



Ministry of Marine Resources
GOVERNMENT OF THE COOK ISLANDS

Marine Resources Bill - 2016

DRAFT

Hon Henry Puna

[Placeholder for Crest]

Marine Resources Bill 2016

Contents

1	Title	6
2	Commencement	6
3	Interpretation	6
4	Act binds the Crown	13
Part 1		
Fisheries Conservation and Management		
5	Objectives, functions, and authority	13
6	Objective and functions of Ministry of Marine Resources	13
7	Principles and measures	14
8	International conservation and management measures	14
9	Conservation, management, and development of fisheries of local interest by local authorities	15
10	Fisheries Advisory Committee	16
11	Directives	16
Part 2		
Specific prohibitions		
12	Prohibited fishing methods	17
13	Introduction or removal of fish or marine resources into or from fishery waters	18
14	Prohibition of removal of fish from nets, traps, etc	18
15	Protection of fish aggregating devices, artificial reefs, mooring buoys, floats, trays	18
16	Use or possession of prohibited fishing gear	19
17	Driftnet fishing activities	19
18	Prohibition of trade in fish, fish products, or other marine resources	19
19	Commercial sale of endangered species	20
20	Export of fish, fish product or other marine resources	20
21	Application of laws of other States	20
22	Contamination of the fishery waters	21
23	Protection of traditional fishers	21
Part 3		
Marine reserves and parks		
24	Declaration of areas	21
25	Prohibited and permitted activities	22
26	Minister may establish advisory committees and remove status of reserve or park	22

Part 4

Development and management of fisheries and aquaculture

Subpart 1—Fishery areas, plans, agreements, etc

27	Aquaculture management areas	23
28	Designated fisheries	24
29	Preparation of fishery plans	24
30	Process to be followed in preparing fishery plans	24
31	Approval of fishery plans	25
32	Local designated fishery	25
33	Exploratory fishing	26
34	Exploratory fishing licences	26
35	Monitoring of exploratory fishing operations	27
36	Access agreements and fisheries management agreements	27
37	Communications, etc to and from agent	28
38	Fishery allocations under access agreements	28
39	Other provisions of access agreements	28
40	Provisions of fisheries management agreements	29
Subpart 2—Quota management system		
41	Determination that stock or species be subject to quota management system	29
42	Setting of total allowable catch or effort	29
43	Taking QMS stock subject to quota fishing	29
44	How stock or species becomes subject to quota management system	29
45	Who is eligible for allocation for initial year	30
46	Quota for QMS stock owned by Crown	30
47	Withholding of quota for non-payment of levies, fees, or charges	30
48	Regulations	30
49	Quota Register	31

Part 5

Licensing

Subpart 1—Licensing

50	Issuing of licences	31
51	Entry into the fishery waters	32
52	Licence or authorisation required for fishing and related activities in the fishery waters	32
53	Conditions of licences	32
54	Fees and other forms of compensation	33
55	Period of validity of licences	33
56	Cancellation or suspension of licences	33
57	Observation of laws	34
58	Register of licences	34

Subpart 2—Authorisations

59	Authorisation of scientific research operations	34
60	Transhipment and bunkering	35
61	Authorisation generally	36

Part 6

Distant water fisheries

62	Fishing by Cook Islands vessels in distant waters	36
63	Requirements for Cook Islands fishing vessels outside the fishery waters	36

Licensing

64	Application for a distant water fishing licence and issue of licence	37
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65	Grounds for refusal of application for distant fishing water licence	37
66	Conditions attaching to a distant water fishing licence	38
67	Secretary may vary conditions	39
68	Validity of a distant water fishing licence	39
69	Cancellation or suspension of a distant water fishing licence	40
70	Use of Cook Islands fishing vessels in areas under the jurisdiction of another State	40
	<i>Miscellaneous</i>	
71	Secretary may introduce measures	40
72	Use of vessels of other flags by Cook Islanders on the High Seas	41
73	Compliance with Cook Islands laws	41
74	Serious violation	42
75	Security for release of fishing vessel	42
	Part 7	
	Port measures	
76	Designation of ports	42
77	Port Entry	42
78	Offences	43
79	Communication of information concerning vessel	43
80	Force majeure or distress	43
	Part 8	
	Processing and export	
81	Competent Authority	43
82	Application of this Part	44
83	Objectives of the Competent Authority	44
84	Functions of the Competent Authority	44
85	Powers of the Competent Authority	45
86	Delegation of power by the Competent Authority	45
	Part 9	
	Monitoring, control and surveillance	
	<i>Authorised officers</i>	
87	Appointment of authorised officers	46
	<i>Powers of authorised officers</i>	
88	General powers of entry and search	46
89	Powers of entry and search where offence suspected	46
90	Powers of detention	47
91	Power to question persons and require production of documents	47
92	Power of arrest	47
93	Power to give directions to master	48
94	Power to use reasonable force and take copies of documents	48
95	Powers of seizure	48
96	General powers	49
	<i>Provision of assistance to, and liability of, authorised officers or observers</i>	
97	Persons may assist authorised officer	49
98	Protection of authorised officer and others from liability	49
	<i>Dealing with seized property and bringing of charges</i>	
99	Release of seized property	50
100	Failure to comply with bond on conditions of release	50
101	Disposal of perishable property and property where ownership is uncertain	51
102	Proceeds of sale or disposal of property	51

103	Determination of amount of bond or other security	51
104	Timing of decisions to bring charges	51
105	No liability for spoilage or determination in quality	52
106	Release of property in certain circumstances	52
107	Removal of parts from seized vessels, vehicles, or aircraft	52
	<i>Observers and obligations to observers</i>	
108	Observers	53
109	Obligations of operations, masters, and crew members of vessels	53
110	Cost of observers	54
	<i>Directions of authorised officers and observers</i>	
111	Directions of authorised officers	54
112	Offences relating to directions of authorised officers and observers	54
113	Offences relating to disembarking outside Cook Islands	55
114	Identification of authorised officers and observers	56
	<i>Mobile Transmission Units</i>	
115	Mobile transmission units – vessel requirements	56
116	Vessel monitoring system – information	57
117	Mobile transmission units – evidence	57
118	Unlicensed foreign fishing vessels in transit	58
	Part 10	
	Administrative penalties	
119	Imposition of administrative penalty	58
120	Form of section 119 notice	58
121	Procedure	58
122	Penalty	59
	Part 11	
	Jurisdiction and evidence	
123	Jurisdiction of High Court	60
124	Who may bring prosecutions or proceedings under the Act	60
125	Liability for non-payment of penalties	60
126	Liability for loss, damage, or costs incurred	61
	<i>Certificate evidence</i>	
127	Certificate evidence	61
128	Certificate as to location of vessel	62
129	Photographic evidence	62
130	Other requirements relating to photographic evidence	63
	<i>General rule about certificates</i>	
131	Validity and procedures for certificates	63
132	Headings to certificates and other formal requirements	64
133	Effect of omissions or mistakes	64
134	No obligation to call issuer of certificate	64
	<i>Other presumptions</i>	
135	General presumptions	65
136	Further presumptions	65
137	Presumption as to authority	65
	<i>Liability for, and defences to, offences</i>	
138	Strict liability	66
139	Liability of directors and managers	66
140	Liability of principal for actions of agent in relation to records and returns	66
141	Statutory defence available to principal	67

