threatened any forest land, or anything on the land, and which has been controlled or extinguished by the Fire and Emergency Service Authority or a forest officer (or other person duly required or authorised in that behalf) the whole or any portion of the costs incurred shall be payable by the owner, licensee, permit holder or any approved logging contractor operating under the authority of a licence or permit:

- (a) of the land on which the fire occurred; or
- (b) of any land containing property which was menaced by the fire and has been protected by the control or extinguishment of the fire.

(2) The obligation to pay costs under subsection (1) shall be determined by the Chief Executive Officer who shall have regard to any negligence of any such owner, licensee, lessee or occupier, and to such other factors as the Chief Executive Officer thinks fit.

(3) Any costs so determined to be recoverable by the Chief Executive Officer shall be recoverable in any Court of competent jurisdiction as a debt due to the State.

(4) If any owner, licensee, permit holder or approved logging contractor operating under the authority of a licence or permit is dissatisfied with any determination made by the Chief Executive Officer pursuant to subsection (2) for the payment of costs incurred in the control or extinguishment of any fire, that person may within one (1) month after notice of the Chief Executive Officer's determination has been given, appeal to the District Court against the determination in writing setting out the grounds of the appeal.

(5) On the hearing of the appeal the Court may confirm, cancel or amend the determination in such manner and in respect of such owners, licensees, permit holders or approved logging contractors operating under the authority of a licence or permit as it thinks fit, and the decision of the Court shall be final and conclusive.

(6) Pending the determination of an appeal, the determination of the Minister appealed against shall be treated as suspended.

71. Consequences of breaches of this Part - The breach of any provision of this Part by any person who:

- (a) holds any licence or permit granted under this Act; or
 - (b) manages any forestry operations on behalf of any person who holds any lease, licence or permit,
- shall be grounds for cancelling the relevant licence or permit.

PART X **OFFENCES AND PENALTIES**

72. General penalty for offences - Every person who commits an offence against this Act for which no penalty is

provided elsewhere than in this section shall be liable upon conviction:

- (a) in the case of an individual -
 - (i) to a fine not exceeding 20 penalty units or to a term of imprisonment not exceeding one (1) year, or both; and
 - (ii) if the offence is a continuing one, to a further fine not exceeding 10 penalty units for every day during which the offence continues;
- (b) in the case of a body corporate -
 - (i) to a fine not exceeding 100 penalty units or to a term of imprisonment not exceeding one (1) year, or both; and
 - (ii) if the offence is a continuing one, to a further fine not exceeding 50 penalty units for every day during which the offence continues.

73. Offences relating to unauthorised forestry operations-(1) Any person who undertakes any forestry operation and who is required to hold a current licence or permit granted under Part V commits an offence if he or she does not hold the required licence or permit at the time that any forestry operations are undertaken.

(2) A person who commits an offence under subsection (1) shall be liable upon conviction:

- (a) if the offence involves any logging or harvesting of native forestry resources, to a fine not exceeding 1000 penalty units and to a term of imprisonment not exceeding six (6) months, or both; or
 - (b) if the offence does not involve any logging or harvesting of native forestry resources, to a fine not exceeding 100 penalty units.
- (3) Any person who conducts any forestry operation in:
- (a) breach of any determination made under section 47 for the protection of the forestry resources;
 - (b) breach of any law relating to national parks and reserves or the provisions of any management plan applying to any national park or reserves;

(c) any area proclaimed to be a protected area under section 58,
commits an offence and shall be liable upon conviction to a fine not exceeding 1000 penalty units or to a term of imprisonment not exceeding one (1) year, or both.

