

Marine Resources



ANALYSIS

- Title
1. Short Title and commencement
 2. Interpretation
- PART I**
FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT
3. Objective, function and authority
 4. Principles and measures
 5. Exploratory fishery
 6. Designated fishery
 7. Aquaculture Management Areas
 8. Conservation, management and development of fisheries of local interest by local authorities
 9. Access agreements and fisheries management agreements
 10. Allocations
 11. Nature of a fishing right
 12. Secretary to establish system for administration of fishing rights
 13. Options arising when fishery plan for fishery is revoked
 14. Rights of option holder where the new fishery plan is the same or substantially the same as the former fishery plan
 15. Rights of option holder where new fishery plan has some features in common with the former fishery plan
 16. Exercise and lapsing of option
 17. Obligations of Secretary in respect of granting fishing rights under the new plan
18. Fishing rights not to be allocated to overseas individuals or companies with overseas control
- PART 2**
FISHING AND RELATED ACTIVITIES
19. Entry into the fishery waters
 20. Licence or authorisation required for fishing and related activities in the fishery waters
 21. Requirements for Cook Islands fishing vessels outside the fishery waters
 22. Use of vessels of other flags by Cook Islanders on the high seas
 23. Compliance with Cook Islands laws
- PART 3**
CONSERVATION MEASURES
24. Prohibited fishing methods
 25. Introduction or removal of fish or marine resources into or from fishery waters
 26. Prohibition of removal of fish from nets, traps, etc.
 27. Protection of fish aggregating devices, artificial reefs, mooring buoys, floats, trays, etc
 28. Use or possession of prohibited fishing gear
 29. Driftnet Fishing Activities
 30. Prohibition of trade in fish, fish products, or other marine resources
 31. Commercial sale of endangered species

- 32. Export of fish, fish product or other marine resources
- 33. Application of laws of other States
- 34. Contamination of the fishery waters

PART 4
LICENSING

- 35. Licence issuance
- 36. Authorisation of scientific research operations
- 37. Transshipment
- 38. Conditions of licences
- 39. Fees and other forms of compensation
- 40. Period of validity of licences
- 41. Cancellation or suspension of licences
- 42. Appeals
- 43. Observation of laws
- 44. Register of licences

PART 5
MONITORING, CONTROL AND SURVEILLANCE

- 45. Appointment of authorised officers
- 46. Powers of entry and search
- 47. Powers to question persons and require production of documents
- 48. Power of arrest
- 49. Power to give directions to master
- 50. Power to use reasonable force and take copies of documents
- 51. Powers of seizure
- 52. General powers
- 53. Persons to assist authorised officer
- 54. Protection of authorised officers from liability
- 55. Requirements for seized property
- 56. Removal of parts from seized vessel
- 57. Observers
- 58. Duties to authorised officers and observers
- 59. Identification of authorised officers and observers
- 60. Automatic Location Communicators – Vessel Requirements

- 61. Vessel Monitoring System – Information
- 62. Automatic Location Communicators – Evidence
- 63. Port State Measures

PART 6
JURISDICTION AND EVIDENCE

- 64. Jurisdiction of High Court
- 65. Liability for non-payment of penalties
- 66. Liability for loss, damage or costs incurred
- 67. Certificate evidence
- 68. Validity and procedures for certificates
- 69. Certificate as to location of vessel
- 70. Photograph evidence
- 71. General Presumptions
- 72. Presumption as to authority
- 73. Strict liability
- 74. Liability of directors and managers
- 75. Liability of principal for actions of agent in relation to records and returns
- 76. Liability of companies and persons for actions of officers and employees
- 77. Destruction of Evidence
- 78. Liability of master
- 79. Forfeiture and suspension and forfeiture of fishing rights, licenses etc
- 80. Banning Order

PART 7
SALE, RELEASE AND FORFEITURE OF RETAINED PROPERTY

- 81. Forfeiture of property on conviction
- 82. Application of bond etc
- 83. Removal of seized goods
- 84. Disposal of forfeited goods
- 85. Liability for loss, damage or deterioration of items in custody
- 86. Removal of item in custody

PART 8
MISCELLANEOUS

- 87. Duty of Confidentiality

88. Importation prohibited of fish caught in illegal, unreported or unregulated fishing operation

89. Rewards

90. Notification by Secretary of Foreign Affairs

91. Failure to furnish or false statements in information for purposes of Act

PART 9

REGULATIONS

92. Regulations

PART 10

GENERAL

93. General offences and penalties

93. Accounts, records, returns and other information

94. Summonses may be served on agent of foreign vessel

95. Matters to be taken into account by Court in sentencing

96. Giving of notices

97. Severability

98. Saving

99. Validity of licences and authorizations

101. Repeals

102. Consequential amendments
Schedules

Marine Resources

An Act to provide for the conservation, management and development of marine resources and related matters

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows -

1. Short Title and commencement - (1) This Act may be cited as the Marine Resources Act 2005.

(2) This Act shall come into force on a date to be appointed by the Minister and notified by publication in the Gazette.

2. Interpretation - In this Act, unless the context otherwise requires –

“Access agreement” means a treaty, agreement or other arrangement entered into pursuant to section 9 of this Act, to which the Government is party and which may relate to areas under national jurisdiction, the high seas, or such area as may be described in such agreement;

“Act” includes any regulations made under the Act referred to;

“Administrator” means an Administrator authorised under an access agreement pursuant to section 9(4)(c) of this Act or any multilateral related agreement;

“Aircraft” means any craft capable of self-sustained movement through the atmosphere and includes hovercraft;

“Aquaculture” means any activity designed to cultivate or farm fish and other living aquatic resources, and includes the cultivation, propagation or farming of aquatic organisms from eggs, spawn, spat or seed or by rearing fish or aquatic plant lawfully taken from the wild or lawfully imported into the Cook Islands, or by other similar process;

“Aquaculture management area” means a plan for the conservation, management and development of aquaculture implemented pursuant to section 7 of this Act;

“Authorisation” means any authorisation given pursuant to this Act;

“Authorised officer” means any person or category of persons designated pursuant to section 45 of this Act to be an authorised officer for the purposes of this Act;

“Automatic Location Communicator” or “ALC” means a device approved by the Secretary which is placed on a fishing vessel that transmits, either in conjunction with another device or devices or independently, information

or data concerning the position, fishing and such other activities of the vessel as may be required;

“Buy” includes-

- (a) barter or attempt to barter;
- (b) purchase or attempt to purchase;
- (c) receive on account or consignment;
- (d) purchase or barter for future goods or for any consideration or value;
- (e) purchase or barter as an agent for another person, and “buyer” shall have a corresponding meaning;

“Cook Islander” means a person belonging to the part of the Polynesian race indigenous to the Cook Islands and who is ordinarily resident in the Cook Islands, and includes any permanent resident as defined in the Entry Residence and Departure Act 1971-72 who is ordinarily resident in the Cook Islands;

“Cook Islands chartered fishing vessel” means a fishing vessel duly registered with consent under section 12(1) of the Shipping Act 1998;

“Cook Islands fishing vessel” means a fishing vessel 10 metres or over in length, which is duly registered under the Shipping Act 1998;

“Cook Islands vessel” means a vessel which is duly registered under the Shipping Act 1998;

“Designated fishery” means any fishery designated in accordance with section 6 of this Act;

“Driftnet” means a gillnet or other net which is more than 2.5 kilometres in length the purpose of which is to enmesh, entrap or entangle fish;

“Driftnet fishing activities” includes fishing with the use of a driftnet and any related activities including transporting, transshipping and processing any driftnet catch, and provision of food, fuel and other supplies for vessels used or outfitted for driftnet fishing;

“Exclusive economic zone” means the exclusive economic zone as defined in the Territorial Sea and Exclusive Economic Zone Act, 1977;

“Exploratory fishing” means any fishing operation undertaken over a limited period of time as authorised by the Secretary pursuant to section 5 of this Act;

“FAO Compliance Agreement” means the Agreement to Promote Compliance with International Conservation and Management Measures by fishing vessels on the High Seas, done at Rome on 24 November 1993;

"Fish" means any aquatic plant or animal, whether piscine or not; and includes any oyster or other mollusc, crustacean, coral, sponge, holothurian (beche-mer), or other echinoderm, turtle and marine mammal, and includes their eggs, spawn, spat and juvenile stages;

"Fish aggregating device" means any man-made or partly man-made floating or semi-submerged device, whether anchored or not, intended for the purpose of aggregating fish, and includes any natural floating object on which a device has been placed to facilitate its location;

"Fish processing" means the producing of any substance or article from fish by any method and includes the cutting up, dismembering, cleaning, sorting, loining, freezing, canning, salting and preserving of fish;

"Fish Stocks Agreement" means the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks, done at New York on 4 December 1995;

"Fisheries Management Agreement" means any treaty, agreement or arrangement in force to which the Cook Islands is party which has as its purpose cooperation in or coordination of fisheries management measures in all or part of the region, or implementation of a multilateral access agreement, including but not limited to fisheries monitoring, control and surveillance and establishing criteria or requirements for fishing and fisheries access but which does not include any fisheries access agreement;

"Fisheries Organisation or Arrangement" includes a global, regional or sub-regional fisheries organisation or arrangement notified in the Gazette in accordance with section 90 of this Act;

"Fisheries Officer" means the Secretary, and any Fisheries Officer, or Assistant Fisheries Officer, or any Constable appointed under the Police Act 1981 pursuant to his office and any other person or category of public servant designated by the Minister, by notice published in the Gazette, to be a Fisheries Officer for the purposes of this Act;

"Fishery" or "Fisheries" means one or more stocks of fish or any fishing operation based on such stocks which can be treated as a unit for purposes of conservation and management, taking into account geographical, scientific, social, technical, recreational, economic, and other relevant characteristics;

"Fishery plan" means a plan for the conservation, management and development of fisheries implemented pursuant to section 6 of this Act;

"Fishery waters" means the waters of the territorial sea of the Cook Islands and of the exclusive economic zone and other internal waters, including

lagoons, as defined in the Territorial Sea and Exclusive Economic Zone Act 1977 and includes any other waters over which the Government of the Cook Islands has fisheries jurisdiction;

"Fishing" means -

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

"Fishing gear" means any equipment, implement, or other thing that can be used in the act of fishing, including any fishing net, rope, line, float, trap, hook, winch, vessel, or aircraft;

"Fishing licence" means any licence for fishing issued or recognised under this Act;

"Fishing right" has the meaning given by section 11 of this Act;

"Fishing vessel" means any vessel, ship or other craft which is used for, equipped to be used for or of a type that is normally used for fishing or related activities;

"Flag State" in relation to a vessel that is a foreign vessel, means-

- (a) the State in which the vessel is registered; or
- (b) if the vessel is unregistered, the State whose flag the vessel flies;

"Foreign vessel" means any vessel that is not a Cook Islands vessel;

"Government" means the Government of the Cook Islands;

"High seas" means any area of the seas beyond national jurisdiction;

"International conservation and management measures" means measures to conserve or manage fish that are -

- (a) adopted and applied by an organisation or arrangement to which the Government is a party, and is required to apply; or
- prescribed under section 92(2)(a) of this Act;

"Licence" means any licence issued under this Act;

“Local Authority” means an Island Council appointed pursuant to the Outer Island Local Government Act 1987 and includes a Vaka Council appointed pursuant to the Rarotonga Local Government Act 1988;

“Marine organism” means any plant or animal, living or non-living, including fish, which spends most of its life cycle in the ocean;

"Master", in relation to any vessel, means the person in charge or apparently in charge of the operations of that vessel;

"Minister" means the Minister responsible for Marine Resources;

“Ministry” means the Ministry of Marine Resources, established under the Ministry of Marine Resources Act 1984;

"Multilateral agreement" means a treaty, agreement or arrangement entered into pursuant to section 9 of this Act, to which there are more than two parties;

“Non-target species” includes both fish and non-fish species;

"Observer" means any person authorised to act as observer pursuant to section 57 and any person designated in accordance with an access agreement or related agreement to act as observer aboard a vessel licensed under that access agreement;

"Operator", in relation to any vessel, means the person who, by virtue of ownership, a lease, a sublease, a charter or a subcharter or otherwise, for the time being has lawful possession and control of the vessel;

"Owner", in relation to a fishing vessel, means any person exercising or discharging or claiming the right or accepting the obligation to exercise or discharge any of the powers or duties of an owner whether on his own behalf or on behalf of another and includes a person who is the owner jointly with any other person or persons and any manager director or secretary of any body corporate or company;

“Person” means any natural person or business enterprise and includes but is not limited to a corporation, partnership, cooperative, association, the Government of the Cook Islands or any subdivision thereof, and any foreign government, subdivision of such government or other entity;

“Property” means any vessel, vehicle, aircraft or other conveyance, fishing gear, implement, appliance, material, container, goods, or equipment; but does not include any fishing right or other form of allocation under this Act;

"Regional Register" means the Regional Register of Foreign fishing vessels maintained by the South Pacific Forum Fisheries Agency in Honiara, Solomon Islands;

"Related activities" includes doing, attempting to do or preparing to do any of the following -

- (a) transshipping any fish or fish products to or from any vessel;
- (b) storing, processing, or transporting fish or fish products taken from the fishery waters up to the time it is first landed;
- (c) or refuelling or supplying fishing vessels or performing other activities in support of fishing operations;

"Related agreement" means any treaty, agreement or arrangement which is concluded in relation to any access agreement or fisheries management agreement entered into pursuant to section 9 of this Act;

"Secretary" means the Secretary of Marine Resources;

"Sell" includes-

- (a) any method of disposition for consideration, including cash, anything which has value or which can be exchanged for cash, and barter;
- (b) disposition to an agent for sale on consignment;
- (c) offering or attempting to sell, or receiving or having in possession for sale, or displaying for sale, or sending or delivering for sale, or causing or permitting to be sold, offered, or displayed for sale;
- (d) disposition by way of raffle, lottery, or other game of chance, and "sale" and "sold" have a corresponding meaning;

"Serious violation" means -

- (a) fishing without a valid licence, authorisation, fishing right or permit as required under this Act;
- (b) failing to maintain accurate records of catch and catch-related data, as required by this Act or a licence issued pursuant to this Act, or serious misreporting of catch contrary to this Act or a licence issued pursuant to this Act;
- (c) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established in the fishery waters or by an applicable subregional or regional fisheries management organization or arrangement;
- (d) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;
- (e) using prohibited fishing gear;
- (f) falsifying or concealing the markings, identity or registration of a fishing vessel;
- (g) concealing, tampering with or disposing of evidence relating to an investigation or anticipated investigation;
- (h) multiple violations which together constitute a serious disregard of conservation and management measures; or
- (i) such other violations as may be specified in this Act;

"Scientific research authorisation" means an authorisation issued pursuant to section 36 of this Act;

"Surveillance officers" include any officer of a vessel or aircraft used for the enforcement of this Act, whether or not such officers are Cook Islanders or whether or not such vessel or aircraft is registered in the Cook Islands;

"Sustainable use" means conserving, using, enhancing, and developing marine resources to enable people to provide for their social, economic, and cultural wellbeing while –

- (a) maintaining the potential of marine resources to meet the reasonably foreseeable needs of future generations; and
- (b) avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment;

"Taking" means fishing and "to take" has a corresponding meaning;

"Transshipment" means transferring any fish or fish products to or from any vessel;

"Vaka Council" means a Vaka Council established in accordance with the Rarotonga Local Government Act 1998;

"Vehicle" means any vehicle as defined under the Transport Act 1966;

"Vessel" means any vessel as defined under the Shipping Act 1998;

"Vessel Monitoring System" means any system to monitor the position and activities of fishing vessels for the purpose of effective management of fisheries;

"Vessel Monitoring System Information" means all data and information generated, obtained or collected in respect to the operation of the vessel monitoring system as required under this Act.