142	Liability for actions of officers and employees	67
143	Statutory availability of section 138 (2) defence to other persons	67
144	Liability of master	68
	<i>Miscellaneous</i>	
145	Destruction of evidence	68
146	Forfeiture and suspension of fishing rights, licences, etc	68
147	Banning order	68
148	General offences and penalties	69
149	Summons may be served on agent of foreign vessel	69
150	Matters to be taken into account by Court in sentencing	69
	Part 12	
	Sale, release, and forfeiture of retained property	
151	Forfeiture of property on conviction	69
152	Application of bond	70
153	Removal of seized goods	70
154	Disposal of forfeited goods	71
155	Liability for loss, damage, or deterioration of items in custody	71
156	Removal of item in custody	71
	Part 13	
	General	
157	Rights of Appeal	71
158	Duty of confidentiality	71
159	Rewards	72
160	Failure to furnish or false statements in information for purpose of Act	72
161	Accounts, records, returns, and other information	73
162	Giving of notices	73
163	No action to be brought against certain persons	73
164	Severability	74
	<i>Transitional provisions</i>	
165	Savings	74
166	Validity of licences and authorisations	74
167	Regulations	74
	<i>Competent Authority</i>	
	<i>Procedure</i>	
	<i>Port measures</i>	
	<i>Offences and penalties</i>	
168	Schedules	79
169	Delegation	80
170	Extra-territorial effect of the Act	80
171	Repeal	80
172	Consequential amendment	80
	Schedule 1	
	Enactment repealed	
	Schedule 2	
	Amendment to Act	

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

The Parliament of the Cook Islands enacts as follows—

1 Title

This Act is the Marine Resources Act 2016.

2 Commencement

This Act comes into force on a date appointed by the Minister and notified by publication in the Gazette.

3 Interpretation

In this Act, unless the context otherwise requires—

access agreement means an agreement or other arrangement entered into under **section 36**, to which the Government is a party and which relates to areas under national jurisdiction, the high seas, or any area that is described in that agreement or other arrangements

Act includes any regulations made under the Act referred to

administrator means an Administrator authorised under an access agreement under **section 39(c)** or any multilateral related agreement

aircraft means any craft capable of self-sustained movement through the atmosphere, and includes any hovercraft

aquaculture—

(a) means any activity designed to cultivate or farm fish and other living aquatic resources; and

(b) 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 under **section 27**

aronga mana includes those persons invested with or having custody of a title—

(a) in accordance with native custom and usage of the island of which that person is a resident; and

(b) which is recognised by that native custom and usage as entitling the holder or custodian to be a member of the aronga mana of that island

authorisation means any authorisation given under this Act

authorised officer means any person or member of any class of persons designated under **section 87** to be an authorised officer for the purposes of this Act

bio-prospecting means the research, collection, and utilization of biological and genetic resources for purposes of applying the knowledge derived there from primarily for commercial purposes

buy includes—

- (a) bartering or attempting to barter:
- (b) purchasing or attempting to purchase:
- (c) receiving on account or consignment:
- (d) purchasing or bartering for future goods or for any consideration or value:
- (e) purchasing or bartering as an agent for another person

buyer has a corresponding meaning to buy

Competent Authority means the person who is for the time being the Competent Authority under **section 81**

Cook Islander—

- (a) means a person belonging to the part of the Polynesian race indigenous to the Cook Islands and includes any person descended from a Cook Islander; and
- (b) includes any permanent resident as defined in the Entry Residence and Departure Act 1971-72 [who is ordinarily resident in the Cook Islands] who has been granted a certificate conferring on him the status of a permanent resident

Cook Islands chartered fishing vessel means a fishing vessel chartered to a Cook Islands registered company

Cook Islands distant water fishing vessel means a Cook Islands fishing vessel that engages in distant water fishing

Cook Islands fishing vessel means a fishing vessel 10 metres or over in length, which is registered under the Ship Registration Act 2007

Cook Islands vessel means a vessel which is registered under the Ship Registration Act 2007

designated fishery means any fishery designated under **section 28**

distant water includes the high seas beyond the exclusive economic zone of the Cook Islands and waters within the national jurisdiction of another State

distant water fishing licence means a licence issued under **Part 6**

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—

- (a) fishing with the use of a driftnet; and
- (b) any related activities (for example, transporting, transshipping, and processing any driftnet catch, and provision of food, fuel and other supplies for vessels used or outfitted for driftnet fishing)

e-monitoring means electronic monitoring

e-monitoring data means any data that is, or was:

- (a) generated by; or
- (b) transmitted by; or
- (c) stored by;

e-monitoring equipment installed, carried or used in compliance with a condition imposed under this Act on a licence or other authorization

e-monitoring equipment means:

- (a) a thing used for, intended to be used for, or capable of being used for, generating, transmitting or storing data; or
- (b) a thing that makes, is intended to make, or is capable of making, a thing covered by paragraph (a) operational

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 under **section 33**

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—

- (a) any oyster or other mollusc, crustacean, coral, sponge, holothurian, or other echinoderm, turtle, and marine mammal; and
- (b) their eggs, spawn, spat, and juvenile stages

fish aggregating device—

- (a) 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
- (b) includes any natural floating object on which a device has been placed to facilitate its location

fish processing—

- (a) means the production of any substance or article from fish by any method; and
- (b) 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 has the corresponding meaning to **fishery**

fisheries management agreement—

- (a) means any agreement or arrangement in force to which the Cook Islands is a 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—
 - (i) fisheries monitoring, control, and surveillance; and
 - (ii) establishing criteria or requirements for fishing and fisheries access; but
- (b) 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 8**

Fisheries Officer means—

- (a) the Secretary, and any Fisheries Officer, or Assistant Fisheries Officer, or any Constable appointed under the Police Act 1981; and
- (b) any other person or member of any class of public servants designated by the Minister, by notice published in the Gazette, to be a Fisheries Officer for the purposes of this Act

fishery means—

- (a) 1 or more stocks of fish; or
- (b) any fishing operation based on those stocks which can be treated as a unit for the 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 under **section 29**

fishery waters—

- (a) 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
- (b) includes any other waters over which the Government of the Cook Islands has fisheries jurisdiction

fishing means all or any of the following—

- (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 definition:
- (f) the use of an aircraft in relation to any activity described in this definition

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 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 the State in which the vessel is registered

foreign fishing vessel means any vessel that is not a Cook Islands fishing vessel

Government means the Government of the Cook Islands

high seas means any area of the seas beyond the national jurisdiction of any country

IUU fishing has the same meaning as it has in the FAO International Plan of Action to Prevent, deter, and Eliminate Illegal, Unreported, and Unregulated Fishing, Rome 2001

international conservation and management measures means measures to conserve or manage fish that are adopted and applied by global, regional, or subregional organizations, or by treaties or arrangements to which the Cook Islands is a party or is a cooperating non-contracting party, in accordance with the relevant rules of international law (as reflected in the 1982 United Nations Convention on the Law of the Sea, the FAO Compliance Agreement, and the Fish Stocks Agreement)

licence means any licence issued or recognised under this Act

local authority or **local government** means a Council established under **section 7** of the Island Government Act 2012-13

mariculture means aquaculture that is conducted in marine or brackish waters within the fishery waters

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

mobile transmission unit or **MTU** means a device approved by the Secretary which—

- (a) is placed on a fishing vessel and
- (b) 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

multilateral agreement means an agreement or arrangement entered into under **section 34**, to which there are more than 2 parties

non-target species includes both fish and non-fish species

observer means—

- (a) any person authorised to act as an observer under **section 108**; and
- (b) any person designated in accordance with an access agreement or related agreement to act as an observer aboard a vessel licenced under that access agreement

operator, in relation to any vessel, means the person who, because 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,—

- (a) 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 that person's own behalf or on behalf of another; and

- (b) 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 that is the owner

person means—

- (a) any natural or legal person or business enterprise; and
- (b) includes, but is not limited to, a corporation, partnership, cooperative, association, trust, estate, custodian, nominee, trustee, executor, administrator, fiduciary or any other individual or entity in their or its own or representative capacity, and any foreign government, subdivision of that government, or other entity

property—

- (a) means any vessel, vehicle, aircraft or other conveyance, fishing gear, implement, appliance, material, container, goods, or equipment; but
- (b) does not include any fishing right or other form of allocation under this Act

quota management system means the quota management system established under this Act by a fishery plan