74. Offences for breaches of licences and permits etc-(1)

Any person who holds a licence or permit granted under this Act and who:

(a) breaches any requirement applying to the forestry operations undertaken under the licence or permit under -
(i) any Code of Practice applying to the forestry operations; or
(ii) any forestry harvesting plan applying to the forestry operations under section 46; or
(iii) any other condition applying to the licence or permit; or
(b) fails to pay any fees or levies prescribed in Part VII;
or
(c) breaches any requirement applying to a national park or reserve under section 56; or
(d) breaches any condition relating to protected areas imposed in relation to the licence or permit in accordance with section 57,
commits an offence and shall be liable upon conviction to a fine not exceeding 500 penalty units or to a term of imprisonment not exceeding one (1) month, or both.

(2) Any person who provides false or misleading information:

(a) in any application for a licence or permit under this Act; or
(b) in relation to any registration that is required under this Act; or
(c) in any return or information required to be provided under section 48,
commits an offence and shall be liable upon conviction to a fine not exceeding 100 penalty units or to a term of imprisonment not exceeding one (1) month, or both.

75. Other offences - Every person commits an offence against this Act if he or she:

- (a) counterfeits upon or unlawfully fixes to any forest produce any mark appropriated for the use of forest officers; or
- (b) without lawful authority, makes or causes to be made, or uses or causes to be used, or has in his or her possession, a brand, stamp or badge which resembles or purports to be a brand, stamp or badge such as is usually used by forest officers; or
- (c) counterfeits or unlawfully issues any licence or other authority for the cutting, removal or sale of forest produce; or
- (d) unlawfully alters, obliterates, defaces, pulls up, removes, damages or destroys any boundary mark, stamp, mark, sign, notice, poster, licence, lease, permit, right or other authority used or issued by any Minister or the Forestry Division or any forest officer or police officer; or
- (e) without lawful authority, enters any land while entry is prohibited; or
- (f) without lawful authority, occupies, clears or breaks up any forest land for cultivation or any other purpose; or
- (g) without lawful authority, erects any livestock enclosure or building on any forest land; or
- (h) unlawfully destroys or damages any building, fence, gate, or other structure in, on or enclosing any forest land; or
- (i) without lawful authority, constructs or obstructs any road, path or waterway on or in any forest land; or
- (j) negligently causes any unnecessary damage in felling any tree or in cutting, extracting or removing any forest produce; or
- (k) without lawful authority, does or causes to be done any act, matter or thing for which lawful authority is required under this Act; or

- (l) without lawful authority, removes from any forest land any forest produce without previously paying any fees or levies payable in respect of that produce; or
- (m) knowingly or negligently furnishes any forest officer with a false or incorrect statement of any forest produce felled, cut, split, sawn or removed by him or her or by any person as his or her agent or employee, on which any fees or levies are payable to the State; or
- (n) without lawful authority, receives any forest produce knowing the same to have been obtained without lawful authority.

PART XI
GENERAL PROVISIONS
RELATING TO OFFENCES

76. Proof of lawful authority - In any prosecution for an offence under this Act, the defendant shall be presumed to have acted without lawful authority unless the defendant (the onus being on the defendant) proves to the contrary.

77. Liability for loss or damage-(1) Every person convicted of an offence under this Act shall be liable for any loss or damage caused by the act constituting the offence, in addition to the penalty for the offence.

(2) The amount payable in respect of that liability may be awarded by the Court in fixing the penalty, and may be recovered as if it were a fine.

(3) In assessing the amount payable under this section the Court may take into account:

- (a) salaries, wages, and incidental expenses incurred in the investigation of the act constituting the offence; and
- (b) the cost or projected cost of reinstating any part of the environment which has been damaged as a result of the commission of the offence to its original state; and

- (c) the full market value of any forestry resource which has been unlawfully taken during the commission of the offence; and
- (d) any other relevant factor.

78. Confiscation of property used in commission of offence - When any person is convicted of an offence under this Act in respect of any forestry resource, that forestry resource and all tools, machinery and vehicles used in the commission of the offence shall be liable to forfeiture by order of the convicting Court, and shall become the property of the State.

79. No limitation of proceedings - Any proceedings for an offence under this Act, or for the recovery of any penalty, fine or forfeiture imposed, may be commenced at any time after the time of the discovery of the offence.