PART I **FISHERIES CONSERVATION, MANAGEMENT** **AND DEVELOPMENT**

3. Objective, Function and Authority - (1) The principal objective of this Act and the Ministry of Marine Resources is to provide for the sustainable use of the living and non-living marine resources for the benefit of the people of the Cook Islands.

(2) The Ministry of Marine Resources has the principal function of, and authority for the conservation, management, development of the living and non-living resources in the fishery waters in accordance with this Act and the Ministry of Marine Resources Act 1984.

(3) This Act shall be interpreted, and all persons exercising or performing functions, duties, or powers conferred or imposed by or under this Act and the Ministry of Marine Resources Act 1984 shall act, in a manner consistent with the Cook Islands

international and regional obligations relating to the conservation and management of living and non-living resources in the fishery waters.

(4) To ensure that the objectives, functions and authority provided under this Act and the Ministry of Marine Resources Act 1984, and Cook Islands obligations under international and regional law are effectively discharged, the provisions of this Act shall prevail in the event of inconsistency or incompatibility with any other Act or instrument having the force of law in the Cook Islands from time to time, except for the Constitution of the Cook Islands.

4. Principles and Measures - The Minister, or Secretary, as appropriate, when performing functions or exercising powers under this Act, shall take into account the following

- (a) environmental and information principles in relation to achieving the sustainable use of fisheries and the need to adopt measures to ensure the long term sustainability of the fish stocks -
 - (i) decisions should be based on the best scientific evidence available and be designed to maintain or restore target stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors;
 - (ii) the precautionary approach should be applied;
 - (iii) impacts of fishing on non-target species and the marine environment should be minimised;
 - (iv) biological diversity of the aquatic environment and habitat of particular significance for fisheries management should be protected ;
- (b) principles and measures for the exploration and exploitation of the non-living resources of the fishery waters, seabed and subsoil -
 - (i) the orderly, safe and rational management of the non-living resources, including the efficient conduct of activities, and in accordance with the principles of conservation, the avoidance of unnecessary waste;
 - (ii) measures to ensure effective protection for the aquatic environment from harmful effects which may arise from exploration or exploitation of non-living resources, including rules, regulations and procedures for, inter alia -
 - (a) the prevention, reduction and control of pollution and other hazards to the aquatic environment, and of interference with the ecological balance of the marine environment;
 - (b) the protection and conservation of the natural resources of the fishery waters and the prevention of damage to the flora and fauna of the aquatic environment;
 - (iii) measures to ensure effective protection of human life.
- (c) principles and measures for the development and management of aquaculture-
 - (i) aquaculture development should be ecologically sustainable

- (ii) the impacts of aquaculture on aquatic ecosystems and other uses of aquatic resources should be assessed;
- (iii) the need to minimise pollution from aquaculture; social, cultural and equity principles –
 - (i) the maintenance of traditional forms of sustainable fisheries management;
 - (ii) protection of the interests of artisanal fishers, subsistence fishers and local island communities, including ensuring their participation in the management of fisheries and of aquaculture; and;
 - (iii) broad participation by Cook Islanders in activities related to the sustainable use of marine resources .

5. Exploratory Fishery - (1) Where the Secretary considers that scientific research or anecdotal information suggests that a fishery (not being a designated fishery) may exist and the extent of the abundance of the fishery or other characteristics of the fishery are unknown or uncertain, and consequently the appropriate level of harvesting or the impacts of fishing operations on the fishery are uncertain, the Secretary may prepare a report to the Minister recommending the approval of a exploratory fishery.

(2) Following receipt of a report from the Secretary under subsection (1), the Minister may, with the concurrence of Cabinet, approve the establishment of an exploratory fishery for a limited period of time for the purpose of establishing -

- (i) The characteristics, including the extent, of the fishery;
- (ii) The feasibility and/or environmental impact of commercial fishing operations;
- (iii) The appropriate method to target and catch the nominated species;
- (iv) The area within which these operations may take place.

(3) Following the approval of a exploratory fishery under subsection (1), the Secretary shall determine the nature and extent of the fishing operations that are appropriate to the exploratory fishery and may issue a public call inviting applications from persons wishing to undertake such fishing operations in the exploratory fishery.

(4) Any person wishing to undertake exploratory fishing in the exploratory fishery may apply to the Secretary for a fishing licence authorising exploratory fishing. The application for such licence must be accompanied by a detailed fishing proposal indicating, inter alia -

- (i) Where and with what vessel and fishing method the applicant wishes to fish;
- (ii) The species that will be targeted;
- (iii) The amount of fishing the applicant is planning to undertake;
- (iv) The data that the person will provide;
- (v) The measures that will be taken to minimise any potentially adverse environmental impacts.

(5) On receipt of the application and fishing proposal, the Secretary shall assess the fishing proposal and determine whether the proposal demonstrates sufficient capability to achieve the purposes provided for under subsection (2) and may, at his or her

complete discretion, grant the applicant a fishing licence authorising exploratory fishing in the exploratory fishery, subject to such conditions as the Secretary determines are appropriate to the exploratory fishery and the approved fishing proposal.

(6) The Secretary shall continue to monitor the impact of fishing operations on the exploratory fishery and the adequacy of the data being received and if, in the opinion of the Secretary, the objectives of this Act are not being served by the continuation of the exploratory fishery or any particular fishing operation, the Secretary may recommend to the Minister, and the Minister may suspend or revoke any approval under subsection (2) or any grant of a fishing licence under subsection (5).

(7) Except as otherwise expressly provided for in any fishery plan, the issue of any fishing licence to any person under subsection (5) shall not confer on that person any future rights or expectations in any fishery that may be identified or determined as a consequence of the establishment of a exploratory fishery under subsection (2).

6. Designated fisheries – (1) The Queen’s Representative may by Order in Executive Council declare a fishery as a designated fishery where, having regard to scientific, social, economic, environmental and other relevant considerations, it is determined that such fishery -

- (a) is important to the national interest; and
- (b) requires management measures for ensuring sustainable use of the fishery resource.

(2) Except for subsection (4), a fishery plan for the management of each designated fishery in the fishery waters shall be prepared by the Secretary, and kept under review.

- (3) Each fishery plan shall -
 - (a) identify the fishery;
 - (b) describe the status of the fishery;
 - (c) specify management measures to be applied to the fishery;
 - (d) specify the process for the allocation of any fishing rights provided for in the fishery plan;
 - (e) make provision in relation to any other matter necessary for sustainable use of fishery resources.

(4) A local authority may prepare a fishery plan for the management of a designated fishery of local interest within its area of authority. Such a plan shall -

- (a) be prepared in consultation with the Ministry of Marine Resources;
- (b) be consistent with the principles and measures in section 4 of this Act; and;
- (c) be submitted for approval to the Secretary.

(5) The Secretary shall approve any fishery plan prepared by a local authority in accordance with subsection (4), but shall not do so if it is inconsistent with the objectives, functions or authority in section 3 or the principles and measures in Section 4 of this Act. In the event of inconsistency, the Secretary shall promptly notify the local authority of the reasons for disapproval, and the fishery plan may be amended and re-submitted to the Secretary for approval.

(6) A fishery plan for a designated fishery shall enter into force on a date specified by Order in Executive Council made by the Queen’s Representative.

(7) The management measures in such plan shall have the full force and effect of regulations promulgated under this Act in accordance with section 92;

(8) After such consultation as the Secretary considers appropriate in the circumstances, the Queen's Representative may by Order in Executive Council, amend or revoke a fishery plan.

(9) All activities subject to a fishery plan shall remain subject to other applicable provisions of all Acts and regulations of the Cook Islands.

(10) A fishery plan has no effect to the extent it is inconsistent with the provisions of this Act.

(11) The terms and phrases defined in this Act shall be given the same meaning in the fishery plan unless the context otherwise requires.

(12) A fishery plan may contain provisions enabling the Secretary by notice in writing to give directives providing for such matters as are contemplated by or necessary for giving full effect to the provisions of that fishery plan.

7. Aquaculture Management Areas - (1) The Queen's Representative may by Order in Executive Council designate an area as an aquaculture management area where, having regard to scientific, social, economic, environmental and other relevant considerations, it is determined that aquaculture activities in the area -

- (a) are important to the national interest; and
- (b) require management measures for ensuring sustainability.

(2) The Secretary, or where appropriate, a local authority, shall prepare an aquaculture management plan for such aquaculture management area.

(3) Each aquaculture management plan shall -

- (a) identify the area to which the plan shall apply
- (b) describe the status of aquaculture activities in the area;
- (c) specify management measures to be applied to ensure sustainable aquaculture in the area;
- (d) specify the process for allocating and authorising participation in aquaculture activity in the area; and
- (e) make provision in relation to any other matter necessary for sustainable aquaculture.

(4) The Secretary shall approve any aquaculture management plan prepared by a local authority in accordance with subsection (2), and may not do so if it is inconsistent with the objectives, functions or authority in section 3 or the principles and measures in section 4 of this Act. In the event of inconsistency, the Secretary shall promptly notify the local authority of the reasons for disapproval, and the fishery plan may be amended and re-submitted to the Secretary for approval.

(5) An aquaculture management plan for a designated aquaculture management area shall enter into force on a date specified by Order in Executive Council made by the Queen's Representative .

8. Conservation, Management and Development of Fisheries of Local Interest by Local Authorities - (1) A local authority may take measures for the conservation, management and development of any fishery of local interest or aquaculture within its area of authority in accordance with the principles and provisions of this Act, in addition to the measures in respect of designated fisheries described in section 6(3), or aquaculture management areas described in section 7 of this Act, including preparation of -

- (a) a fishery plan in cooperation with the Ministry; and
- (b) where no fishery plan exists, by-laws for promulgation by the Queen's Representative by Order in Executive Council.

(2) Any by-law prepared in accordance with subsection (1) shall be submitted to the Minister and Cabinet for approval before consideration in Executive Council. The Minister or Cabinet may disapprove of a proposed by-law only if it is not consistent with the principles and provisions in this Act, and shall disapprove of a proposed by-law if it is inconsistent with any fishery plan adopted in accordance with this Act.

(3) A local authority shall inform the Secretary of the development of any conservation, management or development measures, who may provide technical, monitoring, research and other advice or assistance as appropriate.

(4) Upon agreement between a local authority and the Secretary, and approval by the Minister, measures for co-management between the local authority and the Ministry may be implemented.

(5) The Secretary shall consult with a local authority on any matter of fisheries conservation, management or development which may affect the local authority or environment, and the local authority shall consult the Secretary on such areas as are mutually important, including, as appropriate, leases for aquaculture, and shall afford the Secretary or his designee adequate opportunity to attend any meeting at which such matters are to be considered.

9. Access Agreements and Fisheries Management Agreements - (1) In performing functions or exercising powers under this Act, the Minister may, on behalf of the Government of the Cook Islands enter into access agreements and fisheries management agreements providing, inter alia, for fisheries access, related activities, cooperation in fisheries management, exploration or exploitation of non-living marine resources or such other matter as may be provided under this Act.

(2) Every access agreement -

- (a) which relates to areas under national jurisdiction of the Cook Islands is subject to the sovereign rights of the Cook Islands over the marine resources;
- (b) which authorises fishing in areas beyond national jurisdiction is subject to the requirements of any applicable bilateral or multilateral agreement, arrangement, treaty or convention to which Cook Islands is party;
- (c) shall ensure the responsibility of the other party or parties to take all measures to ensure compliance with the terms and conditions of the access agreement and with all applicable laws of the Cook Islands;
- (d) in respect of each fishing vessel shall require the flag state government, fishermen's association or vessel operator to nominate, appoint and maintain an agent who shall be resident in Cook Islands and who shall have authority to receive and respond to any legal process and shall notify the Secretary of the name and address of such agent, and any communication, information, document, direction, request or response to or from that agent shall be deemed to have been sent to, or received from the flag state government, fishermen's association or vessel operator;
- (e) shall be consistent with the principles and measures in section 4.