QMS stock means a stock or species of fish for which a quota management system has been established

regional register means the Regional Register of Foreign fishing vessels maintained by a fisheries organisation or arrangement

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 the fish or fish products are first landed:
- (c) refuelling or supplying fishing vessels or performing other activities in support of fishing operations

related agreement means any agreement or arrangement which is concluded in relation to any access agreement or fisheries management agreement entered into under **section 36**

scientific research authorisation means an authorisation issued under **section 59**

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

sold and sale have a corresponding meaning to **sell**

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 under this Act, or serious misreporting of catch contrary to this Act or a licence issued under 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 sub-regional 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:
- (i) any other matters described in this Act as a serious violation

sustainable use, in relation to marine resources, 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

TAC, in relation to a QMS stock, means the total allowable catch set for that stock by a fishery plan, and includes any amendments made from time to time in accordance with regulations made under **section 48**

TACC, in relation to a QMS stock, means the total allowable commercial catch set for that stock by a fishery plan, and includes any amendments made from time to time in accordance with regulations made under **section 48**

TAE, in relation to a QMS stock, means the total allowable effort set for that stock by a fishery plan, and includes any amendments made from time to time in accordance with regulations made under **section 48**

taking means fishing and **to take** has a corresponding meaning

transshipment means transferring any fish or fish products to or from any vessel

vehicle means a vehicle as defined by the Transport Act 1966

vessel means a vessel as defined by the Ship Registration Act 2007

vessel monitoring system means any system, including any satellite based system, e-monitoring equipment or other electronically based 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 of the operation of the vessel monitoring system required under this Act.

4 Act binds the Crown

- (1) This Act binds the Crown.
- (2) However, the Crown is not liable to be prosecuted for an offence against this Act.

Part 1
Fisheries Conservation and Management

5 Objectives, functions, and authority

- (1) The principal objective of this Act is to provide for the sustainable use of the living and non-living marine resources in and around the Cook Islands for the benefit of the people of the Cook Islands.
- (2) This Act must be interpreted, so far as is practicable and to the extent relevant, in a manner consistent with the international and regional obligations of the Cook Islands relating to the conservation and management of living and non-living resources in the fishery waters.
- (3) All persons exercising or performing functions, duties, or powers conferred or imposed by or under this Act or the Ministry of Marine Resources Act 1984 (or both) must, so far as is practicable and to the extent relevant, act in a manner consistent with the international and regional obligations of the Cook Islands 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 or the Ministry of Marine Resources Act 1984 (or both), and the obligations of the Cook Islands under international and regional law, are effectively carried out, recognised, or discharged, as the case requires, the provisions of this Act—
 - (a) prevail in the event of inconsistency or incompatibility with any other Act or instrument in force in the Cook Islands; but
 - (b) despite **paragraph (a)**, are subject to the constitution of the Cook Islands.

6 Objective and functions of Ministry of Marine Resources

- (1) The principal objective of the Ministry of Marine Resources is to provide for the sustainable use of the living and non-living marine resources in and around the Cook Islands 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, and 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.

7 Principles and measures

- (1) The Minister or Secretary, as appropriate, when performing or exercising functions, duties, or powers under this Act, must, so far as is practicable and to the extent relevant, take into account—

Environmental and information principles

- (a) the following 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 capable of producing other suitable reference points, as qualified by relevant environmental and economic factors:
 - (ii) the precautionary approach and the ecosystem approach to fisheries management 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:
 - (v) measures should be taken to ensure the effective protection of human life:

Principles and measures for the development of aquaculture

- (b) the following 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 before aquaculture is permitted:
 - (iii) pollution from aquaculture should be prevented or minimised:

Social, cultural, and equity principles

- (c) the following social, cultural, and equity principles—
- (i) traditional forms of sustainable fisheries management should be maintained:
 - (ii) the interests of artisanal fishers, subsistence fishers, and local island communities, including their participation in the management of fisheries and of aquaculture, should be protected:
 - (iii) the broad participation by Cook Islanders in activities related to the sustainable use of marine resources should be encouraged.

8 International conservation and management measures

- (1) The Secretary must publish in the Gazette a list of the global, regional, or sub-regional fisheries organizations or arrangements to which the Cook Islands is a party or a cooperating non-contracting party.
- (2) The Secretary shall further publish in the Gazette the international conservation and management measures which shall have the force of law in Cook Islands and on all fishing vessels registered in Cook Islands and in doing

so he may specify that only a certain part or parts of an international conservation and management measure shall have such effect.

- (3) For the purpose of giving effect to any treaty entered into by the Cook Islands or any international conservation and management measure or arrangement to which the Cook Islands is a party or is a cooperating non-contracting party,—
 - (a) the Queen’s Representative may make regulations by Order in Executive Council, on the recommendation of the Minister that those regulations are necessary or desirable for this purpose:
 - (b) the Secretary may give notice in the Gazette or attach any conditions to a licence that the Secretary or the Minister consider necessary or desirable for this purpose.
- (4) The Secretary must publish in the Gazette at least every 6 months any conditions that have been imposed on individual licences under this section.

9 Conservation, management, and development of fisheries of local interest by local authorities

- (1) A local authority may, in accordance with the principles and provisions of this Act, take measures for the conservation, management, and development of any fishery of local interest or aquaculture within its area of authority, including the 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) The measures referred to in **subsection (1)** are in addition to the measures that may be taken in respect of aquaculture management areas described in **section 27** or designated fisheries described in **section 28**.
- (3) Any by-law prepared in accordance with **subsection (1)** must be submitted to the Minister and Cabinet for approval before consideration in Executive Council.
- (4) The Minister or Cabinet must—
 - (a) disapprove a proposed by-law if it is not consistent with the principles and provisions in this Act; and
 - (b) disapprove a proposed by-law if it is inconsistent with any fishery plan adopted in accordance with this Act.
- (5) A local authority must inform the Secretary of the development by the authority of any conservation management or development measures and the Secretary may provide technical, monitoring, research, and other advice or other assistance that the Secretary considers appropriate.
- (6) On agreement between a local authority and the Secretary, and after approval by the Minister, measures for co-management between the local authority and the Ministry may be implemented by that authority and the Minister.
- (7) The Secretary must consult with a local authority on any matter of fisheries conservation, management, or development that may affect the local authority or the environment.
- (8) A local authority must—

- (a) consult with the Secretary on any areas that are mutually important, including, as appropriate, leases for aquaculture; and
- (b) give the Secretary or his or her designate adequate opportunity to attend any meeting at which any matters of that kind are to be considered.