80. Compounding of offences-(1) When the Chief Executive Officer is satisfied that any person has committed any offence under this Act (other than those created by section 24(4) and by section 75 of this Act), the Chief Executive Officer may accept from that person a sum of money by way of compensation for that offence, together with the forest resources (if any) in respect of which that offence has been committed:

PROVIDED THAT such compensation shall not exceed five (5) times the loss or damage which the Assistant Chief Executive Officer - Forestry of the Ministry estimates to have been caused by the act constituting the offence or the maximum penalty for the offence (ignoring in either case the value of property which has been or may be confiscated under section 78), whichever is the smaller.

(2) When making an assessment under subsection (1) the Assistant Chief Executive Officer - Forestry of the Ministry shall take into account the factors stated in section 77.

(3) Any property which has been or may be seized under section 81 may, as determined by the Chief Executive Officer, be forfeited to the State upon the compounding of any offence under this section.

(4) In any proceedings brought against any person for an offence under this Act, it shall be a good defence if that person proves to the satisfaction of the Court that the offence has been compounded under this section.

PART XII
SEIZURE OF FOREST PRODUCE

81. Power to seize forest produce-(1) Where any police officer or authorised forestry officer has reason to believe that:

- (a) any forest produce has been cut, removed or otherwise dealt with contrary to any provision of this Act; or
 - (b) any other offence under this Act in respect of any forest produce has been committed; or
 - (c) any forest produce has been abandoned,
- he or she may examine and seize that produce, and for that purpose if authorised so to do by a search warrant issued by a Judge or Faamasino Fesoasoani may enter any land or building, doing as little damage as may be.

(2) While any forest produce is being transported, any police officer or authorised forestry officer may:

- (a) stop and enter any vehicle or vessel carrying the produce and detain that vehicle or vessel for so long as is necessary for the purposes of this section;
- (b) examine the produce; and
- (c) require the person in possession of the produce to explain his or her right to be in possession of the produce and, if that person refuses or fails to give a satisfactory explanation, may seize the produce.

(3) Where any forest produce is seized under this section the police officer or authorised forestry officer who seizes it may require the person in charge of any vehicle or vessel on which it is loaded to take it to such reasonably convenient place as he or she may specify and there to unload it.

(4) Every person who fails to do any act which is required to be done under subsection (3) within a reasonable time commits an offence against this Act.

(5) Where any forest produce is seized under this section it shall become and remain the property of the State until the claim of a lawful owner is established.

82. Acts that constitute seizure-(1) A police officer or authorised forestry officer shall effectively seize any timber or forest produce for the purposes of this Act if he or she, either:

- (a) brands or marks of any timber or other forest produce with a distinctive mark; or
- (b) affixes to it of a written and signed notice of seizure; or
- (c) takes or arranges for the timber or forest produce to be taken into his or her custody.

(2) After the seizure of any timber or forest produce, any person who then removes or interferes with the timber or other forest produce seized (without the written permission of the person making the seizure or of a Judge) commits an offence and shall be liable upon conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding three (3) months, or both.

83. Procedure subsequent to seizure-(1) When any timber or other forest produce has been seized, the person making the seizure shall promptly give written notice of the seizure to all persons in possession of, or owning, or reasonably believed to own, the timber or other forest produce, and shall also file a notice of seizure in the office of the District Court nearest to the place of seizure.

(2) Notice in writing of the seizure shall also be promptly posted in the police station, and in the Forestry Division or other public Government office, nearest to where the seizure was made.

(3) If within 14 days after the affixing, giving, filing and posting of notices under this section no one claims to be the owner of the timber or other forest produce, a Judge shall, upon application being made by the officer who seized the timber or

forest produce, either order the seized timber or other forest produce to be forfeited to the State, or make such order as the Judge thinks just, vesting the forest produce in any person.