(3) Fishery allocations under access agreements shall -

- (a) not exceed a level consistent with the long-term conservation and sustainable use of fishery resources and the protection of fishing by Cook Islanders;
 - (b) be consistent with any applicable fishery management plan; and
 - (c) be made taking into account, inter alia, the following considerations as may be appropriate -
 - (i) past and present fishing patterns and practices;
 - (ii) submission of information for the conservation, management and development of fish stocks;
 - (iii) contributions to research in the fishery waters; and
 - (iv) whether such allocations would advance development of the fishing industry in the Cook Islands.
- (4) An access agreement may provide, inter alia, for -
- (a) authorisation of fishing, related activities or other activities or operations described in this Act or in a bilateral or multilateral access agreement;
 - (b) the issuance of licences for fishing, related activities or other activities or operations described in this Act;
 - (c) in the case of a multilateral access agreement, an Administrator authorised to perform such duties as may be specified in such agreement, including licence issuance and administration;
 - (d) such other matters as may be required for the effective implementation of the access agreement, in accordance with the objectives and provisions of this Act.
- (5) A fisheries management agreement may provide, inter alia, for -
- (a) harmonised terms and conditions for fisheries access,
 - (b) the implementation of a multilateral access agreement;
 - (c) harmonised, joint or reciprocal fisheries surveillance and enforcement measures;
 - (d) harmonised or joint conservation and management of fisheries;
 - (e) an observer programme; and
 - (f) such other matters as may be required in accordance with the objectives and provisions of this Act.

10. Allocations – (1) The Secretary may make, amend or revoke allocations for any fishing activity falling within the scope of this Act, in accordance with the provisions of this Act and any applicable fishery plan, access agreement or fishery management agreement.

(2) The making, amendment, suspension, or revocation of any allocation under subsection (1) shall not -

- (a) unless otherwise as expressly provided for in this Act or under any fishery plan, access agreement, fishery management agreement made under this Act, give rise to any right of review or appeal; or
- (b) give rise to any entitlement or expectation to compensation for any purpose or reason.

11. Nature of a fishing right - (1) For the purposes of section 6 of this Act, any fishery plan may provide for the allocation by the Secretary of fishing rights within the following class of rights -

- (a) a right to take a particular quantity of fish, or to take a particular quantity of fish of a particular species or type, or a proportion of fishing capacity, from, or from a particular area in, a designated fishery;
- (b) a right to engage in fishing in a designated fishery at a particular time or times, on a particular number of days, during a particular number of weeks or months, or in accordance with any combination of the above, during a particular period or periods;
- (c) a right to use a boat or particular type of vessel, or a particular size of vessel, or a boat having a particular engine power, in a designated fishery;
- (d) a right to use a particular fishing method or equipment in a designated fishery;
- (e) any other right in respect of fishing in a designated fishery.

(2) For the purpose of section 6 of this Act, any fishery plan may provide for the Secretary to reallocate in accordance with this Act and the fishery plan, any fishing right that remains un-fished by the holder of that right for any specified period.

(3) Except as otherwise provided in any fishery plan, a fishing right or fishing right option shall not be transferable or capable of having any charge or other interest registered against that right or option in any register established in accordance with section 12(1) of this Act.

12. Secretary to establish system for administration of fishing rights - (1) Where a fishery plan for a designated fishery provides for the management by means of a system of fishing rights, the Secretary shall establish and administer such a system (including the establishment of a register of fishing rights and fishing right options), in accordance with the requirements of the relevant fishery plan.

(2) The Secretary shall give, as soon as is reasonably practicable after a fishery plan comes into force, but not later than 30 working days thereafter, to a person who is eligible to receive a fishing right a certificate evidencing the grant by the Secretary of the fishing right in accordance with the criteria set out in the relevant fishery plan.

(3) A fishing right is granted subject to the following conditions -

- (a) the holder of the fishing right must comply with any obligations imposed by the fishery plan or imposed by the Secretary in accordance with that fishery plan;
- (b) the fishing right will cease to have effect if the fishery plan for the fishery to which the fishing right relates is revoked under section 6(8) of this Act;
- (c) no compensation is payable because the fishing right ceases to have effect or ceases to apply to a fishery;
- (d) the holder of the fishing right complies with the requirements of this Act that pertain to the holding of the fishing right itself and the fishing or the possession or sale of any fish taken under any fishing right;
- (e) the fishing right may only be exercised from or in respect of a Cook Islands fishing vessel.

(4) A fishing right -

- (a) is subject to such other conditions as are specified in the certificate, including conditions relating to the suspension of the fishing right, term of the fishing right; concentration of ownership of fishing rights, transferability or otherwise of the fishing right, and transferability of share-holding in any body corporate holding the fishing right or holding any interest in the fishing right; and
- (b) comes into force on the day specified for the purpose in the certificate, or, if no day is so specified, on the day on which it is granted; and
- (c) subject to this Act, remains in force until revoked or surrendered in accordance with this Act or it otherwise ceases to have effect under this Act.

(5) The Secretary may, by written notice given to the holder of a fishing right, whether or not at the request of the holder, vary or revoke a condition of the fishing right (not being a condition mentioned in subsection (3)) or specify a condition or a further condition to which the fishing right is to be subject.

(6) Any condition imposed by the Secretary in respect of any fishing right may be additional to or more restrictive than the provisions of any relevant fishery plan, but shall not be inconsistent with any such fishery plan.

(7) A fishing right ceases to be in force if the holder of the fishing right surrenders it by written notice given to the Secretary.

13. Options arising when fishery plan for fishery is revoked - (1) Subject to subsection (2), if a fishery plan for a designated fishery (the former plan) is revoked, each person (a former holder of fishing rights) who held fishing rights of a particular class of fishing rights (the relevant class) in respect of the fishery under the former plan immediately before it was revoked holds a fishing rights option in respect of fishing rights of the relevant class.

- (2) Subsection (1) does not apply if -
 - (a) a new fishery plan comes into force for the designated fishery immediately after the revocation of the former fishery plan; and
 - (b) the new fishery plan is in all substantial respects identical to the former plan; and
 - (c) the persons who held fishing rights under the former plan are granted equivalent fishing rights under the new plan.

(3) Section 11 of this Act applies in determining the kinds of fishing rights that together constitute a class of fishing rights in respect of a fishery, except that fishing rights that, in the Secretary's opinion, are substantially the same as any class of fishing rights under section 11 of this Act may be treated by the Secretary as identical for the purposes of that section.

(4) A fishing rights option entitles the holder of the option to be granted fishing rights of the relevant class under any fishery plan (the new plan) determined for a fishery after the revocation of the former plan if section 14 or 15 of this Act applies to the new plan. The nature and extent of the entitlements are set out in section 14(2) or 15(2) of this Act, as the case may be.

14. Rights of option holder where the new fishery plan is the same or substantially the same as the former fishery plan - (1) This section applies to the new plan if -
- (a) the new plan applies to a geographical area that consists of or includes the whole or a part of the geographical area to which the former plan applied; and
 - (b) the description (other than the description of the geographical area) of the fishery to which the new plan applies is, in the Secretary's opinion, the same, or substantially the same, as the description of the fishery to which the former plan applied; and
 - (c) the new plan provides for the granting of classes of fishing rights that are the same, or substantially the same, as the classes of fishing rights provided for in the former plan; and
 - (d) under the new plan the only persons who are entitled to be granted fishing rights are persons who hold fishing rights options in respect of fishing rights under the new plan.

(2) If a person holds a fishing rights option in respect of fishing rights under the new plan, the option entitles the person, subject to subsection (3) to be granted under the new plan, the nearest equivalent number of fishing rights of the relevant class available under the new plan.

(3) In making a determination under subsection (1)(b), the Secretary may have regard to any matters that the Secretary considers appropriate, including the total number of fishing rights of the relevant class that are available to be granted under the new plan.

15. Rights of option holder where new fishery plan has some features in common with the former fishery plan - (1) This section applies to the new plan if -
- (a) in the Secretary's opinion section 14 of this Act does not apply to the new plan; and
 - (b) the new plan applies to a geographical area that consists of or includes the whole or a part of the geographical area to which the former plan applied; and
 - (c) at least one of the species of fish to which the new plan applies was also a species of fish managed under the former plan (except any species that was a bycatch) and fishing rights were granted under the former plan immediately before it was revoked; and
 - (d) fishing rights are available to be granted under the new plan.

(2) If a person holds a fishing rights option in respect of fishing rights under the new plan, the option entitles the person to be granted such number of fishing rights under the new plan as the Secretary determines to be fair and equitable having particular regard to the number and classes of fishing rights available under the new plan.

(3) In determining the number of fishing rights within a class of fishing rights to be granted to a person under the new plan in accordance with subsection (2), the Secretary must take into account -

- (a) the extent to which the new plan applies to the fishery to which the former plan applied; and
- (b) the number and classes of fishing rights the former holder of fishing rights held under the former plan immediately before it was revoked; and

- (c) the criteria and procedures to be followed under the new plan for the granting of fishing rights; and
- (d) the conditions relevant under the new plan to persons who are to be eligible for the grant of fishing rights.

16. Exercise and lapsing of option - (1) A person who holds a fishing rights option is taken to exercise the option if the person has received a notice under section 17(1)(a) of this Act and, within the period stated in the notice, notifies the Secretary, by writing signed by the person, that the person exercises the option in respect of all, or a stated number, of the fishing rights to which the option relates.

(2) If a person does not exercise a fishing rights option in respect of all or some of the fishing rights to which the option relates, the option lapses to the extent it is not exercised.

17. Obligations of Secretary in respect of granting fishing rights under the new plan - (1) The Secretary must not grant any fishing rights under a new fishery plan unless -

- (a) the Secretary has given written notice to each person who holds a fishing rights option in relation to the plan asking the person to inform the Secretary in writing within the period of 30 days after a date stated in the notice (being a date not earlier than 2 days after the day on which the notice is sent) -
 - (i) whether the person wishes to exercise the option; and
 - (ii) if so, the number of fishing rights in respect of which the person exercises the option; and
- (b) that period has elapsed.

(2) The Secretary must develop procedures that will ensure that the holders of options that are exercised are granted the fishing rights under the new plan to which they are entitled.

(3) The Secretary may remove particulars of an option from the Register when all the fishing rights to which the option relates have been granted or the option has lapsed.

18. Fishing rights not to be allocated to overseas individuals or companies with overseas control - (1) This section applies to any person who -

- (a) being an individual, is a person who is not a Cook Islander;
- (b) being a body corporate, is wholly or significantly controlled from outside the Cook Islands.

(2) For the purposes of subsection (1)(b), a body corporate shall be deemed to be wholly or significantly controlled from outside the Cook Islands if more than 50 per cent of the voting power or 50 per cent of the beneficial ownership in relation to the body corporate is -

- (a) held or may be exercised by or on behalf of one or more individuals who are not Cook Islanders; or
- (b) held by a body or bodies corporate of which more than 50 per cent of the voting power is held or may be exercised by or on behalf of one or more individuals who are not Cook Islanders or a body or bodies corporate that, by virtue of this provision, is or are wholly or significantly controlled from outside Cook

Islands, or a combination of such individuals and bodies corporate.

(3) Where any person to whom this section applies would otherwise be entitled to be allocated a fishing right, the Secretary shall not allocate that fishing right to that person but shall re-allocate that fishing right in accordance with the provisions of any relevant fishery plan.

(4) Where any person who is allocated a fishing right becomes a person to whom this section applies, the person shall dispose of that fishing right (if transferable) within the period of 3 months or such greater period as the Secretary may permit, unless permission is granted under subsection (5).

(5) The Minister may, with the concurrence of Cabinet, subject to such conditions as the Minister considers appropriate, permit the acquisition or continued holding of any fishing right or any interests in fishing rights by any person to whom this section applies, where the Minister considers that to do so would be for the benefit of the people of the Cook Islands.

(6) Where any person to whom this section applies holds any fishing right or any interest in any fishing right that is not permitted under subsection (4) or subsection (5), the fishing right (or any related fishing right option) shall be deemed to have been surrendered to the Secretary without compensation.

PART 2 **FISHING AND RELATED ACTIVITIES**

19. Entry into the fishery waters - (1) No foreign vessel that may be used for fishing or for a related activity or other activity provided for in this Act, shall enter the fishery waters except for a purpose recognised under international law, or in accordance with a valid licence issued pursuant to this Act or a fisheries access agreement, or as may be otherwise authorised pursuant to this Act.

(2) Where any foreign vessel is used in contravention of subsection (1), the operator and master of such vessel each commits an offence, and shall be liable on conviction to a fine not less than \$100,000 and not exceeding \$1,000,000.

(3) An offence against subsection (1) shall constitute a serious violation.

20. Licence, or Authorisation Required for Fishing and Related Activities in the fishery waters – (1) No vessel 10 metres or more in length shall be used in the fishery waters for -

- (a) fishing;
- (b) related activities;
- (c) any other activity as may be provided under this Act;

otherwise than under the authority of any valid licence, authorisation and fishing right as may be required under this Act, fishery plan or any access agreement or fisheries management agreement entered into pursuant to Part I of this Act.

(2) Where any vessel is used in contravention of subsection (1), the operator and master of such vessel each commits an offence, and shall be liable on conviction to a fine not less than \$100,000 and not exceeding \$1,000,000.

21. Requirements for Cook Islands fishing vessels outside the fishery waters – (1) No person may use a Cook Islands fishing vessel for fishing or related activities -

- (a) in areas under national jurisdiction of a foreign country except in accordance with the laws of that country;

- (b) in an area subject to a multilateral access agreement or related agreement except in accordance with that agreement;
- (c) on the high seas except in accordance with a licence issued in accordance with section 35 of this Act;
- (d) in an area subject to international conservation and management measures, as defined in section 2 of this Act, except in accordance with those measures.

(2) Where any vessel is used in contravention of subsection (1), the operator and master of such vessel each commits an offence, and shall be liable on conviction to a fine not less than \$100,000 and not exceeding \$1,000,000.

22. Use of Vessels of other Flags by Cook Islanders on the High Seas – (1) No person, being a Cook Islander, or a body corporate established under the laws of Cook Islands may use a vessel registered in another country for fishing or related activities on the high seas except in accordance with a qualifying authorisation issued by the flag State.

(2) A qualifying authorisation may be issued -

- (a) by a State that is a party to the Fish Stocks Agreement; or
- (b) by a State that is a party to the FAO Compliance Agreement; or
- (c) by a State that is a party to, or has accepted the obligations of, a global, regional, or sub-regional fisheries organisation or arrangement to which the authorisation relates; or
- (d) by a State that -
 - (i) is a signatory to the Fish Stocks Agreement; and
 - (ii) has legislative and administrative mechanisms to control its vessels on the high seas in accordance with that agreement.

(3) For the purpose of subsection (1) any notice given by the Minister in the Gazette, specifying any State or category of States as States that may issue a qualifying authorization shall be conclusive of its contents.