10 Fisheries Advisory Committee

- (1) There shall be established a Fisheries Advisory Committee which shall advise and make recommendations to the Minister on:
 - (a) matters relating to the conservation, management, use and development of fisheries;
 - (b) the development and implementation of comprehensive fisheries policies;
 - (c) the monitoring and review including the evaluation, of conservation guidelines and ecosystem-based management measures;
 - (d) consideration and review of fishery management plans;
 - (e) coordination of policies with regard to fisheries with other Ministries, including joint venture agreements and investments in the fisheries sector;
 - (f) matters requiring coordination and cooperation; and
 - (g) any other matter at the request of the Minister or as required under this Act.
- (2) The Committee shall comprise the following members –
 - (a) The Secretary as the Chairman; and
 - (b) at least five other members, appointed by the Minister, who shall possess scientific, economic, legal or other relevant expertise.
- (3) The Minister shall publish in the Gazette,
 - (a) the date on which the Committee shall come into existence; and
 - (b) the names of members appointed under sub **section 2** and any changes in membership of the Committee from time to time.
- (4) Unless otherwise decided by the Minister, members appointed under **sub section 2** shall be appointed for a term of three years.
- (5) The Committee may co-opt any person as the Committee thinks fit by reason of any particular knowledge or skill, to assist the Committee for a specific purpose, and the person co-opted shall not be entitled to vote on any question before the Committee.
- (6) Unless otherwise determined by regulation made under **section 167** of this Act, the quorum for a meeting of the Committee shall be at least half of its members being present for the duration of the meeting.
- (7) Except for the determination of the quorum, the Committee may regulate its own proceedings.
- (8) A person appointed under **subsection (2)** may be removed by the Minister from holding a position on the Committee:
 - (a) where he or she has engaged in misconduct;

- (b) where he or she has been absent without reasonable excuse from three consecutive meetings;
 - (c) where he or she is deemed unfit to hold office whether by reason of infirmity of body or mind.
- (9) A member of the Committee shall disclose an interest in any matter that comes before the Committee for deliberations and shall recuse himself from deliberations of the Committee in respect of that matter in which that member has a substantial interest.
- (10) The Committee may establish sub-committees chaired by a member of the Committee to deliberate on a specific issue or with specified responsibilities and for a specified term.
- (11) The sub-committee shall make recommendations to the Committee for deliberation.

11 Directives

- (1) The Secretary may, by notice in writing, give directives providing for such matters as are contemplated by or necessary for giving full effect to the provisions of fisheries plans or regulations including, but not limited to –
- (a) the return or abandonment of any species;
 - (b) the impact of fishing operations in the aquatic environment;
 - (c) the issuing or allocation of quota;
 - (d) the landing of any fish caught under the authority of a licence outside the fishery waters;
 - (e) the maintaining, completion and furnishing of log books, records, returns, unloading records, or other information;
 - (f) the administration, implementation or operation of any monitoring, control or surveillance programme;
- (2) The seasonal or permanent closure of areas to fishing under the authority of any licence. Any conditions or obligations imposed under any directive issued pursuant to sub-clause a) may be additional to, or more restrictive than, but must not be inconsistent with, the provisions of the Fishery Plan or the Act.

Part 2 Specific prohibitions

12 Prohibited fishing methods

- (1) Every person commits an offence and is liable on conviction to a fine not exceeding \$50,000 who—
- (a) permits to be used, uses, or attempts to use any explosive, poison, or other noxious substance for killing, stunning, disabling, or catching fish, or in any way making fish more able to be easily caught; or
 - (b) carries or has in his or her possession or control any explosive, poison, or other noxious substance in circumstances evidencing an intention to

use the explosive, poison, or other noxious substance in any of the ways referred to in **paragraph (a)**.

- (2) Any explosive, poison, or other noxious substance found on board any fishing vessel is presumed, unless the contrary is proved, to be intended to be used in the ways 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 in contravention of **subsection (1)(a)** and is liable on conviction to a fine not exceeding \$50,000.
- (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 may be given by the Secretary or by any person authorised by him or her in writing.
- (5) **Section 127** applies to a certificate given under this section.

13 Introduction or removal of fish or marine resources into or from fishery waters

- (1) A person must not introduce any live fish or other aquatic organisms into the fishery waters without a permit issued by the Secretary that includes quarantine approval.
- (2) A person must not 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 is liable on conviction to—
 - (a) a fine not exceeding \$50,000; and
 - (b) an order requiring the person to pay for the extent of damage caused by diseases in the fishery waters as a result of the introduction of live fish.

14 Prohibition of removal of fish from nets, traps, etc

- (1) A person must not, 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 the net, trap, pond, enclosure, or storage device.
- (2) A person must not 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 **subsections (1) or (2)** commits an offence and is liable on conviction to—
 - (a) a fine not exceeding \$50,000; and
 - (b) in the case of a person who contravenes **subsection (2)**, an order requiring the person to compensate the owner for the full amount of the knowing and intentional impairment and lost fishing opportunity.

15 Protection of fish aggregating devices, artificial reefs, mooring buoys, floats, trays

- (1) A person must not destroy, damage, or take any part of a fish aggregating device, artificial reef, mooring buoy, float, tray, or other device that 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 is liable on conviction to—

- (a) a fine not exceeding \$50,000; and
- (b) an order requiring the person to pay compensation for the destruction, damage, or theft of a fish aggregating device, artificial reef, mooring buoy, float, tray, or other device, or any respective part.

16 Use or possession of prohibited fishing gear

- (1) A person must not use for fishing or have on board a vessel in the fishery waters—
 - (a) any net, the mesh size of which does not comply with the minimum mesh size for that type of net that is required or prescribed under this Act;
 - (b) any fishing gear which does not comply with standards required under this Act for that type of fishing gear;
 - (c) any driftnet or other fishing gear which is prohibited by this Act.
- (2) Any person who contravenes **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$500,000, except that in a case involving a driftnet the person is liable on conviction to a fine not exceeding \$1,000,000.

17 Driftnet fishing activities

- (1) A vessel must not be used for, or to assist with, any driftnet fishing activities in the Cook Islands or the fishery waters.
- (2) A person must not engage in, or assist with, any driftnet fishing activities in the Cook Islands or the fishery waters.
- (3) A Cook Islands owned vessel or vessel registered under the Ship Registration Act 2007 must not be used for, or to assist with, any driftnet fishing activities.
- (4) A Cook Islander must not engage in, or assist with, any driftnet fishing activities.
- (5) If a vessel is used in contravention of **subsection (1) or (3)**, the operator and master each commits an offence and is liable on conviction to a fine not exceeding \$500,000.
- (6) Every person who contravenes **subsection (2) or (4)** commits an offence and is liable on conviction to a fine not exceeding \$1,000,000.

18 Prohibition of trade in fish, fish products, or other marine resources

- (1) A person must not sell, possess, or otherwise trade in fish, fish products, or other marine resources, including bio prospecting obtained in contravention of this Act, except if permitted to do so under an authorisation granted under this Act.
- (2) The Minister may, by notice in the Gazette, prohibit trade in fish, fish products, or other marine resources in order to achieve any objective of the Act, or to apply any principle referred to in **section 6**, including conservation, management, and implementation of obligations under a fisheries management agreement.
- (3) Any person who contravenes **subsection (1) or (2)** commits an offence and is liable on conviction to—
 - (a) fine not exceeding \$500,000; and

- (b) an order requiring the person to pay an amount equivalent to the current retail value of the fish, fish product, or marine resource in the market for which it is destined.

19 Commercial sale of endangered species

- (1) The Minister may, by notice in the Gazette, declare as endangered, any fish—
 - (a) that is designated as endangered by international agreement; or
 - (b) recommended by the Secretary to be declared endangered, based on sound scientific advice.
- (2) A person must not land, display for sale, sell, deal in, transport, receive, buy, or possess any fish declared as endangered under this section.
- (3) Any person who contravenes **subsection (2)** commits an offence and is liable on conviction to—
 - (a) a fine of not more than \$250,000; and
 - (b) an order requiring the person to pay an amount equivalent to the current retail value of the fish or fish product in the market for which it is destined.

20 Export of fish, fish product or other marine resources

- (1) A person must not, unless permitted to do so under **Part 8**, the Food Act 1992-93, or any regulations made under either of those Acts, do either of the following—
 - (a) export any fish or fish product taken in the fishery waters, or on the high seas by a Cook Islands fishing vessel, unless—
 - (i) it is exported for personal consumption by immediate family members; or
 - (ii) it does not exceed a total of 25 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.
- (2) Any person who contravenes **subsection (1)** commits an offence and is liable on conviction to—
 - (a) a fine not exceeding \$500,000; and
 - (b) an order requiring the person to pay an amount equivalent to the current retail value of the fish or fish product in the market for which it is destined.