84. Disposal of forfeited produce - Any timber or other forest produce forfeited under the provisions of this Act may be sold or otherwise disposed of, on the recommendation of the Chief Executive Officer, in accordance with all legal requirements relating to the sale of government property.

PART XIII **MISCELLANEOUS**

85. Regulations relating to forestry resource management-(1) The Head of State, acting on the advice of Cabinet, may from time to time make regulations not inconsistent with this Act for any purpose for which regulations are required or contemplated by this Act, and for giving full effect to the provisions of this Act.

(2) Without restricting the general words in subsection (1), regulations may be made under this section for all or any of the following purposes:

- (a) regulating the management of any forest land, and the cutting, hewing, sawing, or other methods or conversion of timber or other forest produce, and the burning or other disposal of logging and industrial waste and debris from any forest land;
- (b) clarifying the definitions of “forestry resources”, “forestry operation”, “native forestry resources” or “State forest land”, including any exclusions from such definitions or vesting authority in a person to determine whether a particular act, matter or thing falls within or outside of such definitions;

- (c) prescribing the forms of licences and permits authorising forestry operation on forest land, and prescribing the method by which and the conditions subject to which licences and permits may be renewed, extended, determined, cancelled, forfeited, surrendered, or withdrawn;
- (d) prescribing the procedures for fixing and imposing performance bonds in relation to forestry harvesting licences, and for drawing on such bonds in the event of any breach by the licensee;
- (e) prescribing the fees, security bonds and deposits to be paid for any application, the issue of any licence or permit, any investigation or assessment undertaken by the Ministry in relation to any forestry operation or proposed forestry operation, and any other process or procedure used by the Ministry in accordance with this Act, or service provided by the Ministry, for the proper management of the forestry resource;
- (f) prescribing and imposing levies on licences and permits issued under this Act to be applied to reforestation, forestry research, environmental management and any other purpose associated with the sustainable development of the forestry resource, and the means of calculating, collecting and applying any levy imposed, including arrangements for any levy to be paid into a Trust Fund established to ensure that the levy is applied to the purposes for which it is imposed;
- (g) prescribing the amounts of fees and levies payable in respect of licences and permits authorising forestry operations;
- (h) regulating the exercise of the rights conferred by licences and permits over or in respect of forest land, making provision for the protection and preservation of trees, timber and other growth, and regulating the measurement, appraisal,

cutting, marking, and removal of timber and other forest produce;

- (i) prescribing the manner in which any forest produce is to be branded or marked for any purpose; and providing for the registration of brands or marks;
- (j) prescribing the books and records to be kept and the returns to be made by licence and permit holders, producers and distributors of forest produce, and by persons directly or indirectly taking delivery of timber or other forest produce, cut, hewn, sawn, acquired, converted, held or disposed of by them;
- (k) requiring the persons described in paragraph (j) to produce for inspection by the Chief Executive Officer, and authorised forestry officers, all books or account, returns, and other documents connected with any of the operations described in paragraph (j);
- (l) prescribing means for preventing or extinguishing fires on forest land as additional arrangements to those set out in this Act;
- (m) regulating or prohibiting, or authorising police officers, traffic officers, forest officers, licensees or permit holders to regulate or prohibit, the use of any public road or other public infrastructure on or within one (1) mile of forest land while a fire is in progress or fire fighting operations are proceeding in the vicinity, or at other times and for other purposes;
- (n) prescribing the measures to be taken and the equipment and fire patrols to be provided and maintained, by saw millers and other persons engaged in industrial operations on forest land or any other land within one (1) mile of any forest land for preventing or extinguishing fires or for diminishing the danger of life and property arising from fires;
- (o) prescribing additional procedures for stopping, detaining or seizing any forest produce;