(4) Any person who contravenes subsection (1) commits an offence, and shall be liable on conviction to a fine not less than \$50,000 and not exceeding \$100,000.

23. Compliance with Cook Islands Laws - (1) The operator, master, and each member of the crew of any fishing vessel or other vessel that may be used for fishing, a related activity or other activity in the fishery waters provided for in this Act, whether or not it holds a licence or other authorisation, shall comply with all applicable laws of the Cook Islands.

(2) The operator and master of any fishing vessel required to hold a licence for fishing outside the fishery waters under section 21 of this Act or who is subject to the requirements of section 22 of this Act, shall comply with all applicable laws of the Cook Islands.

(3) Where any vessel is used in contravention of subsections (1) or (2), the operator and master of such vessel, each commits an offence, and shall be liable on conviction to a fine not less than \$100,000 and not exceeding \$1,000,000.

PART 3
CONSERVATION MEASURES

24. Prohibited fishing methods - (1) Every person commits an offence who –
- (a) permits to be used, uses, or attempts to use any explosive, poison, or other noxious substance for the purpose of killing, stunning, disabling, or catching fish, or in any way rendering fish more easily caught; or
 - (b) carries or has in his possession or control any explosive, poison, or other noxious substance in circumstances evidencing an intention of using the explosive, poison, other noxious substance for any of the purposes referred to in paragraph (a),
- and shall be liable on conviction to a fine not exceeding \$10,000.

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

(3) Every person commits an offence who lands, sells, receives, or is found in possession of any fish taken by any means which is in contravention of subsection (1)(a), and is liable on conviction to a fine not exceeding \$5,000.

(4) In any proceedings for any offence against this section, a certificate as to the cause and manner of death or injury of any fish, signed by the Secretary, or by any person authorised by him in writing, shall, until the contrary is proved, be sufficient evidence as to the matters stated in the certificate.

(5) In any proceedings for any offence against this section, the defendant shall be given not less than 14 days notice in writing of the prosecution's intention to adduce a certificate under subsection (4).

25. Introduction or removal of fish or marine resources into or from fishery waters - (1) No person shall introduce any live fish or other aquatic organisms into the fishery waters without a permit issued by the Secretary which includes quarantine approval.

(2) No person shall translocate any live fish or aquatic organism from one lagoon to another in the fishery waters without an authorisation under this Act.

(3) Any person who contravenes subsections (1) or (2) commits an offence and shall be liable on conviction to a fine not exceeding \$10,000, and in addition shall be liable for the extent of damage which may be caused by diseases in the fishery waters as a result of the introduction of live fish.

26. Prohibition of removal of fish from nets, traps - (1) No person shall, within the fishery waters, remove a fish from a net, trap, pond, enclosure or storage device, unless he or she is the owner or is acting with the authority of the owner of such net, trap, pond, enclosure or storage device.

(2) No person shall destroy, damage or knowingly or intentionally impair the functioning of any net, trap, pond, enclosure or storage device which belongs to another person.

(3) A person who contravenes subsection (1) or (2) commits an offence and shall be liable on conviction to a fine not exceeding \$5,000, and in addition a person who contravenes subsection (2) shall be ordered to compensate the owner for the full amount of any such knowing or intentional impairment and lost fishing opportunity.

27. Protection of fish aggregating devices, artificial reefs, mooring buoys, floats, trays - (1) No person shall destroy, damage or take any part of a fish aggregating device, artificial reef, mooring buoy, float, tray or other device which belongs to another person or has been installed by the Government or a local authority.

(2) Any person who contravenes subsection (1) commits an offence and shall be liable on conviction to fine not exceeding \$5,000, and in addition may be ordered to pay full compensation for the destruction, damage or theft of a fish aggregating device, artificial reef, mooring buoy, float, tray or other device or any part thereof.

28. Use or possession of prohibited fishing gear - (1) No person shall use for fishing or have on board a vessel in the fishery waters -

(a) any net, the mesh size of which does not conform to the minimum mesh size for that type of net as required or prescribed pursuant to this Act;

(b) any fishing gear which does not conform to standards required pursuant to this Act for that type of fishing gear;

(c) any fishing gear which is prohibited by this Act, including without limitation a driftnet.

(2) Any person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding \$500,000, except in the case of a driftnet where the fine shall be not less than \$100,000 and shall not exceed \$1,000,000.

29. Driftnet Fishing Activities - (1) No vessel shall be used for or assist in any driftnet fishing activities in the Cook Islands or the fishery waters.

(2) No person shall engage or assist in any driftnet fishing activities in the Cook Islands or the fishery waters.

(3) No Cook Islands owned vessel or vessel registered under the Shipping Act 1998 shall be used for or assist in any driftnet fishing activities.

(4) No person, being a Cook Islander, shall engage or assist in any driftnet fishing activities.

(5) Where any vessel is used in contravention of subsections (1) or (3), the operator and master each commits an offence, and shall be liable on conviction to a fine not exceeding \$500,000.

(6) Every person who contravenes subsection (2) or (4) commits an offence and shall be liable on conviction to a fine not exceeding \$500,000.

30. Prohibition of trade in fish, fish products, or other marine resources - (1) Except pursuant to section 55(4), no person shall buy, sell, possess or otherwise trade in fish, fish products, or other marine resources obtained in contravention of this Act.

(2) The Minister may, by notice in the Gazette, prohibit trade in fish, fish products or other marine resources for any purpose under this Act, including conservation, management, and implementation of obligations under a fisheries management agreement.

(3) Any person who contravenes subsection (1) commits an offence and upon conviction shall be fined not more than \$500,000, and in addition an amount equivalent to the current retail value of the fish, fish product or marine resource in the market for which it is destined.

31. Commercial sale of endangered species - (1) The Minister may, by notice in the Gazette, declare as endangered any fish which are designated as endangered by

international agreement or upon the recommendation by the Secretary based on sound scientific advice.

(2) No person shall land, display for sale, sell, deal in, transport, receive, buy or possess any fish declared as endangered in accordance with this section.

(3) Any person who contravenes subsection (2) commits an offence and shall be liable on conviction to a fine not less than \$20,000 and not more than \$50,000, and in addition an amount equivalent to the current retail value of the fish or fish product in the market for which it is destined.

32. Export of fish, fish product or other marine resources - (1) No person shall -

- (a) export any fish or fish product taken in the fishery waters, or on the high seas by a Cook Islands fishing vessel, unless it is exported for personal consumption by immediate family members, does not exceed a total of 50 kilogrammes and is not intended for commercial resale;
- (b) export any live fish, live rock or viable fish eggs, spawn or other marine organism taken from the fishery waters.

without prior written permission of the Secretary, or as may be otherwise required by the Secretary or prescribed by regulation.

(2) Any person undertaking activities in contravention of subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding \$500,000, to which fine shall be added an amount equivalent to the current retail value of the fish or fish product in the market for which it is destined.

33. Application of laws of other States - (1) It shall be unlawful for any person to import, export, transport, sell, receive, acquire or purchase any fish or fish product taken, possessed, transported or sold in violation of any law or regulation of a foreign State upon implementation, on a reciprocal basis, of a fisheries management agreement between the Government and such other State or States, in which such activities are agreed to be unlawful.

(2) The fisheries management agreement described in subsection (1) shall be implemented by regulation, which may require, inter alia, record keeping and reporting for each day of fishing activity, whether the fishing took place in the fishery waters or not.

34. Contamination of the fishery waters - (1) No person shall directly or indirectly contaminate the fishery waters in any way, including by the discharge of any substance or by any act or omission that is likely to cause damage to or deterioration in the quality of the marine resources.

(2) For the purposes of this section, the following is presumed to be damaging -

- (a) non-biodegradable trash or debris;
- (b) the discharge of a poison, chemical or noxious substance, including but not limited to oil, petroleum, solvents, metals or sewage.

(3) Any person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding \$500,000, and in addition an amount equivalent to the total cost of the cleanup and of all damage caused as a direct or indirect consequence of the contamination.

PART 4
LICENSING

35. Licence issuance – (1) Subject to the provisions of this Act, and unless a multilateral access agreement or related agreement provides otherwise for licence issuance, the Secretary, or in the case of a vessel other than a Cook Islands vessel, the Minister, may issue a licence with the concurrence of Cabinet to the owner or operator of any vessel authorising that vessel to be used -

- (a) in the fishery waters for such fishing, related activities, exploration or exploitation of non-living marine resources, or for other purposes in accordance with this Act as may be specified in the licence; or
- (b) for fishing in areas beyond the fishery waters

(2) No licence shall be issued and no authorisation shall be given pursuant to this Act unless -

- (a) an application is made to the Secretary in the prescribed form or to an Administrator or other responsible authority in accordance with an applicable multilateral access or related agreement.
- (b) the required fees and other forms of compensation have been paid in accordance with section 39 of this Act.

(3) The Minister or Secretary as appropriate, may deny an application for a licence on any of the following grounds -

- (a) the owner or operator is the subject of proceedings under the bankruptcy laws of any jurisdiction and reasonable financial assurances have not been provided;
- (b) there has been failure to satisfy a judgment or other determination for a contravention of this Act or an access agreement by the owner or operator of the vessel in respect of which application for a licence has been made until such time as the judgment or other determination for has been made;
- (c) an owner or operator of the vessel has contravened, or the vessel has been used for the contravention of an access agreement to which the Cook Islands is party, or has committed an offence against the laws of the Cook Islands;
- (d) where the fishing vessel in respect of which the application is made does not have good standing on the Regional Register; or
- (e) the previous offending history (if any), of the vessel's owner, operator or master;
- (f) in accordance with such other grounds as may be prescribed.

(4) The Minister or Secretary as appropriate, shall deny any application for a licence where the granting of the licence would conflict or would be inconsistent with the requirements of this Act, an applicable access agreement, fisheries management agreement, fishery plan, or any international conservation and management measure.

36. Authorisation of scientific research operations - (1) The Minister may, on the submission of a research plan approved by the Secretary, authorise any vessel or person to undertake scientific research operations in the fishery waters, and may, in granting any such authorisation, exempt that vessel or person from the requirements of any fisheries management and conservation measures specified in the authorisation.

(2) In reviewing or preparing a research plan for scientific research, the Secretary shall consult with a local authority if the Secretary determines that the research will affect the area under the jurisdiction of such local authority..

(3) The Minister shall attach such conditions as may be prescribed and may attach such additional conditions as he or she thinks fit and are consistent with those which may be prescribed, to any authorisation granted under subsection (1).

(4) Each vessel or person authorised in accordance with this section shall comply with all applicable laws of Cook Islands and any conditions of such authorisation.

(5) The Minister may suspend or revoke such authorisation if there is failure to comply with the conditions of the authorisation or the requirements of this Act.

(6) Any authorisation or exemption granted under this section shall be in writing.

(7) Every person commits an offence who undertakes or assists in any scientific research in the fishery waters –

(a) Without authorisation under subsection (1); or

(b) In contravention of any condition or conditions attached to the authorisation under subsection (2); or

(c) In contravention of the requirements of subsection (3), and on conviction shall be liable to a fine not less than \$100,000 and not exceeding \$1,000,000.

37. Transshipment – (1) The Minister may authorise in writing any transshipment involving any foreign vessel in the fishery waters where such activity does not constitute a condition of license for fishing, in accordance with any applicable access agreement and any requirements which may be prescribed.

(2) The Minister shall attach such conditions as may be prescribed and may attach additional conditions as he thinks fit which are consistent with any conditions which may be prescribed, to any authorisation granted under subsection (1).

(3) Each person authorised in accordance with this section shall comply with all applicable laws of the Cook Islands and any conditions of such authorisation.

(4) The Minister may suspend such authorisation if there is failure to comply with the conditions of the authorisation or the requirements of this Act.

(5) Any authorisation granted under this section shall be in writing.

(6) Any person commits an offence who undertakes any transshipment activity in respect of a foreign vessel without an authorisation issued pursuant to this section, and shall be liable on conviction to a fine not less than \$100,000 and not exceeding \$1, 000,000.

38. Conditions of licences - (1) Every licence issued by the Minister or the Secretary shall be in the prescribed form, and may be subject to -

(a) such conditions as may be prescribed;

(b) such general conditions as may be specified under subsection (2); and

(c) such special conditions as may be specified under subsection (3).

(2) The Minister may, by notice published in the Gazette, specify general conditions additional to those to which any licence shall be subject.

(3) Subject to this Act, the Minister or Secretary as appropriate, may attach to any licence such special conditions as may be required for the proper management of fisheries, including conditions relating to –

- (a) the type and method of fishing or related activity authorised;
- (b) the areas within which such fishing or related activities are authorised; and
- (c) the target species and amount of fish authorised to be taken, including any restriction on by-catch; and
- (d) the times within which such fishing or related activities are authorised; and
- (e) restrictions relating to the numbers, types, sizes, specifications or operation of fishing related equipment and/or vessels

(4) The Minister or Secretary as appropriate, may from time to time, where it is expedient for the proper management of fisheries, vary any special conditions attached to any licence or authorisation.

(5) Where the Minister or the Secretary varies any special conditions attached to any licence, the Minister or the Secretary shall notify the licence holder of the variation as soon as practicable.

39. Fees and other forms of compensation - (1) There shall be payable in respect of every licence issued by the Minister or the Secretary such fees and other forms of compensation as may be prescribed.

(2) There shall be payable in respect of authorisations or allocations given or made pursuant to this Act such fees or other forms of compensation as may be prescribed.

40. Period of validity of licences - (1) Subject to this section, every licence issued by the Minister or the Secretary shall, unless earlier cancelled or suspended in accordance with section 41 of this Act, be valid for a period not exceeding 12 months.

(2) Where a material circumstance of a licensed vessel changes, the licence shall automatically terminate.

(3) The period of validity of a licence shall not extend beyond the period of validity of any applicable access agreement.

(4) Except as may be otherwise prescribed in connection with the limitation of effort in any fishery, no licence issued in respect of any vessel shall be transferable to any other vessel except with the written permission of the Secretary, unless provided otherwise by a fishery plan or an access agreement.

41. Cancellation or suspension of licences - (1) Subject to subsection (5), the Secretary or Minister as appropriate, may cancel or suspend a licence on any of the grounds set out in subsections (2), or on such grounds as may be prescribed.