21 Application of laws of other States

- (1) A person must not import, export, transport, sell, receive, acquire, or purchase any fish or fish product taken, possessed, transported, or sold in violation of any law of a foreign State if—
 - (a) a fisheries management agreement between the Government and that other State or States is implemented on a reciprocal basis; and
 - (b) the agreement states that those activities are unlawful.
- (2) For the purposes of **subsection (1)**, the fisheries management agreement described in **subsection (1)** takes effect when implemented by regulations made under section 167

- (3) Those regulations may—
 - (a) require record keeping and reporting for each day of fishing activity; and
 - (b) require the keeping of information on whether the fishing took place in the fishery waters or not; and
 - (c) provide for any other matter necessary to give effect to the agreement.

22 Contamination of the fishery waters

- (1) A person must not 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 actions are presumed to contaminate fishery waters:
 - (a) putting non-biodegradable trash or debris into those fishery waters:
 - (b) discharging a poison, chemical, or noxious substance, (including but not limited to oil, petroleum, solvents, metals, or sewage) into those fishery waters.
- (3) Any person who contravenes **subsection (1)** commits an offence and is liable on conviction to—
 - (a) a fine not exceeding \$500,000; and
 - (b) an order requiring the person to pay an amount equivalent to the total cost of the clean up and of all damage caused as a direct or indirect consequence of the contamination.

23 Protection of traditional fishers

- (1) Each foreign fishing vessel in any place in the fishery waters shall be operated in such a way that the activities of traditional fishermen and fishing vessels are not disrupted or in any other way adversely affected.

Part 3

Marine reserves and parks

24 Declaration of areas

- (1) The Queen's Representative may, by Order in Executive Council, declare any area of the fishery waters to be a marine reserve or marine park, if the Minister is satisfied that special management measures are necessary for 1 or more of the following purposes—
 - (a) to provide special protection to the flora and fauna of the area:
 - (b) to protect and preserve the natural breeding and nursery grounds and habitats of aquatic life:
 - (c) to allow for the replenishment or restoration of aquatic life in any area where that life has been depleted:
 - (d) to sustain livelihoods which rely on aquatic living resources:
 - (e) to promote scientific study and research in respect of the area:
 - (f) to preserve and enhance the biodiversity and natural beauty of the area.

- (2) The Queen's Representative may, by Order in Executive Council, declare zones within any declared marine reserve or marine park within which certain activities specified in that Order in Council may be carried or are prohibited.

25 Prohibited and permitted activities

- (1) A person commits an offence and is liable on conviction to a fine not exceeding \$500,000 who, in any marine reserve or marine park, and without permission under **subsection (2)**,—
- (a) fishes, attempts to fish, or conducts any related activities; or
 - (b) takes or destroys any flora or fauna; or
 - (c) does any of the following—
 - (i) dredges:
 - (ii) extracts coral, sand, or gravel:
 - (iii) discharges or deposits waste or any other polluting matter:
 - (iv) in any way disturbs, alters, or destroys the natural environment; or
 - (d) constructs or erects any buildings or other structures on or over any land or waters within the reserve or park; or
 - (e) does any other thing or takes an action which is in contravention of this Act or any other law relating to marine reserves or marine parks.
- (2) The Minister, or any person authorized by him or her in writing, may give written permission to do any of the things otherwise prohibited under this section if the Minister or other person entitled to give permission is satisfied that giving the permission does not undermine the effective implementation of a fishery plan for the reserve or park concerned.
- (3) Where an activity that could have a detrimental impact on a marine reserve or marine park is planned within the reserve or park by any Ministry or entity under any other Act or law, the Ministry or entity under whose management that activity is planned must obtain the written consent of the Minister before commencing that activity in that marine reserve or marine park.
- (4) The Minister must not decide whether to give consent under **subsection (3)**, until the Minister has consulted with, and considered any recommendations made by, any advisory committee established in respect of that reserve or park.

26 Minister may establish advisory committees and remove status of reserve or park

- (1) The Minister may—
- (a) establish an advisory committee for each marine reserve or marine park or any combination of reserves or parks:
 - (b) determine the terms of reference of any advisory committee established under **paragraph (a)**:
 - (c) do any other thing or take any action necessary for the protection and preservation of a marine reserve or marine park.
- (2) If the reserve or park no longer serves the purpose for which it was declared, the Minister may, by order published in the Gazette, declare that the reserve or park no longer has that status from the date stated in the order.

- (3) Before making a declaration under **subsection (2)**, the Minister must hold public consultation to enable persons having an interest in the reserve or park, including users, to express their views.

Part 4

Development and management of fisheries and aquaculture

Subpart 1—Fishery areas, plans, agreements, etc

27 Aquaculture management areas

- (1) The Queen’s Representative may, by Order in Executive Council made on the recommendation of the Minister, designate an area as an aquaculture management area.
- (2) The Minister may recommend the making of an order under **subsection (1)** if having regard to scientific, social, economic, environmental, and other relevant considerations, the Minister is satisfied that aquaculture activities in the area—
 - (a) are important to the national interest; and
 - (b) require management measures for ensuring sustainability.
- (3) The Secretary, or where appropriate, a local authority, must prepare a aquaculture management plan for all or any part of an aquaculture management area.
- (4) Each aquaculture management plan must do the following—
 - (a) identify the area to which the plan applies;
 - (b) describe the status of mariculture or other aquaculture activities in the area;
 - (c) specify management measures to be applied to ensure that only sustainable mariculture or other types of aquaculture are carried out in the area;
 - (d) specify the process for allocating and authorising participation in mariculture or other aquaculture activity in the area;
 - (e) make provision in relation to any other matter necessary for sustainable mariculture or other types of aquaculture.
- (5) An aquaculture management plan prepared by a local authority in accordance with **subsections (3) and (4)** must be approved by the Secretary, before it is implemented.
- (6) If the Secretary considers that any aquaculture management plan is inconsistent with the objectives, functions, or authority referred to in **section 5** or the principles and measures referred to in **section 7**, he or she must—
 - (a) not approve the plan; and
 - (b) promptly notify the local authority of the reasons for disapproval.
- (7) If the Secretary decides not to approve an aquaculture management plan under **subsection (6)**, the plan may be amended by the local authority concerned and re-submitted to the Secretary for approval.

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

28 Designated fisheries

- (1) The Queen's Representative may, by Order in Executive Council made on the recommendation of the Minister, declare a fishery to be a designated fishery.
- (2) The Minister may recommend the making of an Order in Council under **subsection (1)** if, having regard to scientific, social, economic, environmental and other relevant considerations, the Minister is satisfied that the fishery—
- (a) is important to the national interest; and
 - (b) requires management measures for ensuring sustainable use of the fishery resource.

29 Preparation of fishery plans

- (1) The Secretary must prepare and keep under review 1 or more fishery plans for each designated fishery or class of designated fisheries.
- (2) A fishery plan must do the following in relation to the fishery or class of fisheries to which the plan relates—
- (a) identify and address trends in the biological, economic, and social characteristics of the fishery or category of fishery, including issues requiring special attention;
 - (b) address how the fishery or category of fishery is to be managed using precautionary and ecosystem approaches to fisheries;
 - (c) identify the target and other fish stocks, fisheries management units, and management objectives for the fishery or category of fisheries;
 - (d) address the proposed conservation, management, and development measures to be applied to the fishery or class of fisheries, having regard to the performance of historical measures;
 - (e) describe the processes and indicators for management and measuring management performance;
 - (f) make provision in relation to any other matter necessary for sustainable use of fishery resources.
- (3) The Secretary may include in a fishery plan provisions that establish a quota management system for a stock of species of fish.
- (4) The Secretary may also include additional matters in a fishery plan prepared under this section.