- (p) providing that no sawmill or other related factory or industrial plant on any class of land may be erected or operated without the prior written authority of the Minister or unless it is registered, and prescribing the mode of registration and the fees to be paid, and the conditions for the continuance of registration or for re-registration;
- (q) regulating the establishment and conduct of recreation and camping areas on State forest land, and prescribing the terms and conditions on which those lands may be used, and fees to be paid;
- (r) defining the functions of any technical committees and vesting powers relevant to functions of the Ministry prescribed by this Act in those committees;
- (s) prohibiting the sale, import or use of any equipment or machinery used in forestry operations which are not consistent with proper forestry management practice and the sustainable development of the forestry resource, and regulating the type, design, layout and equipment used by forestry operations or by sawmills or related factory or industrial plant, and of any associated workers' dwellings, amenities, conveniences, and services;
- (t) prescribing requirements as to the measuring, appraising, grading, treating, drying, manufacture and merchandising of trees, tree seeds, timber or timber products;
- (u) prescribing requirements or conditions, unless otherwise agreed, in respect of the use, naming, manufacture, drying, treating, grading, handling, storing, sale, supply, transport by land or sea, distribution and disposal of timber and manufactured timber products, either generally or in respect of any specified area, timber, grade

- or kind of timber or manufactured timber product;
- (v) prescribing procedures and arrangements for certifying that principles of sustainable forestry have been complied with in relation to any forest product;
 - (w) restricting, prohibiting or regulating the use, sale, export or disposal of timbers which are in short supply or which require to be conserved, and restricting or prohibiting the sale or export of any timbers as round logs or in any other form;
 - (x) regulating any matter involving the impact of forestry operations on water resources;
 - (y) regulating the management of any State forest lands, and the conditions subject to which the public may use such land, including leasing or licensing areas of State forest lands for the purpose of farm agro-forestry or forestry plantation development;
 - (z) supporting the implementation of policies and programs which promote the establishment of plantation forestry and farm agro-forestry, and provide incentives and support for such developments;
 - (za) conducting research into any aspect of the forestry resources and sustainable management practices, including mapping the resource, conducting inventories of the resource and propagating and effectively utilising species for plantation and farm agro-forestry developments;
 - (zb) regulating the management of any protected land;
 - (zc) regulating or prohibiting the removal of earth, sand or minerals so as to protect the forestry resources;
 - (zd) prescribing requirements and procedures for the pre-qualification and registration of logging contractors;

- (ze) prescribing powers of the Ministry and procedures relevant to the sale and marketing of timber produce, including the sale of timber produce by tender;
- (zf) prescribing the qualifications and training requirements applying to employees engaged in forestry operations, and the use of machinery and equipment for forestry operations; and
- (zg) prescribing penalties for the breach of any regulations under this Act, or of the conditions of any licence or permit, and applying enforcement arrangements for the imposition of on-the-spot fines in relation to certain offences.

(3) Regulations made under this Act may be so made as to apply generally throughout Samoa or within any specified part or parts of Samoa, or within the whole of Samoa except such part or parts as may be specified in the regulations.

(4) The power to make any specific regulation as provided for by subsection (2) does not affect the exercise of a similar power which is vested in any person under this Act, but any person must exercise his or her power in accordance with any regulations made under this section.

86. Protection of forestry information systems-(1) The copyright for all information, data, maps and records prepared by or for the Ministry for the purposes of its forestry related information and mapping systems (including the SAMFRIS system) is vested in the Ministry.

(2) Any agreement which purports to vest the copyright of any information, data, maps and records referred to in subsection (1) in any other person shall be void and of no effect.

(3) Nothing in subsection (2) shall affect the right of the Chief Executive Officer to give permission under this section to any person to publish any information, data, maps and records referred to in subsection (1), on the terms and conditions set by the Chief Executive Officer.

(4) No information, data, maps and records referred to in subsection (1), may be published in any form unless approved by the Chief Executive Officer.

(5) In giving any approval under subsection (4) the Chief Executive Officer may determine and apply any terms and conditions applying to any approved publication, including the fixing of any fee or payment for the right to publish any information, data, maps and records referred to in subsection (1).