(2) A licence may be cancelled or suspended where the Minister or the Secretary, as appropriate, is satisfied that -

- (a) it is necessary to do so in order to give effect to any licensing programme or conservation measure specified in, or implemented in accordance with a fishery plan;
- (b) a vessel in respect of which the licence has been issued has been used in contravention of this Act or of any condition of the licence or in breach of any applicable access agreement; or
- (c) payment has not been made and is overdue for any fees, other charges and compensation required under this Act, or for any penalty, fine or other determination imposed pursuant to this Act.

- (d) good standing on the Regional Register has been withdrawn in respect to the licensed vessel where such good standing is a condition of licence issuance; or
- (e) the Minister or Secretary is required or authorised to do so in accordance with the provisions of any access agreement entered into under this Act.

(3) Where a fishing licence has been cancelled or suspended under this section, notification of the cancellation or suspension shall be given to the person to whom the licence was issued.

(4) Where a licence has been issued pursuant to a multilateral access agreement, it may only be suspended or cancelled in accordance with the terms of such agreement.

(5) Where a licence has been suspended or cancelled on the grounds specified in subsection (2) (a), a proportion of any fees paid for the licence representing the unexpired period of that licence or the period of suspension, as the case may be, shall be reimbursed to the licensee at his or her request.

(6) Any notification given under subsection (3) shall be in writing, except as otherwise specified in subsection (7).

(7) In the case of a fishing vessel, a notification referred to in subsection (4) may be in writing or by telex, radio, facsimile, email or such other form as the Secretary thinks appropriate.

42. Appeals - Any person affected and aggrieved by -

- (a) the refusal of the Secretary to issue or renew a licence in accordance with this Act in respect of a Cook Islands fishing vessel; or
- (b) the cancellation or suspension by the Secretary in accordance with this Act of a licence issued in respect of a Cook Islands fishing vessel;

may, within 30 days of the receipt of notification of that decision appeal against it to the Minister, whose decision shall be final.

43. Observation of laws - A licence or authorisation issued under this Act shall not relieve any foreign vessel or its master or crew of any obligation or requirement imposed by any applicable law concerning navigation, customs, immigration, health or any other matter.

44. Register of Licences - The Secretary shall cause to be maintained a register of all licences issued pursuant to this Act by the Minister and the Secretary, containing information relating to -

- (a) the nature of the activity licensed;
- (b) the vessel, person or establishment licensed; and
- (c) the period of validity of each licence;

and such additional information relating to the licences as the Secretary thinks appropriate.

PART 5

MONITORING, CONTROL AND SURVEILLANCE

45. Appointment of authorised officers - (1) The Minister may, on the recommendation of the Secretary, by notice published in the Gazette, appoint any person or

category of persons as authorised officers for the purposes of this Act including nationals of other States subject to an applicable access agreement or related agreement.

(2) Every fisheries officer is deemed to be an authorised officer for the purposes of this Act.

46. Powers of entry and search - (1) In the course of the enforcement and administration of this Act, an authorised officer may, at any reasonable time -

- (a) stop, enter, board or examine any vessel or vehicle, or enter and examine any premises or place, or examine any record, document, article, and any gear, apparatus, device, or contents of any kind therein;
 - (b) stop any person and examine any record, document, article, container, gear, apparatus, device, or fish in the possession of that person;
 - (c) pass across any land.
- (2) If an authorised officer believes, on reasonable grounds -
- (a) that an offence is being or has been committed against this Act; and
 - (b) that -
 - (i) Any fish taken or thing used or intended to be used in contravention of this Act; or
 - (ii) Any record or information required by or under this Act to be kept, completed, or provided; or
 - (iii) Any article, record, document, or thing which there is reasonable ground to believe will be evidence as to the commission of an offence against this Act -

may be concealed or located or held in any vessel, vehicle, conveyance of any kind, premises, place, parcel, package, record, or thing, then, for the purpose of the enforcement of this Act, that authorised officer may at any reasonable time enter or pass across any land in order to enter, examine, and search any such premises or place, or any such vessel vehicle, or conveyance of any kind (by stopping or opening where necessary), and may examine and search (by stopping or opening where necessary) any such parcel, package, record, or thing.

(3) An authorised officer may detain any person, vessel, vehicle, conveyance of any kind, parcel, package, record, document, article, gear, apparatus, device, container, fish, or thing for such period as is reasonably necessary to enable the fishery officer to carry out an examination or search under this section.

47. Power to question persons and require production of documents - For the purpose of the enforcement of this Act -

- (1) if an authorised officer believes on reasonable grounds that a person -
 - (a) is or has been engaged in the taking or selling of fish; or
 - (b) has purchased or is or has been in possession of fish; or
 - (c) is committing or has committed an offence against this Act,
 the authorised officer may, at any reasonable time question that person or any other person, and -
 - (d) require the person being questioned to provide an answer, including any explanation or information concerning any vessel, or any place or thing, or any fish or fishing method, gear, apparatus, record, document, article, device, or thing

relating to the taking, sale, purchase, or possession of any fish;
and

- (e) require that person or any other person to produce any permit, authority, approval, permission, licence, or certificate issued in respect of any vessel or person.

(2) Nothing in subsection (1) shall be construed so as to require any person to answer any question tending to incriminate that person.

48. Power of arrest - (1) For the purpose of the enforcement of this Act an authorised officer may, if he or she believes on reasonable grounds that any person is offending against this Act, or has committed an offence against this Act -

- (a) order that person to forthwith desist from offending;
- (b) request that person to supply to that authorised officer the name by which that person is commonly known and the person's family name or surname, date of birth, actual place of residence, and occupation and may request that person to supply such verification of those details as it is reasonable in the circumstances to require the person to provide;
- (c) arrest, without warrant, that person.

(2) If an authorised officer arrests a person under subsection (1) the authorised officer shall cause the person to be delivered into the custody of a member of the Police as soon as practicable and the provisions of the Criminal Procedure Act 1980-81 shall therefrom apply except that the duties relating to the laying and filing of an information shall be the duties of the arresting authorised officer and not of a constable.

(3) If the offence in respect of which the person has been arrested carries a maximum penalty exceeding \$50,000 that person shall not be bailable as of right.

49. Power to give directions to master - (1) For the purpose of the enforcement of this Act, an authorised officer may, if he or she believes that a vessel is being or has been used in contravention of the provisions of this Act or of the conditions of any permit, authority, approval, permission, licence, registration, or certificate issued under this Act, require the master to take the vessel, as soon as reasonably practicable, to the nearest available port in the Cook Islands, or such other port as is agreed between the master and the authorised officer.

(2) If a authorised officer has given a direction under subsection (1), he or she may also give to the master or any person on board the vessel any reasonable directions in respect of any activity, method, procedure, item, gear, document, fish, property, or thing while the vessel is proceeding to port.

50. Power to use reasonable force and take copies of documents - (1) For the purpose of the enforcement of this Act, other than the exercise of any power under section 47 of this Act, an authorised officer is justified in using such force as may be reasonably necessary to enable the exercise of his or her powers under this Act.

- (2) In exercising powers under this Act, an authorised officer may -
 - (a) make or take copies of any record or document, and for this purpose may take possession of and remove from the place where they are kept any such record or document, for such period of time as is reasonable in the circumstances;

- (b) if necessary, require a person to reproduce, or assist the authorised officer to reproduce, in a useable form, information recorded or stored in a document.

51. Powers of seizure - (1) An authorised officer may seize -

- (a) Any vessel, vehicle or other conveyance, fishing gear, implement, appliance, material, container, goods, equipment, or thing which the authorised officer believes on reasonable grounds is being or has been or is intended to be used in the commission of an offence against this Act;
- (b) Any fish which the authorised officer believes on reasonable grounds are being, or have been, taken, killed, transported, bought, sold, or found in the possession of any person, in contravention of this Act; and any fish with which such fish have been intermixed;
- (c) Any article, record, document, or thing which the authorised officer believes on reasonable grounds is evidence of the commission of an offence against this Act;

(2) Any property seized under subsection (1) shall be delivered into the custody of the Secretary.

52. General powers - (1) An authorised officer may do all such acts and things and give such directives as are reasonably necessary for the purposes of exercising any of his or her powers under this Act.

- (2) The powers of an authorised officer under this Act are exercisable -
 - (a) within the Cook Islands;
 - (b) in the fishery waters;
 - (c) beyond the fishery waters;

in relation to any conduct whether or not that conduct occurred in the fishery waters.

(3) Subsection (2)(c) does not authorise an authorised officer to exercise any powers under this Act in respect of any foreign vessel or any person aboard any such vessel unless the authorised officer -

- (a) believes on reasonable grounds that any person on board the vessel has committed an offence in the fishery waters; and
- (b) is in hot pursuit of, or has freshly pursued, the vessel; and
- (c) commenced that pursuit in the fishery waters.

(4) An authorised officer may exercise any powers beyond the limits of the fishery waters in respect of any foreign vessel or any person aboard any such vessel and relating to fisheries inspection, compliance or enforcement provided that the exercise of those powers is authorised by an access agreement, fisheries management agreement or other bilateral or multilateral legal instrument to which Cook Islands is party, and implemented in Cook Islands by regulation or notification in the Gazette.

53. Persons to assist authorised officer - (1) Any authorised officer or observer exercising any of the powers conferred on him or her by this Act may do so with the aid of such assistants as he or she considers necessary for the purpose.

(2) All persons called upon to assist any authorised officer or observer in the exercise of any of the powers conferred on him or her by this Act are hereby authorised to render such assistance.

54. Protection of authorised officer from liability - (1) No authorised officer or observer who does any act under this Act, or omits to do any act required by this Act, shall be under any civil or criminal liability as a result of that act or omission on the ground of want of jurisdiction or mistake of law or fact, or any other ground, unless he or she has acted, or omitted to act, in bad faith.

(2) A person who, while assisting a authorised officer or observer under section 53 of this Act, does any act under this Act, or omits to do any act required by this Act, shall not be under any civil or criminal liability as a result of that act or omission on the ground of want of jurisdiction or mistake of law or fact, or any other ground, unless he or she has acted or omitted to act in bad faith.

(3) The Government shall not be held directly or indirectly liable for an act or omission of any authorised officer or person, unless the authorised officer or person would himself or herself incur liability for the act or omission.

55. Requirements for seized property, etc. - (1) The Secretary may, at any time until an information or charge is laid in respect of the alleged offence for which the property was seized, on application by -

- (a) the person from whom the property was seized; or
- (b) the owner or person entitled to the possession of the property seized; and

release the property to any such person under bond in such sum and under such sureties and conditions (if any) as the Secretary may specify.

(2) Where any person to whom property is released under subsection (1) fails to comply with the conditions of any bond or with any condition specified by the Secretary -

- (a) the property may be re-seized at any time at the direction of the Secretary; and
- (b) the provisions of this section shall thereupon apply to the property as if it had been seized pursuant to section 51 of this Act; and
- (c) the Secretary may, in the case of failure to comply with the conditions of any bond, apply to the High Court for an order for estreat of the bond; and
- (d) where the Secretary so applies the Registrar shall fix a time and place for the hearing of the application, and shall, not less than 7 days before the time fixed, cause to be served on every person bound by the bond a notice of the time and place so fixed; and
- (e) if on the hearing of any such application it is proved to the satisfaction of the Court that any condition of the bond has not been kept, the Court may make an order to estreat the bond to such an amount as it thinks fit to any person bound thereby on whom notice is proved to have been served in accordance with this subsection; and
- (f) any penalty payable in accordance with this subsection shall be recoverable as if it were a fine.

(3) Where, in the opinion of the Secretary, any fish or other article seized pursuant to section 51 of this Act may rot, spoil, deteriorate or otherwise perish, the Secretary may arrange for its sale in such manner and for such price as the Secretary may determine.

(4) Where the ownership of any property cannot at the time of seizure be ascertained, the property seized shall be forfeit to the Government and shall be disposed of as directed by the Secretary after 90 days from the date of seizure if, within that time, it has not been possible to establish the ownership of the property.

(5) A purchaser for valuable consideration of any fish, article or property sold under subsection (3) or subsection (4) shall derive good and unencumbered title in respect of that fish, article or property (as the case may be).

(6) Subject to subsection (1), all property seized pursuant to section 51 of this Act and the proceeds from the sale of any such property pursuant to subsection (3), except where such property has been disposed of by the Government pursuant to subsection (4), shall be held in the custody of the Secretary acting on behalf of the Government until—

- (a) a decision is made not to lay any information or charge in respect of the alleged offence for which the property was seized; or
- (b) where such a charge or information is laid, upon the completion of proceedings in respect of the alleged offence for which the property was seized, or such sooner time as the Court may determine.

(7) Where any information or charge has been laid in respect of the alleged offence for which the property was seized pursuant to subsection (1), and that property remains in the custody of the Government, the Court may at any time, on application by—

- (a) the person from whom the property was seized; or
- (b) the owner or person entitled to the possession of the property seized;

release the property under bond to any such person, and any such release may be subject to such sureties and conditions as the Court may specify.

(8) In determining the value of the bond or other form of security, the Court shall have regard to the aggregate amount of –

- (a) the value of the property to be released;
- (b) the total maximum fine or fines provided for the offence charged or likely to be charged; and
- (c) the loss, damages or costs the prosecution would be likely to recover under section 66, if a conviction were entered,

and the Court may set the value at such aggregate amount.

(9) The decision whether or not to lay any information or charge in respect of an alleged offence for which any property is seized under section 51 of this Act shall be made as soon as reasonably practicable after the property is seized, taken possession of, or detained.

(10) The Government shall not be liable to any person for any spoilage or deterioration in the quality of any fish seized under section 51 of this Act.

(11) Subject to subsection (10), but notwithstanding any other provisions of this section, where any property has been seized under section 51 of this Act, then –

- (a) on a decision being made not to lay an information or charge; or
- (b) On the acquittal of any person charged with an offence for which the property is subject to forfeiture –

such property, or the proceeds from the sale of such property, shall forthwith be released from the custody of the Government of the Cook Islands to the person entitled thereto and in the case of proceeds of sale from property under section 55(4) the same shall be paid into the

unclaimed monies account and be dealt with in accordance with the Unclaimed Monies Act 1970.