30 Process to be followed in preparing fishery plans

In preparing a fishery plan under **section 29**, the Secretary must do the following—

- (a) submit the proposed management plan to public consultation for review and recommendations by members of the public;
- (b) publish the following by notice in the Gazette or in 2 national newspapers with wide circulation in the Cook Islands—

- (i) contact details for the public offices where copies of the proposed fisheries management plan are available for consultation with the public;
- (ii) an invitation to the public, and particularly to the residents of the area concerned, to submit written or oral comments on the proposed fisheries management plan within a specified period of time, being not less than six weeks but not more than 4 months, after the date of the notice;
- (iii) an indication of dates and places where public meetings will be held within the period of time specified under **subparagraph (ii)** to allow the public to submit comments.

31 Approval of fishery plans

- (1) Each fishery plan and each review of a fishery plan must be submitted by the Secretary to the Minister for approval.
- (2) If a review of a fishery plan recommends amendments to the plan, the Secretary must consult with persons with an interest in the changes and the amended plan must be approved by the Minister before it is implemented.
- (3) If a fishery plan or amended fishery plan is submitted to the Minister for approval, the Minister must—
 - (a) consider the plan or amended plan within 30 days of receiving it from the Secretary; and
 - (b) decide within that period whether to approve it.
- (4) Following approval, a fishery plan comes into force by notice of the Minister published in the Gazette.
- (5) Unless the Secretary decides otherwise, each fishery plan—
 - (a) is valid for a period of up to 5 years specified by the Secretary; and
 - (b) may be reviewed or extended for a further period not exceeding 5 years, as considered appropriate by the Secretary.

32 Local designated fishery

- (1) A local authority may prepare a fishery plan for the management of a designated fishery of local interest within its area of authority.
- (2) Any local designated fishery plan prepared under **subsection (1)** must—
 - (a) be prepared in consultation with the Ministry of Marine Resources;
 - (b) be consistent with the principles and measures referred to in **section 7**;
 - (c) be submitted for approval to the Secretary.
- (3) The Secretary may approve any fishery plan prepared by a local authority in accordance with **subsections (1) and (2)**.
- (4) If the Secretary considers any local designated fishery plan is inconsistent with the objectives, functions, and authority referred to in **section 5** or the principles and measures referred to in **section 7**, he or she—
 - (a) must not approve the plan; and
 - (b) must promptly notify the local authority of the reasons for disapproval.

- (5) If the Secretary does not approve a plan under **subsection (4)**, the local designated fishery plan may be amended by the local authority concerned and re-submitted to the Secretary for approval.

33 Exploratory fishing

- (1) This section applies if the Secretary considers that scientific research or anecdotal information suggests that—
- (a) a fishery (not being a designated fishery) may exist; and
 - (b) the extent of the abundance of the fishery or other characteristics of the fishery are unknown or uncertain; and
 - (c) consequently, the appropriate level of harvesting or the impacts of fishing operations on the fishery are uncertain.
- (2) If this section applies, the Secretary may prepare a report to the Minister recommending the approval of an exploratory fishery.
- (3) Following receipt of a report from the Secretary under **subsection (2)**, the Minister may approve the establishment of an exploratory fishery for a limited period of time for the purpose of establishing the following—
- (a) the characteristics, including the extent, of the fishery;
 - (b) the feasibility of, or environmental impact of, commercial fishing operations, or both;
 - (c) the appropriate method to target and catch the nominated species;
 - (d) the area within which these operations should take place.
- (4) If an exploratory fishery is approved under **subsection (3)**, the Secretary—
- (a) must determine the nature and extent of the fishing operations that are appropriate to the exploratory fishery; and
 - (b) may give public notice inviting applications for fishing licences from persons wishing to undertake those fishing operations in the exploratory fishery.

34 Exploratory fishing licences

- (1) Any person wishing to undertake exploratory fishing in the exploratory fishery may apply to the Secretary for a fishing licence authorising exploratory fishing.
- (2) The application for a licence authorising exploratory fishing must be accompanied by a detailed fishing proposal which contains information about the following—
- (a) where and with what vessel and fishing method the applicant wishes to fish;
 - (b) the species that will be targeted;
 - (c) the amount of fishing the applicant is planning to undertake;
 - (d) the data that the person will provide to the Secretary;
 - (e) the measures that will be taken by the applicant to minimise any potentially adverse environmental impacts.
- (3) On receipt of the application and fishing proposal, the Secretary must—

- (a) assess the fishing proposal and determine whether the proposal demonstrates sufficient capability to achieve the purposes provided for under **section 33 (3)**; and
 - (b) may, at his or her discretion, grant the applicant a fishing licence authorising exploratory fishing in the exploratory fishery, subject to any conditions that the Secretary determines are appropriate to the exploratory fishery and the approved fishing proposal.
- (4) The issue of any fishing licence to any person under **subsection (3)** does not, except as otherwise provided for in any fishery plan, 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 an exploratory fishery under **section 33 (3)**.

35 Monitoring of exploratory fishing operations

- (1) The Secretary must continue to monitor the impact of fishing operations on the exploratory fishery and the adequacy of the data being received.
- (2) If, in the opinion of the Secretary, the objective of this Act is not being served by the continuation of the exploratory fishery or any particular fishing operation, the Secretary may recommend to the Minister that the Minister suspend or revoke any approval under **section 33 (3)** or any grant of a fishing licence under **section 34 (3)**.
- (3) On receipt of a recommendation under **subsection (2)**, the Minister may—
 - (a) suspend any approval under **section 33 (3)** or any grant of a fishing licence under **section 34 (3)**, for any period specified by the Minister or indefinitely; or
 - (b) revoke any approval under **section 33 (3)** or any grant of a fishing licence under **section 34 (3)**.
- (4) The Minister must notify the holder of a licence authorising fishing for exploratory purposes, as soon as reasonably practicable of any decision made under **subsection (3)**.

36 Access agreements and fisheries management agreements

- (1) In performing functions or exercising powers under this Act,—
 - (a) the Minister may, on behalf of the Government, enter into access agreements and fisheries management agreements; and
 - (b) the Minister may, on behalf of the Government, enter into treaties providing for fisheries access, related activities, cooperation in fisheries management, exploration or exploitation of non-living marine resources, or other matters provided for under this Act.
- (2) Every access agreement—
 - (a) which relates to areas under national jurisdiction of the Cook Islands, is subject to the sovereignty or sovereign rights of the Cook Islands, as the case may be, 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 the Cook Islands is a party:

- (c) must require 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) must, in respect of each fishing vessel, require the flag state government, fishermen's association, or vessel operator to—
 - (i) nominate, appoint, and maintain an agent who must be resident in the Cook Islands and who has authority to receive and respond to any legal process; and
 - (ii) notify the Secretary of the name and address of that agent:
- (e) must be consistent with the principles and measures referred to in **section 7**.

37 Communications, etc to and from agent

Any communication, information, document, direction, request, or response to or from an agent referred to in **section 36 (2) (d)** is deemed to have been sent to, or received from, the flag state government, fishermen's association, or vessel operator.

38 Fishery allocations under access agreements

- (1) Fishery allocations under access agreements must—
 - (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 plan:
 - (c) be made, taking into account, amongst other things, the following considerations, to the extent 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:
 - (iv) whether those allocations would advance development of the fishing industry in the Cook Islands.

39 Other provisions of access agreements

- (1) An access agreement may provide for all or any of the following—
 - (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 issuing 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 those duties specified in the agreement, including the issuing of licences and administration:
 - (d) any other matters that are required for the effective implementation of the access agreement, in accordance with the objectives and provisions of this Act.