(6) The Chief Executive Officer is authorised to make any necessary arrangements for the sale and distribution of the information, data, maps and records referred to in subsection (1), and may fix the charges to be imposed.

(7) In giving any approval and setting any terms and conditions under this section, the Chief Executive Officer shall have regard to relevant considerations relating to:

- (a) the need to ensure that the integrity of the information, data, maps and records referred to in subsection (1), is maintained; and
- (b) the fixing of an affordable charge for the purchase of the information, data, maps and records referred to in subsection (1), or rights of access to them.

(8) Any person who:

- (a) publishes any information, data, maps and records referred to in subsection (1), without the approval of the Chief Executive Officer under this section; or
 - (b) publishes any information, data, maps and records referred to in subsection (1), with an approval given by the Chief Executive Officer, but in breach of any term of condition applying to the approval; or
 - (c) tampers with any information, data, maps and records referred to in subsection (1), prepared under the authority of this Act so as to alter any of its provisions in any way (except under the authority of this section),
- commits an offence, and shall be liable upon conviction to -
- (i) a fine not exceeding 500 penalty units, if the offender has profited in any way from the publication or tampering; or

(ii) a fine not exceeding 50 penalty units, if the offender has derived no profit from the publication or tampering.

87. Repeal and amendment of laws-(1) The Forests Act 1967 and the Potlatch Act 1967 are repealed.

(2) The Agriculture, Forests and Fisheries Ordinance 1959 is amended by:

(a) deleting the words “forests” and “forest” wherever they appear, and including in the title of the Act, references to the Department constituted under the Ordinance and to the office of the Director created under the Ordinance; and

(b) deleting subparagraphs 4(b)(ii) and (iii) from the Ordinance.

(3) The Alienation of Customary Land Act 1965 is amended by deleting:

(a) the word “forestry” wherever it appears in the Act;

(b) the definitions of forest produce and forestry from section 2 of the Act;

(c) from section 4 the proviso, including subparagraphs (e)(i) and (ii) from the Act; and

(d) section 9A from the Act.

88. Savings provisions-(1) In this Part “the repealed Act” means, the Forests Act 1967.

(2) Subject to subsection (3), all leases, licences, authorisations or permits issued under the repealed Act shall remain in force for the remainder of their term, as if they were issued under this Act:

PROVIDED THAT they may be varied, suspended or cancelled in accordance with this Act.

(3) Notwithstanding subsection (2), if the Minister is of the opinion that any lease, licence, permit or authorisation issued under the repealed Act is inconsistent with this Act, or should be made subject to amended or additional conditions, the Minister may:

(a) notify the lessee or the holder of the licence, permit or authorisation of any amended or additional

conditions, and those conditions shall apply from the date of notification; or

- (b) notify the lessee or holder of a licence, permit or authorisation of his or her intention to cancel the permit, and require the holder to apply for the appropriate licence or permit under this Act.
- (4) Where the Minister gives notification under subsection (3)(b), the lease, licence, authorisation or permit issued under the repealed Act to which it relates will cease to be valid:
- (a) at the expiration of 30 days from the date of notification, if no application is made under subsection (3)(b); or
 - (b) if an application is made under subsection (3)(b) and the application is rejected in accordance with this Act; or
 - (c) upon the issue of a licence or permit issued under this Act and pursuant to an application made under subsection (4)(b).
- (5) All agreements applying under the repealed Act shall apply under this Act until they terminate in accordance with their terms.
- (6) All declarations of protected lands and any other prohibition or restrictions lawfully imposed under the repealed Act shall continue in force as if they were made under this Act.
- (7) Nothing in this Act affects the validity of any court proceedings for an offence under any law repealed by section 87 which has been commenced or conducted prior to the commencement of this Act.

89. Transitional provisions - All regulations, orders and notices made or given under the repealed Act shall remain in force as if they were made or given under this Act, unless they are inconsistent with this Act.

**The Forestry Management Act 2011 is administered by the
Ministry of Natural Resources and Environment.**

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