(12) Notwithstanding any other provisions in this section, an authorised officer who at the time of seizure returns to the water any fish seized pursuant to section 51 of this Act that he or she believes to be alive, shall not be under any civil or criminal liability to the person from whom the fish was seized in the event of a decision being made not to lay an information or charge in respect of the fish, or of the person being acquitted of the charge.

56. Removal of parts from seized vessels, etc. - (1) An authorised officer may remove any part or parts from any vessel, vehicle or aircraft held in the custody of the Government for the purpose of immobilising that vehicle or aircraft.

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

(3) No person, otherwise than acting under the authority of the Secretary, shall possess or arrange to obtain any part or parts removed under subsection (1) or possess or arrange to obtain or make any replacement or substitute part or parts for those removed under subsection (1) or shall fit or attempt to fit any part or parts or any replacement or substitute part or parts to a vessel, vehicle or aircraft held in the custody of the Government.

57. Observers - (1) The Secretary may designate in writing persons to act as observers on vessels issued with valid licences or authorisations pursuant to this Act.

(2) Notwithstanding subsection (1), observers may be designated in accordance with any fishery plan or any access agreement or related agreement and shall be designated where required by any fishery plan or any agreement or where an observer or class of observers has been certified under the terms of such agreement or other bilateral or multilateral legal instrument to which Cook Islands is party.

(3) Persons designated in accordance with subsection (2) who are not Cook Islanders shall be subject to the provisions of this Act while carrying out their duties and functions and enforcing their rights.

(4) Observers shall exercise scientific, compliance, monitoring and other functions.

(5) Observers shall be permitted to board any vessel issued with a valid licence or authorisation pursuant to this Act and remain on such vessel for the purpose of exercising the observers functions.

(6) The operator, master, and each member of the crew of such vessel shall allow and assist an observer to -

- (a) board and remain on such vessel for the purpose of carrying out his or her duties and functions, at such time and place as the Secretary may require;
- (b) have full access to and the use of facilities and equipment on board the vessel which the observer may determine is necessary to carry out his or her duties, including -
 - (i) full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish;
 - (ii) full access to the vessel's records including its log and documentation for the purpose of records inspection and copying;
 - (iii) full access to fishing gear on board;
 - (iv) full access to navigation equipment and radios;

- (v) take and remove from the vessel reasonable samples for the purposes of scientific investigation and other relevant information;
- (vi) take photographs of the fishing operations, including fish, fishing gear, equipment, charts and records, and remove from the vessel such photographs or film as he or she may have taken or used on board the vessel;
- (vii) send or receive messages by means of the vessel's communications equipment; and
- (viii) gather any other information relating to fisheries in the fishery waters or other areas as may be authorised by licence or authorisation;
- (c) carry out the observers duties safely; and
- (d) disembark at such time and place as may be determined by the Secretary or in accordance with an access agreement.

(7) The operator shall provide the observer, while on board the vessel, at no expense to the Government with food, accommodation and medical facilities equivalent to officers or such reasonable standard as may be acceptable to the Secretary.

(8) In addition to the requirements in subsection (7), the Secretary may require the operator to pay in full the following costs of the authorised observer -

- (a) travel costs to and from the vessel;
- (b) such salary as may be notified by the Secretary, being the full amount of such salary; and
- (c) full insurance coverage.

(9) Any operator and master of any vessel with a valid licence issued in accordance with this Act shall allow and assist any observer to have full access to any place within the Cook Islands where fish taken in the fishery waters is unloaded or transhipped, to remove samples and to gather any information relating to fisheries in the fishery waters.

58. Duties to authorised officers and observers - (1) The operator, master, and each crew member of any fishing vessel, the driver of any vehicle and the pilot and crew of any aircraft shall immediately comply with every instruction or direction given by an authorised officer or observer as appropriate, and facilitate safe boarding, entry and inspection of the vessel, vehicle or aircraft and any fishing gear, equipment, records, fish and fish products.

(2) The operator, master, and each crew member of a vessel, driver of a vehicle and pilot and crew of an aircraft shall ensure the safety of an authorised officer or observer as appropriate in the performance of his duties.

(3) Every person commits an offence who contravenes subsections (1) or (2), or -

- (a) assaults, obstructs, resists, delays, refuses boarding to, intimidates or fails to ensure the safety of or otherwise interfere with an authorised officer or observer in the performance of his duties;
- (b) incites or encourages any other person to assault, resist, or obstruct any authorised officer while in the execution of his powers or duties, or any person lawfully acting under the officer's orders or in his aid;
- (c) uses threatening language or behaves in a threatening or insulting manner or uses abusive language or insulting gestures

towards any authorised officer or observer while in the execution of his powers or duties, or any person lawfully acting under an authorised officer's orders or in his aid;

- (d) fails to comply with the lawful requirements or any authorised officer or observer;
- (e) furnishes to any authorised officer any particulars which are false or misleading in any material respect;
- (f) personates or falsely represents himself to be an authorised officer, or who falsely represents himself to be a person lawfully acting under an authorised officer's orders or in his aid;
- (g) resists lawful arrest for any act prohibited by this Act;
- (h) is in breach of any other duty to an authorised officer or authorised observer under this Act.

(4) For the purpose of subsection (3), any person who does not allow any authorised officer, or any person acting under his orders or in his aid, or an observer to exercise any of the powers conferred on such person by this Act shall be deemed to be obstructing that officer or person.

(5) Every person who, being a master, owner, charterer, agent, or a company established under the laws of Cook Island which owns, partly owns or controls a fishing vessel which transports an authorised officer or observer outside the fishery waters and causes him or her to disembark outside the territory of jurisdiction of the Cook Islands, commits an offence and upon conviction shall be liable, in addition to any fine, for all costs of repatriation including board and lodging while out of the Cook Islands and direct transportation to Cook Islands.

(6) Every person who commits an offence against this section shall be liable on conviction to a fine not exceeding \$500,000.

59. Identification of authorised officers and observers – An authorised officer or observer when exercising any of the powers conferred on him by this Act shall on request produce identification to show he or she is an authorised officer or observer under this Act.

60. Automatic Location Communicators – Vessel Requirements – (1) The operator of each fishing vessel licensed to fish pursuant to this Act shall be required, as a condition of its licence, to install, maintain and operate a registered automatic location communicator (ALC) at all times while in the fishery waters or such other area as may be agreed or designated, and in accordance with -

- (a) the manufacturer's specifications and operating instructions; and
- (b) such standards as may be required by any body or organization of which Cook Islands is a member;
- (c) such other requirements as may be prescribed.

(2) The operator of each vessel referred to in subsection (1) shall ensure that -

- (a) no person tampers or interferes with the ALC and that the ALC is not altered, damaged, disabled or otherwise interfered with;
- (b) the ALC is not moved from the required or agreed installed position or removed without the prior written permission of the Secretary;

- (c) the ALC is switched on and is operational at all times when the vessel is within the fishery waters or such other area as may be agreed or designated, and at such times prior to entry into such fishery waters or other area as may be prescribed;
- (d) upon notification by the Secretary that the vessel's automatic location communicator has failed to transmit, the directives of the Secretary are complied with until such time that the vessel's ALC is functioning properly;
- (e) the ALC is registered as the Secretary may direct or as may be prescribed, at the operator's expense.

(3) The operator of each vessel referred to in subsection (1) or his or her authorised agent, upon notification by the licensing country of appropriate authority that the vessel's ALC has failed to report, shall ensure that reports containing the vessel's name, call sign, position (expressed in latitude and longitude to minutes of arc), and date and time for the report, are communicated to a delegated authority at intervals of 8 hours or such shorter period as specified by the delegated authority, commencing from the time of notification of the failure of the ALC. Such reports must continue until such time as the ALC is confirmed operational by the licensing country of appropriate authority.

(4) If it is not possible to make any one or more of the further position reports described in paragraph (3), or when the Ministry so directs, the master of the vessel must immediately stow the fishing gear and take the vessel directly to a port identified by the Ministry, and as soon as possible, report to the Ministry that the vessel is being, or has been, taken to port with gear stowed.

(5) Any operator, including the master, owner and charterer, who does not comply with subsections (1), (2), (3) or (4) commits an offence and shall be liable on conviction to a fine not less than \$50,000 and not exceeding \$250,000, and in addition the applicable licence shall be cancelled.

61. Vessel Monitoring System – Information – (1) Ownership of all vessel monitoring system information generated by an ALC required and operating under section 60 is vested in the Cook Islands Government.

(2) All vessel monitoring information shall be classified as confidential information, and shall be subject to such procedures as may be prescribed by regulation.

(3) Any person who divulges information from a vessel monitoring system, to any person or persons not authorised to receive such information commits an offence and shall be liable on conviction to a fine not less than \$50,000 and not exceeding \$250,000.

62. Automatic Location Communicators – Evidence - (1) All information or data obtained or ascertained by the use of an ALC shall be presumed, unless the contrary is proved, to -

- (a) come from the vessel so identified;
- (b) be accurately relayed or transferred;

(c) be given by the master, owner and charterer of the vessel; and evidence may be given of information and data so obtained or ascertained whether from a printout or visual display unit.

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

(3) An ALC installed and operated in accordance with this Act shall be judicially recognised as notoriously accurate.

(4) The presumption set out in subsection (3) shall apply whether or not the information was stored before or after any transmission or transfer.

(5) Any person may give a certificate stating –

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

(6) Section 68 of this Act shall apply to a certificate given under this section as if it had been a certificate given under section 67 of this Act and any reference therein to section 67 of this Act shall be read as a reference to this section.

63. Port State Measures - Landings and transshipments in areas under national jurisdiction may be prohibited by the Secretary where it has been established, on reasonable grounds, that the catch has been taken in a manner which undermines the effectiveness of fisheries conservation and management measures adopted by a regional or international organisation.

PART 6 **JURISDICTION AND EVIDENCE**

64. Jurisdiction of High Court – (1) Any act or omission in contravention of any of the provisions of this Act committed -

- (a) by any person within the fishery waters;
- (b) by any Cook Islander or person ordinarily resident in Cook Islands outside the fishery waters; or
- (c) by any person on board any Cook Islands fishing vessel;

may be dealt with and judicial proceedings taken as if such act or omission had taken place in the Cook Islands within the local limits of the jurisdiction of the High Court.

(2) Where an authorised officer or observer is lawfully exercising any powers conferred under this Act outside the fishery waters or, unless the applicable access agreement, fisheries management agreement or other bilateral or multilateral legal instrument provides otherwise, any person commits any act or omission, which if committed within the fishery waters would be an offence against this Act, then the exercise of those powers or the commission of that act or omission shall be deemed to have occurred within the fishery waters.

(3) Any act or omission on the high seas by a person referred to in subsection (1) (b) or (c), which if committed within the fishery waters would be an offence against section 60(2) of this Act shall be deemed to have been committed within the fishery waters.

(4) Where any regulation or licence condition requires specifically or incidentally the reporting of any fact while a vessel is on the high seas then proceedings may

be taken in respect of any failure to report or the misreporting of such fact as if it had occurred within the fishery waters.

(5) Notwithstanding any provision of any statutory enactment an information or charge in respect of any offence against this Act may be laid at any time within one year of the commission of the offence.

(6) No prosecution or proceedings for an offence against this Act may be commenced except by -

- (a) the Solicitor-General; or
- (b) the Secretary; or
- (c) any authorised officer, authorised in that behalf by the Secretary.

65. Liability for non-payment of penalties - All pecuniary penalties and all forfeitures incurred or imposed pursuant to this Act, and the liability to forfeiture of any article seized under the authority thereof, and all rents, charges, expenses and duties and all other sums of money payable under this Act may be sued for, determined, enforced and recovered by suit or other appropriate civil proceedings in the name of the Secretary as the nominal plaintiff, and all such proceedings shall be deemed to be civil proceedings, and the fact that a bond or other security has been paid shall not be pleaded or made use of in answer to or in stay of any such proceedings.

66. Liability for loss, damage or costs incurred - A person who commits an offence against this Act may, upon conviction, be held liable to the Government of the Cook Islands for -

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

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

67. Certificate evidence - The Secretary or any person designated in writing by him may give a certificate stating that -

- (a) a specified vessel or person was or was not on a specified date or dates the holder of any specified licence, authorisation or certificate of registration;
- (b) an appended document is a true copy of the licence, authorisation or other document granted or issued under this Act and that specified conditions were attached to such document;
- (c) a particular location or area of water was on a specified date or dates within the fishery waters, or within a closed, limited, restricted or in any other way controlled area of the fishery waters, or an area of the fisheries waters subject to specified conditions;
- (d) an appended chart shows the boundaries on a specified date or dates of the fishery waters, territorial sea, closed or limited

- areas or other areas or zones delineated for any specified purpose;
- (e) a particular item or piece of equipment is fishing gear;
 - (f) the cause and manner of death of or injury to any fish;
 - (g) An appended document is a true copy of an access agreement, fisheries management agreement or other bilateral or multilateral legal instrument to which Cook Islands may be party;
 - (h) a call sign, name or number is that of or allotted under any system of naming or numbering of vessels to a particular vessel;
 - (i) that a specified vessel has good standing on the Regional Register of Foreign fishing vessels, or the VMS Register as evidenced by an appended certificate to that effect from the Director of the South Pacific Forum Fisheries Agency;
 - (j) a particular position or catch report, a copy of which is appended, was given in respect of a specified vessel;
 - (k) any specified return, log, record or information required to be kept or furnished under this Act was or was not kept or furnished;
 - (l) any specified interest in any specified fishing right was or was not held by a person named in the certificate.

68. Validity and procedures for certificates – (1) Unless the contrary is proved, a document purporting to be a certificate given under section 67 of this Act shall be deemed to be such a certificate and to have been duly given.

(2) Where a certificate given under section 67 -

- (a) is served upon a defendant 28 or more days before its production in court in any proceedings under this Act; and
- (b) the defendant does not, within seven days of the date of service, serve notice of objection and the grounds therefore in writing upon the prosecutor,

then the certificate shall, unless the Court finds the defendant is unduly prejudiced by the failure to object, be conclusive proof of all the facts averred in it.