40 Provisions of fisheries management agreements

- (1) A fisheries management agreement may provide for all or any of the following—
- (a) harmonised terms and conditions for fisheries access:
 - (b) standard licence conditions that can be imposed on individual fishing operations:
 - (c) the implementation of a multilateral access agreement:
 - (d) harmonised, joint, or reciprocal fisheries surveillance and enforcement measures:
 - (e) the conditions under which fishing vessels are chartered, whether registered in the Cook Islands or elsewhere:
 - (f) harmonised or joint conservation and management of fisheries:
 - (g) an observer programme:
 - (h) any other matters that are required in accordance with the objectives and provisions of this Act.

Subpart 2—Quota management system

41 Determination that stock or species be subject to quota management system

- (1) The Queen's Representative, by Order in Executive Council made on the recommendation of the Minister, may declare a stock or species to be subject to the quota management system under this sub-Part.
- (2) The Minister must not recommend the making of an Order under **subsection (1)** unless he or she is satisfied that the current management of the stock or species is not ensuring the sustainability of the stock or species. Before making a recommendation for the making of an Order, the Minister must consult persons or organisations that he or she considers to be representative of the classes of persons who have an interest in the determination.

42 Setting of total allowable catch or effort

- (1) The Queen's Representative, by Order in Executive Council made on the recommendation of the Minister, must set a total allowable catch or total allowable commercial catch, or total allowable effort for each QMS stock.

43 Taking QMS stock subject to quota fishing

- (1) The taking of any QMS stock for sale is subject to any quota management system established under a fishery plan approved under subpart 1 for that QMS stock.

44 How stock or species becomes subject to quota management system

- (1) A quota management system established by a fishery plan comes into force when the plan comes into force under **section 31 (4)** or as otherwise provided in the plan.
- (2) A quota management system has effect according to its terms, subject to this Part and any regulations that apply in relation to the plan.

45 Who is eligible for allocation for initial year

(1) A person is eligible to receive an allocation for the initial year for any QMS stock if, on the date on which the Order declaring the stock to be a QMS stock is made, the person holds a licence under this Act for 1 or more fishing vessels that entitles the holder to use the vessel or vessels to take for sale any fish of that stock in the fishery waters of the Cook Islands.

46 Quota for QMS stock owned by Crown

- (1) For the purposes of this Part, all quota in QMS stocks is owned exclusively by the Crown until allocated in accordance with a fishery plan and regulations.
- (2) The Secretary, on behalf of the Crown, may—
 - (a) sell, lease, or purchase any quota in any QMS stock:
 - (b) hold any quota without being obliged to offer it to any person.

47 Withholding of quota for non-payment of levies, fees, or charges

- (1) If a licence or other authority to take fish is suspended under this Act for non-payment of any levies, fees, or charges payable under this Act, the Secretary may, until the due amounts are paid in full, withhold any quota that would, but for this section, have been allocated to the person concerned.
- (2) If payment is not made within 7 days of the date payment is due, the Secretary may make it available for reallocation.

48 Regulations

- (1) The Queen's Representative may, by Order in Executive Council made on the recommendation of the Minister, make regulations for all or any of the following purposes—
 - (a) authorising the Secretary to adjust (by increasing or decreasing) any TAE, TAC or TACC specified in any fishery plan in any circumstances, and in accordance with any criteria, specified in the regulations:
 - (b) facilitating or providing for the allocation of quota in accordance with a fishery plan:
 - (c) requiring quota holders to report catch to the Secretary:
 - (d) providing for catch to be reported to the Secretary and for catch and quota balances to be recorded in a Quota Register kept under **section 49**, and providing for the Secretary to notify quota balances:
 - (e) defining the quota management area and the fishing period that applies to any QMS stock by reference to a designated fishery or by some other means:
 - (f) prescribing fees or charges, and forms, for the purposes of this subpart:
 - (g) providing for the forfeiture of any unused quota to be a penalty that may be imposed for an offence against the regulations in addition to or instead of any penalty prescribed under **section 167**:
 - (h) providing for any other matters that are necessary or expedient for the purposes of giving full effect to a fishery plan or to this subpart, including regulations that authorise the Secretary to issue directions on specified matters.

49 Quota Register

- (1) The Secretary must, in accordance with any regulations made for the purpose, keep a Quota Register that records report quota balances, and any other information prescribed by the regulations.

**Part 5
Licensing**

Subpart 1—Licensing

50 Issuing of licences

- (1) This section applies to the issuing of any licence for a Cook Islands fishing vessel or foreign fishing vessel, as the case may be, for fishing or related activities in the fishery waters or for fishing in areas beyond the fishery waters.
- (2) Licences for Cook Islands fishing vessels must be issued by the Secretary and licences in respect of foreign fishing vessels must be issued by the Minister.
- (3) A licence must not be issued under this Act unless—
- (a) an application is made to—
 - (i) the Secretary in the prescribed form; or
 - (ii) an administrator or other responsible authority in accordance with an applicable multilateral or bilateral access or related agreement; and
 - (b) the required fees and any other forms of compensation have been paid in accordance with **section 54**.
- (4) The Minister or Secretary, as appropriate, may refuse to grant an application for a licence on any of the following grounds—
- (a) the owner or operator of the fishing vessel 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, by the owner or operator of the vessel in respect of which the application is made;
 - (c) an owner or operator of the vessel in respect of which the application is made—
 - (i) has contravened, or the vessel has been used for the contravention of, an access agreement to which the Cook Islands is a party; or
 - (ii) has committed an offence against the laws of the Cook Islands;
 - (d) the vessel in respect of which the application is made does not have good standing on the Regional Register;
 - (e) the previous offending history of the vessel's owner, operator, or master;
 - (f) any other grounds prescribed by regulations made under this Act.
- (5) The Minister or Secretary, as appropriate, may refuse to grant any application for a licence if 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.

51 Entry into the fishery waters

- (1) A foreign vessel that may be used for fishing or for a related activity or other activity provided for in this Act must not enter the fishery waters—
 - (a) except for a purpose recognised under international law or in accordance with a valid licence issued under this Act or a fisheries access agreement; or
 - (b) unless otherwise authorised under this Act.
- (2) If any foreign vessel is used in contravention of **subsection (1)**, the operator and master of the vessel each commits an offence and is liable on conviction to a fine not exceeding \$1,000,000.

52 Licence or authorisation required for fishing and related activities in the fishery waters

- (1) A vessel 10 metres or more in length must not be used in the fishery waters, unless authorised under a licence issued under this Part or an authority given under any other Part for any of the following things—
 - (a) fishing;
 - (b) related activities;
 - (c) any other activity regulated by this Act.
- (2) If any vessel is used in contravention of **subsection (1)**, the operator and master of the vessel each commits an offence and is liable on conviction to a fine not exceeding \$1,000,000.

53 Conditions of licences

- (1) Every licence issued by the Minister or the Secretary must be in the prescribed form, and may be issued subject to—
 - (a) any prescribed conditions; and
 - (b) any general conditions specified under **subsection (2)**; and
 - (c) any special conditions specified under **subsection (3)**.
- (2) The Minister may, by notice published in the Gazette, specify general conditions to which any licence must be subject.
- (3) The Minister or Secretary, as appropriate, may attach to any licence any special conditions, not inconsistent with this Act, that are required for the proper management of fisheries, including conditions relating to—
 - (a) the type and method of fishing or related activity authorised; and
 - (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 any fishing or related activities are authorised, and restrictions relating to the numbers, types, sizes, specifications, or operation of fishing related equipment or vessels; and
 - (e) transshipment of catch.

- (4) The Minister or Secretary, as appropriate, may vary any special conditions attached to any licence where he or she considers it is necessary for the appropriate and proper management of fisheries.
- (5) If the Minister or the Secretary varies any special conditions attached to any licence, the Minister or the Secretary must notify the licence holder of the variation as soon as practicable.