(3) Where –

- (a) a certificate is served less than 28 days before its production in court; or
- (b) written notice of objection and the grounds therefore is served upon the prosecutor within 7 days of service of the certificate on the defendant; or
- (c) the Court finds the defendant is unduly prejudiced by the failure to object,

then the certificate shall, unless the contrary is proved, be sufficient evidence of all the facts averred in it.

(4) Any certificate given under section 67 of this Act shall be headed "Certificate Made Under Section 67 of the Marine Resources Act" and no certificate issued under section 67 of this Act may be used as conclusive proof of the facts averred therein unless it is served with a copy of section 67 and 68 of this Act.

(5) Any omission from or mistake made in any certificate issued under section 67 of this Act shall not render it invalid unless the court considers such omission or

mistake is material to any issue in the proceedings concerned, or the defendant is unduly prejudiced thereby.

(6) Where in any proceedings a certificate made under section 67 of this Act is produced to the Court, the prosecution shall not be obliged to call the maker of the certificate and the court shall, where material, rely on the facts therein unless the contrary is proved.

69. Certificate as to location of vessel - (1) Where in any proceedings under this Act the place or area in which a vessel is alleged to have been at a particular date and time or during a particular period of time is material to an offence charged then a place or area stated in a certificate given by an authorised officer shall be evidence, unless the contrary is proved, of the place or area in which the vessel was at the date and time or during the period of time stated.

(2) An authorised officer shall in any certificate made under subsection (1) state -

- (a) his or her name, address, official position, country of appointment and provision under which appointed;
- (b) the name and, if known, call sign of the fishing vessel concerned;
- (c) the date and time or period of time the vessel was in the place or area;
- (d) the place or area in which it is alleged the vessel was located;
- (e) the position fixing instruments used to fix the place or area stated in (d) and their accuracy within specified limits;
- (f) a declaration that the authorised officer checked the position fixing instruments a reasonable time before and after they were used to fix the position and they appeared to be working correctly;
- (g) if a position fixing instrument which is not judicially recognised as notoriously accurate or a designated machine is used, a declaration that he checked the instrument as soon as possible after the time concerned against such an instrument.

(3) Section 68 of this Act shall apply to a certificate given under this section as if it had been a certificate given under section 67 of this Act and any reference therein to section 67 of this Act shall be read as a reference to this section.

(4) For the purposes of this section "authorised officer" shall include fisheries enforcement officers, surveillance officers and those charged with similar responsibilities in other countries, and high seas inspectors duly authorised under a multilateral legal instrument to which Cook Islands is party.

70. Photograph evidence - (1) Where a photograph is taken of any fishing or related activity and simultaneously the date and time on which and position from which the photograph is taken are superimposed upon the photograph then it shall be presumed unless the contrary is proved that the photograph was taken on the date at the time and in the position so appearing.

(2) The presumption set out in subsection (1) above shall only arise if -

- (a) the camera taking the photograph is connected directly to the instruments which provide the date, time and position concerned; and

- (b) the instruments which provide the date, time and position are judicially recognised as being notoriously accurate or are designated machines or were checked as soon as possible after the taking of the photograph against such instruments.
- (3) Any authorised officer who takes a photograph of the kind described in subsection (1) may give a certificate appending the photograph stating -
 - (a) his or her name, address, official position, country of appointment, and provision under which he is appointed;
 - (b) the name and call sign, if known, of any fishing vessel appearing in the photograph;
 - (c) the names of the camera, watch or clock or other instruments supplying the date and time and the position fixing instrument and a declaration that he checked those instruments a reasonable time before and after the taking of the photograph and, if necessary, in accordance with subsection (2)(b) and that they all appeared to be working correctly;
 - (d) the matters set out in subsection (2)(a);
 - (e) the accuracy of the fixing instrument used within specified limits; and
 - (f) the maximum possible distance and the direction of the subject of the photograph away from the camera at the time the photograph was taken.

(4) Section 68 shall apply to a certificate given under this section as if it had been a certificate given under section 67 and any reference therein to section 67 shall be read as a reference to this section.

(5) For the purposes of this section "authorised officer" shall include fisheries enforcement officers, surveillance officers and those charged with similar responsibilities in other countries, and high seas inspectors duly authorised under a multilateral legal instrument to which Cook Islands is party.

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

(2) Where, in any legal proceedings under this Act, the place in which an event is alleged to have taken place is in issue, the place stated in the relevant entry in the logbook or other official record of any enforcement vessel or aircraft as being the place in which the event took place shall be presumed to be the place in which the event took place, unless the contrary is proved.

(3) Prima facie evidence of an entry in a logbook or other official record of an enforcement vessel or aircraft may be given by the production of a written copy or extract of the entry certified by an authorised officer as a true copy of accurate extract.

(4) For the purposes of any proceedings under this Act, the act or omission of any member of the crew of a fishing vessel while aboard that vessel or engaged in fishing activity related to that vessel shall be deemed to be also that of the operator and master of the vessel.

(5) Any entry in writing or other mark in or on any log, chart or other document required to be maintained under this Act or used to record the activities of a fishing vessel shall be deemed to be that of the operator and master of the vessel.

(6) Where in any legal proceedings for an offence under this Act -

- (a) an authorised officer gives evidence on reasonable grounds to believe that any fish to which the charge relates were taken by the use of driftnets;
 - (b) the Court considers that, having regard to the evidence, the grounds are reasonable; the fish shall be presumed to have been so taken, unless the contrary is proved.
- (7) Where in any legal proceedings for an offence under this Act -
- (a) an authorised officer gives evidence of reasonable grounds to believe that any fish to which the charge relates were taken in a specified area of the fishery waters;
 - (b) the Court considers that, having regard to that evidence the grounds are reasonable;

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

(8) In any proceedings for an offence against this Act, an allegation made by the informant in any information or charge relating to whether or not any person was the operator or master of any vessel shall be presumed to be true in the absence of proof to the contrary.

72. Presumption as to authority - A return, log, record or other information purporting to be made, kept or furnished by or on behalf of any person shall, for all purposes of this Act, be deemed to have been made, kept or furnished by that person or by that person's authority unless the contrary is proved.

73. Strict liability - (1) In any prosecution for any offence against this Act it shall not be necessary for the prosecution to prove that the defendant intended to commit an offence.

- (2) It shall be a defence in any such prosecution if the defendant proves -
 - (a) that the defendant did not intend to commit the offence; and
 - (b) that -
 - (i) in any case where it is alleged that anything required to be done was not done, the defendant took all reasonable steps to ensure that it was done; or
 - (ii) in any case where it is alleged that anything prohibited was done, that the defendant took all reasonable steps to ensure that it was not done.

74. Liability of Directors and Managers - Where any body corporate is convicted of an offence against this Act, every director and every person concerned in the management of the body corporate shall be guilty of a like offence if it is proved that the act that constituted the offence took place with the person's authority, permission, or consent, or that the person knew or should have known that the offence was to be or was being committed and failed to take all reasonable step to prevent or stop it.

75. Liability of principal for actions of agent in relation to records and returns - (1) Where a person (in this section referred to as the principal) is required by or under this Act to -

- (a) keep any account, log or record; or
- (b) furnish any return, log or information; or
- (c) complete any form; or

- (d) take any action in relation to the keeping of any account, log or record or the furnishing of any return, log or information or the completing of any form -

every act or omission of any person acting or purporting to act as agent for the principal in respect of any such requirement shall be deemed for the purposes of this Act to be the act or omission of the principal, unless the principal proves that the person purporting to act as agent had no authority, either express or implied, to act as the principal's agent for the purpose of keeping any account or record, or furnishing any return or information, or completing any form, or taking any action in respect of such matters, as the case may be.

(2) A defence specified in section 73(2) of this Act is available to a principal prosecuted in respect of the act or omission of an agent if the principal satisfies the Court that, having regard to -

- (a) any likely or possible benefit or detriment arising to the principal from the act or omission in respect of which the prosecution is brought if the alleged offence had remained undetected; and
- (b) the purpose or motive of the agent whose act or omission it was; and
- (c) the relationship between the principal and the agent whose act or omission it was, or between the principal and any person appearing or likely to benefit from the alleged offence; and
- (d) where the principal is a body corporate, whether or not any person responsible for or closely associated with the management of the body corporate appears to have benefited from the act or omission, or would have been likely to so benefit if the alleged offence had remained undetected; and
- (e) any action taken by the principal, once aware of the act or omission, in respect of the agent whose act or omission it was or any person appearing likely to benefit from the alleged offence -

it would be in the interests of justice to allow the principal the benefit of any defence provided for in section 73(2) of this Act.

(4) For the purposes of this section a person may act as an agent for a principal whether or not that person is employed by the principal and whether or not acting for reward.

76. Liability of companies and persons for actions of officers and employees - (1) Every act or omission of any officer or employee of a person, or of the master or any member of the crew of a vessel that is owned, chartered or leased by the person for the purpose of engaging in fishing, shall be deemed for the purposes of this Act to be the act or omission of the person.

(2) Subject to subsection (3), any defence specified in section 73(2) of this Act in relation to a prosecution under this Act is available to a person only to the extent that it can be proved in respect of the officer, employee, master, or crew member in relation to whose act or omission the prosecution is brought.

(3) A defence specified in section 73(2) of this Act is available to a person prosecuted in respect of the act or omission of a person referred to in subsection (1) if the person satisfies the Court that, having regard to -

- (a) any likely or possible benefit or detriment arising to the person from the act or omission in respect of which the prosecution is brought if the alleged offence had remained undetected; and
- (b) the purpose or motive of the person whose act or omission it was; and
- (c) the relationship between the person and the person whose act or omission it was, or between the person and any person appearing or likely to benefit from the alleged offence; and
- (d) where the person is a body corporate, whether or not any person responsible for or closely associated with the management of the body corporate appears to have benefited from the act or omission, or would have been likely to so benefit if the alleged offence had remained undetected; and
- (e) any action taken by the person, or, where the person is a body corporate, by any person responsible for its management, once aware of the act or omission, in respect of the person whose act or omission it was or any person appearing or likely to benefit from the alleged offence, -

it would be in the interests of justice to allow the person the benefit of any defence provided for in section 73(2) of this Act.

77. Destruction of Evidence - (1) No person shall destroy, throw overboard, conceal or abandon any fish, fish product, fishing gear, net or other fish appliance, log, return, record, document, electric shock device, explosive, poison or other noxious substance, or any other thing with intent to avoid seizure or the detection of an offence against this Act.

(2) Any person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding \$250,000.

78. Liability of Master - Where an offence against this Act has been committed by any person on board or employed on a fishing vessel, the master of the vessel shall also be guilty of the offence.

79. Forfeiture and suspension of fishing rights, licenses etc. - Where any person is convicted of an offence against this Act the High Court may forfeit or suspend for such period as the Court considers appropriate, any applicable fishing right, license, authorisation, or permit.

80. Banning Order - (1) Where any person who is convicted of an offence against this Act or any regulation made under this Act and within 7 years from the date of that conviction is convicted on another occasion of the same or any other offence against this Act or any regulation made under this Act, the Court may, in addition to any other fine or penalty provided under this Act, make an order prohibiting that person from engaging in -

- (a) fishing;
- (b) fishing related activities;
- (c) any other activity as may be provided for under this Act;

for a period of up to 3 years from the date of conviction.

(2) Any person who contravenes an order made under subsection (1) or the master of a fishing vessel who has aboard a person he knows is banned under subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding \$250,000.

PART 7
SALE, RELEASE AND FORFEITURE OF RETAINED PROPERTY

81. Forfeiture of property on conviction - (1) On the conviction of any person for an offence against this Act for which the maximum penalty is a fine of \$1,000,000 or more, the High Court shall in addition to imposing any fine order that the following shall be forfeit to the Government unless the Court for special reasons relating to the offence thinks fit to order otherwise -

- (a) any property used in respect of the commission of the offence (whether or not seized pursuant to section 51 of this Act); and
- (b) any fish found onboard any foreign vessel at the time it was seized or detained pursuant to this Act and in any other case any fish in respect of which the offence was committed (whether or not seized pursuant to section 51 of this Act); and
- (c) any proceeds from the sale of such property or fish pursuant to section 55(3) of this Act; and
- (d) any illegal fishing gear in respect of which the offence was committed (whether or not seized pursuant to section 51 of this Act).

(2) On the conviction of any person for an offence against this Act (not being an offence referred to in subsection (1) or subsection (3)), the High Court may in addition to imposing any fine order that any of the following shall be forfeit to the Government -

- (a) any property used in respect of the commission of the offence (whether or not seized pursuant to section 51 of this Act); and
- (b) any fish in respect of which the offence was committed (whether or not seized pursuant to section 51 of this Act); and
- (c) any proceeds from the sale of such property or fish pursuant to section 55(3) of this Act; and
- (d) any illegal fishing gear in respect of which the offence was committed (whether or not seized pursuant to section 51 of this Act).

(3) On the conviction of any person for an offence against this Act for which the maximum penalty is a fine not exceeding \$10,000, the High Court may in addition to imposing any fine order that any of the following shall be forfeit to the Government -

- (a) any fish in respect of which the offence was committed (whether or not seized pursuant to section 51 of this Act); and
- (b) any proceeds from the sale of such fish pursuant to section 55(3) of this Act; and
- (c) any illegal fishing gear in respect of which the offence was committed (whether or not seized pursuant to section 51 of this Act).

82. Application of bond etc. - (1) Upon the making of an order for forfeiture under section 81 of this Act, the High Court may, upon application of the Secretary, make an order that any bond or security given in respect of that forfeit property or fish shall be applied as follows and in this order -

- (a) the discharge of the property or fish ordered forfeit under section 81 of this Act;

- (b) the payment of all fines or penalties imposed in respect of the offences giving rise to the forfeiture ordered;
- (c) the discharge of all orders for restitution of any loss, damages or costs made under section 66

(2) Where any monies recovered in respect of an order for restitution made under section 66 of this Act relate to fuel costs incurred by any government vessel or other craft, those monies shall be paid into the appropriate fuel account maintained in respect of that vessel or craft (or its replacement or substitute) and shall be applied for the purpose of replacement fuel.

83. Removal of seized goods – Where any property or other item held or forfeited under this Act has been unlawfully removed from the custody of the Government it is liable to seizure at any time within the fishery waters.

84. Disposal of forfeited goods – (1) Any property, fish or other item ordered to be forfeited under this Act may, at the expiry of the time limited for appeal and if no appeal is lodged, be disposed of in such manner as the Minister may direct.

(2) Any property, fish or other item seized under this Act or any monies held pursuant to section 55(5) of this Act but not forfeited in any legal proceedings may be held by the Government until all fines, orders for restitution or costs and penalties imposed under this Act have been paid and failing payment within the time allowed be sold and the balance of the proceeds released after deduction of all fines, orders for costs, penalties imposed under this Act and costs of sale.

85. Liability for loss, damage or deterioration of items in custody - The Government shall not be liable to any person for any loss, damage to or deterioration in the condition of any property or other item while in the custody of the Government under this Act.

86. Removal of item in custody - Any person who removes any vessel, vehicle, aircraft or other item held in the custody of the Government under this Act commits an offence whether or not he knew the vessel, vehicle, aircraft or other item was held in the custody of the Government and shall be liable on conviction to a fine not less than \$50,000 and not exceeding \$250,000.

PART 8 **MISCELLANEOUS**

87. Duty of confidentiality - (1) Any person carrying out duties or responsibilities in the Ministry or otherwise under this Act, shall not, unless authorised in accordance with this Act, reveal information or other data of a confidential nature acquired by virtue of their said authority, duties and responsibilities to any person not having such authority or carrying out such duties and responsibilities.

(2) The Secretary may designate any information as confidential, and in doing so may also exempt general summaries of aggregated information from confidentiality requirements.

(3) The Secretary may authorise in writing any person to –

- (a) receive or access confidential information;
- (b) access or restrict access to such premises holding confidential information as he may designate.

- confidential -
- (4) Notwithstanding subsection (2), the following information shall be
- (a) any information or data of a commercial nature provided in records, returns, or other documents required under this Act;
 - (b) any information or other data supplied by a vessel monitoring system in accordance with this Act;
 - (c) such other information or data as may be prescribed from time to time.
- (5) Information may be disclosed to the extent -
- (a) that disclosure is authorised or required under this Act or any other law;
 - (b) that the person providing the information authorised its disclosure;
 - (c) necessary to enable the Secretary to publish statistical information relating to the fisheries sector; or
 - (d) necessary to enable advice to be given to the Minister.
- (6) The Secretary may authorise the release of any information supplied by a vessel monitoring system relating to the position of any vessel, upon request, to the responsible authority for purposes including surveillance, search and rescue and other emergency, and may authorise the release of such other confidential information for such purposes as may be prescribed.
- (7) Any person who contravenes the requirements this section commits an offence and, shall be liable on conviction to a fine not exceeding \$5,000 and in addition his or her appointment or other authority under the Act may be reviewed and terminated by the appropriate authority.

88. Importation prohibited of fish caught in illegal, unreported or unregulated fishing operation – (1) Notwithstanding the provisions of section 33, no person shall import fish caught in an illegal, unreported or unregulated fishing operation.

- (2) For the purposes of this section,
- (a) Illegal fishing refers to activities -
 - (i) conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;
 - (ii) conducted by vessels flying the flag of States that are parties to a regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law;
 - (iii) in violation of national or international obligations, including those undertaken by cooperating States to a regional fisheries management organization;
 - (b) Unreported fishing refers to fishing activities -
 - (i) which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations;
 - (ii) undertaken in the area of competence of a regional fisheries management organization which have not been

reported or have been misreported, in contravention of the reporting procedures of that organization;

- (c) Unregulated fishing refers to include fishing activities -
 - (i) in the area of application of a regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization;
 - (ii) in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.
- (d) Notwithstanding subsection (2)(c), certain unregulated fishing may take place in a manner which is not in violation of applicable international law, and may not require the application of measures under this section.

(3) Any person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not less than \$50,000 and not exceeding \$500,000 and the full market value of such fish or fish products, and in addition the fish or fish products shall be forfeit.

89. Rewards – (1) The first person who provides information leading directly to a conviction or administrative determination for an offence under this Act may receive a sum of one per cent of the total fine or \$500, whichever is less.

(2) The Secretary, in consultation with the Solicitor General and the Financial Secretary, shall be responsible for allocating rewards in accordance with such procedures as may be prescribed, and his decision shall be final.

(3) Officials of the Government shall not be eligible for a reward under this section.

90. Notification by Secretary of Foreign Affairs - (1) The Secretary of Foreign Affairs may from time to time, by notice in the Gazette, give notice of a global, regional, or sub-regional fisheries organisation or arrangement -

- (a) of which Cook Islands is a member; or
- (b) of which Cook Islands is not a member; and

has adopted international conservation and management measures which Cook Island fishing vessels are required to comply with in accordance with this Act.

(2) A notice given under subsection (1) must specify where a copy of the constitution of the organisation or a copy of the arrangement or international conservation and management measures, as the case may be, may be obtained.

91. Failure to furnish or false statements in information for purpose of Act - Every person commits an offence who -

- (a) fails to provide or furnish any document, record, return, log or information when lawfully requested to do so pursuant to this Act; or
- (b) makes any false or misleading statement or any material omission in any communication, application, document, record, return, log or information for the purposes of this Act;

and shall be liable on conviction to a fine not less than \$50,000 and not exceeding \$500,000.

PART 9 **REGULATIONS**

92. Regulations - (1) The Queen's Representative may, by Order in Executive Council, make such regulations as may be necessary to give effect to the provisions of this Act and for due administration thereof.

(2) Without, limiting the generality of subsection (1), regulations made pursuant to this section may provide for all or any of the following –

- (a) prescribing measures for the conservation, management, development, licensing and regulation of fisheries or any particular fishery;
- (b) licensing, authorisation or registration in respect of any vessel or class or category of vessels to be used for fishing, related activities or any other purpose pursuant to this Act, including the form, issuance requirements, grounds for denial, terms and conditions and fees, charges, royalties, and other forms of compensation related to such licensing, authorisation or registration;
- (c) licensing, authorisation or registration in respect of any fisherman or class of fisherman, fishing gear and other equipment or devices used for fishing;
- (d) the operation of, and conditions and procedures observed by any fishing vessel while in the fishery waters;
- (e) the operation of, and conditions and procedures to be observed by any other vessel which may enter the fishery waters for any purpose under this Act;
- (f) the catching, loading, landing, handling, transshipping, transporting, possession and disposal of fish;
- (g) the import, export, distribution and marketing of fish and fish products;
- (h) the manner in which any fishing gear is to be stowed;
- (i) the appointment, powers and duties of authorised officers and observers;
- (j) the duties and procedures to be followed by the master and crew of any vessel in respect of authorised officers and observers;
- (k) rewards to be paid to any person providing information on the operations of foreign vessels leading to a conviction of an offence against this Act;
- (l) the licensing, control and use of fish aggregating devices and the rights to the aggregated fish, and prescribing times and the

- minimum distances from such devices any vessel may fish around such devices;
- (m) regulating or prohibiting the use of self-contained underwater breathing apparatus;
 - (n) regulating or prohibiting the use of spear guns or other similar devices;
 - (o) standards and measures for the safety of local fishermen and fishing vessels;
 - (p) regulating aquaculture and access to land leased for aquaculture and to the waters superjacent to such land;
 - (q) prescribing the terms and conditions of leases for aquaculture;
 - (r) requiring the provision of statistical and other information related to fisheries;
 - (s) the control, inspection and conditions of operation of fish processing establishments;
 - (t) the prevention of marine pollution;
 - (u) the appointment, maintaining of and procedures for agents appointed to receive and respond to process pursuant to this Act;
 - (v) the implementation of any access or related agreement or other agreement or arrangement entered into pursuant to this Act;
 - (w) regulating or prohibiting, either generally or in any specified fishery –
 - (i) the taking of coral and shells;
 - (ii) the setting of fish fences or nets;
 - (iii) the taking of aquarium fish; or
 - (iv) aquaculture operations;
 - (x) prescribing measures for the protection of trochus, pearl and pearl-shell, turtles, green snails, clams and lobsters;
 - (y) regulating or prohibiting fishing of all kinds within any lagoon or any part of any lagoon, the time or times of year during which such fishing may occur or is prohibited, and approving, restricting or prohibiting the equipment or methods which may be used in connection with such fishing;
 - (z) prescribing offences against the regulations and penalties for such offences, not exceeding a fine of \$250,000 and, where the offence is a continuing one, a further fine not exceeding \$5000 for every day that the offence has continued; and
 - (zz) prescribing any other matter, which is required or authorised to be prescribed by this Act.

PART 10
GENERAL

93. General offences and penalties - (1) Every person commits an offence who acts in contravention of or fails to comply with any provision of this Act, or any notice, direction, restriction, requirement, or condition given, made, or imposed under this Act (other than a requirement to pay a sum of money).

(2) Every person who commits an offence against this Act for which no other penalty is prescribed shall be liable on conviction to a fine not exceeding \$250,000,

and, if the offence is a continuing one, to a further fine not exceeding \$1,000 for every day after the first day on which the offence has continued.

(3) Nothing in subsection (1) shall apply to any person carrying out any duties or responsibilities imposed or required under this Act while an employee, agent or representative of the Government.

94. Accounts, records, returns, and other information - (1) For the purpose of this Act, the Secretary, may, in any particular case or class of cases -

- (a) require any person to keep any record, return, log or other information additional to those specified in regulations made under this Act ; and
- (b) specify the manner and form in which such record, return, log or other information that are to be kept and furnished to the Secretary.

(2) Every person who fails to comply with a specification of the Secretary under subsection (1)(b) commits an offence and shall be liable on conviction to a fine not exceeding \$250,000.

95. Summons may be served on agent of foreign vessel - (1) Any summons in respect of an offence against this Act or regulations made under this Act that relates to any foreign vessel or Cook Islands chartered fishing vessel shall be deemed to have been served on the defendant if the summons is served, on the authorised agent of -

- (a) the operator of any foreign-owned Cook Islands fishing vessel; or
- (b) the foreign charter party of any Cook Islands chartered fishing vessel;
- (c) the operator of any foreign vessel.

(2) For the purposes of subsection (1), the authorised agent shall be the person nominated as authorised agent at the time of registration in the Cook Islands or licensing of the vessel, as the case may be, whether or not the vessel is currently registered in the Cook Islands or licensed under this Act.

96. Matters to be taken into account by Court in sentencing - If any person is convicted of an offence against this Act, the Court shall, in imposing sentence, take into account the purpose of this Act and shall have regard to -

- (a) the difficulties inherent in detecting fisheries offences; and
- (b) the need to maintain adequate deterrents against the commission of such offences.

97. Giving of notices - (1) Except as otherwise specified in this Act, if under this Act any notice or other document is to be given, served on, or furnished to any person, that notice or other document may be -

- (a) given to the person personally; or
- (b) given personally to any other person authorised to act on behalf of the person; or
- (c) in the case of any notice or document to be given or served in the course of or for the purpose of any proceedings for an offence against this Act, given to the persons legal representative or counsel or such other person as the Court may direct.

- (d) except in the case of any notice or document to be given or served in the course of or for the purpose of any proceedings for an offence against this Act, sent by post to the person, or any other person authorised to act on the person's behalf, at that person's or other person's usual or last known place of business or abode; or
- (e) except in the case of any notice or document to be given or served in the course of or for the purpose of any proceedings for an offence against this Act, sent by electronic transmission to the person, or any other person authorised to act on the person's behalf, at that person's or other person's usual or last known address; and, for the purposes of this paragraph,—
 - (i) the term “electronic transmission” means any transmission of information sent electronically; and includes any transmission sent by facsimile, electronic mail, or electronic data transfer;
 - (ii) the term “address” includes a facsimile number or an electronic mail address.

(2) Any notice or other document so sent by post shall be deemed to have been given, served, or received 7 working days after the date on which it was posted, unless the person to whom it was posted proves that, otherwise than through that person's fault, the notice or document was not received.

98. Severability - If any provision of this Act or amendments or additions thereto, or the application thereof to any person, thing or circumstance is held invalid, the invalidity does not affect the provisions, application, amendments or additions that can be given effect without the invalid provisions or application, and to this end the provisions of this Act and the amendments or additions thereto are severable.

99. Saving - All regulations, orders and notices made or given under the Marine Resources Act 1989 shall, except so far as they are inconsistent with this Act, continue to have effect as though made, given, or issued under this Act.

100. Validity of Licences and Authorisations - (1) Subject to subsection (2), all licences or authorisations granted or appointments made under the Marine Resources Act 1989, valid and in force immediately before the coming into operation of this Act, shall continue, on such coming into operation, to have full force and effect for the term for which they were granted or made or until they expire or are revoked according to law as if the Act under which they were granted or made had not been repealed.

(2) Where the Secretary is of the opinion that any term or condition of any licence or authorisation granted or appointment made under the Marine Resources Act 1989 is at variance with the provisions of this Act to an extent which makes it unacceptable, he shall by written notice -

- (a) advise the holder of the licence or authorisation, the operator of the vessel in respect of which the licence or authorisation is granted, or the person appointed, as the case may be, of the term or condition that is unacceptable;
- (b) specify the variation in any term or condition required to ensure compliance with this Act;

- (c) advise that the variation shall apply in respect of the licence, authorisation or appointment, as the case may be, with effect from a date specified in the notice, unless he receives notification from the holder of the licence or authorisation, the operator of the vessel in respect of which the licence or authorisation is granted or the person appointed, as the case may be, that such variation is unacceptable, in which case the licence, authorisation or appointment, as the case may be, shall cease to have effect from the date specified.

101. Repeals - The enactments specified in the First Schedule to this Act is repealed to the extent specified in that schedule.

102. Consequential amendments - The enactment set out in the Second Schedule is amended to the extent set out in that Schedule.

This Act is administered in the Ministry of Marine Resources

FIRST SCHEDULE
ENACTMENTS REPEALED

Enactment Repealed
The Marine Resources Act 1989

SECOND SCHEDULE
ENACTMENTS AMENDED

Enactment	Amendment
The Cook Islands Investment Corporation Act 1998	By deleting from the paragraph (c) of the definition of “real property”, the words “ and the exploitation of the living and non-living resources of the sea and the seabed.”