54 Fees and other forms of compensation

- (1) A person who is granted a licence issued by the Minister or the Secretary must pay the prescribed fees (if any) and any other prescribed form of compensation.
- (2) A person who is given an authorisation or allocation under this Act must pay the prescribed fees (if any) and any other prescribed form of compensation.

55 Period of validity of licences

- (1) Every licence issued by the Minister or the Secretary is, unless earlier cancelled or suspended in accordance with this section or **section 56**, valid for a period not exceeding 12 months.
- (2) If the Secretary considers that a material circumstance of a licenced vessel has changed, the licence is cancelled from the date the change occurred.
- (3) If any date for which a licence is valid under **subsection (2)** is unclear to the Secretary, the Secretary may cancel the licence from a date that he or she considers appropriate.
- (4) The period of validity of a licence does not extend beyond the period for which any applicable access agreement is in force.
- (5) A licence issued in respect of any vessel may not be transferred so that it applies to any other vessel except—
 - (a) with the written permission of the Secretary; or
 - (b) if provided otherwise by a fishery plan or an access agreement; or
 - (c) if permitted by regulations made under this Act.

56 Cancellation or suspension of licences

- (1) The Secretary or Minister, as appropriate, may cancel or suspend a licence on any of the grounds set out in **subsection (2)**, or on any other prescribed grounds.
- (2) A licence may be cancelled or suspended if 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; or
 - (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, or compensation required under this Act, or for any penalty, fine, or other determination imposed under this Act; or

- (d) good standing on the Regional Register has been withdrawn in respect of the licenced vessel in circumstances where good standing is a condition of holding a licence; or
 - (e) the vessel has been placed on the IUU vessel register maintained by a regional fisheries management organisation to which the Cook Islands is a party; or
 - (f) in the opinion of the Secretary or Minister, the vessel has been found to have been engaged in trafficking of people or drug trafficking, or fish workers on board have been treated in a cruel or inhumane manner; or
 - (g) the operator or crew member of a vessel has intimidated, threatened or assaulted an observer on board the vessel; or
 - (h) 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) If a fishing licence is cancelled or suspended under this section, the Secretary must give notice of the cancellation or suspension to the person to whom the licence was issued.
- (4) If a licence has been issued under a multilateral access agreement, it may only be suspended or cancelled in accordance with the terms of that agreement.
- (5) Despite **subsection (1)**, if a licence has been suspended or cancelled on any ground specified in **subsection (2)**, 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, may be reimbursed to the licensee at the licensee's request.
- (6) Any notification given under **subsection (3)** must be in writing. In the case of a notice given under **subsection (3)** that is required to be sent to a fishing vessel, that notice may be in writing or by telex, radio, fax, email or any other form that the Secretary considers appropriate.

57 Observation of laws

A licence under this Act does not relieve any foreign or Cook Islands 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.

58 Register of licences

The Secretary must maintain a register of all licences issued under this Act by the Minister or the Secretary, containing information relating to—

- (a) the nature of the activity licenced; and
- (b) the vessel, person, or establishment licenced; and
- (c) the period of validity of each licence; and
- (d) any additional information relating to the licences as the Secretary considers appropriate.

Subpart 2—Authorisations

59 Authorisation of scientific research operations

- (1) The Minister, on receiving a research plan prepared or approved by the Secretary, may—

- (a) authorise any vessel or person to undertake scientific research operations in the fishery waters; and
 - (b) when granting that authorisation, exempt that vessel or person from the requirements of any fisheries management and conservation measures specified in the authorisation; and
 - (c) in relation to that authorisation, impose any prescribed conditions and any other conditions that that Minister considers appropriate to impose and that are consistent with any prescribed conditions.
- (2) In reviewing or preparing a research plan for scientific research, the Secretary must consult with a local authority if the Secretary considers that the research may affect the area under the jurisdiction of that local authority.
 - (3) Each vessel or person authorised in accordance with this section must comply with all applicable laws of Cook Islands and any conditions of that authorisation.
 - (4) The Minister may suspend or revoke the authorisation if there is failure to comply with the conditions of that authorisation or the requirements of this Act.
 - (5) Any authorisation or exemption granted under this section must be in writing.
 - (6) Every person commits an offence and is liable on conviction to a fine not exceeding \$1,000,000 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 (1)(c)**; or
 - (c) in contravention of the requirements of **subsection (3)**.

60 Transhipment and bunkering

- (1) The Minister may authorise in writing any transhipment or bunkering involving any vessel in the fishery waters and any distant water fishing vessel beyond the fishery waters—
 - (a) if that activity does not constitute a condition of a licence for fishing, in accordance with any applicable access agreement; and
 - (b) any prescribed requirements relating to transhipment or bunkering are satisfied.
- (2) In relation to the authorisation, the Minister must impose any prescribed conditions and any other conditions that the Minister considers appropriate to impose and that are consistent with any prescribed conditions.
- (3) Each person authorised in accordance with this section must comply with all applicable laws of the Cook Islands and any conditions of that authorisation.
- (4) The Minister may suspend the 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 must be in writing.
- (6) Any person who undertakes any transhipment or bunkering activity in respect of any vessel without an authorisation granted under this section, commits an offence and is liable on conviction to a fine not exceeding \$1,000,000.

61 Authorisation generally

The provisions of **sections 54 to 57** (relating to fees for licences, the period of validity of licences, cancellation or suspension of licences and observation of laws) apply with any necessary modifications to—

- (a) authorisation granted under this subpart:
- (b) authorisations granted under any other provision of this Act.

Part 6
Distant water fisheries

62 Fishing by Cook Islands vessels in distant waters

(1) The purpose of this Part is to—

- (a) enable the Cook Islands to give effect to—
 - (i) international conservation and management measures adopted by global, regional, or sub-regional regional organizations, or arrangements to which Cook Islands is a party or where it is a cooperating non-contracting party; and
 - (ii) obligations arising under the FAO Compliance Agreement and the Fish Stocks Agreement in relation to Cook Islands vessels in distant waters; and
- (b) establish a system for the regulation and control of Cook Islands distant water fishing vessels operating in areas beyond the national jurisdiction of the Cook Islands.

(2) This Part applies—

- (a) to any fishing vessel of the Cook Islands and any act or omission occurring on or involving a vessel of that kind, wherever that vessel may be; and
- (b) to any act or omission by an authorised officer, whether within or beyond the national jurisdiction of the Cook Islands.

63 Requirements for Cook Islands fishing vessels outside the fishery waters

(1) A person must not use a Cook Islands fishing vessel for fishing or related activities—

- (a) in areas under the 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 this Part;
- (d) in an area subject to international conservation and management measures, as defined in **section 8**, except in accordance with those measures.

(2) If any vessel is used in contravention of **subsection (1)**, the operator and master of the vessel each commits an offence and is liable on conviction to a fine not exceeding \$1,000,000.

Licensing

64 Application for a distant water fishing licence and issue of licence

- (1) The owner, charterer, or operator of a Cook Islands registered fishing vessel may apply for a distant water fishing licence in respect of the vessel by completing an application in a form provided by the Secretary.
- (2) The application form must contain details of—
 - (a) the vessel's name, previous names (if known), registration numbers, and port of registry:
 - (b) the vessel's previous flags (if any):
 - (c) the vessel's international radio call sign (if any):
 - (d) the names, addresses, and details of the vessel's beneficial owners and operators:
 - (e) where and when the vessel was built:
 - (f) the type of vessel:
 - (g) the vessel's length:
 - (h) the type of fishing method or methods:
 - (i) the moulded depth of the vessel:
 - (j) the beam of the vessel:
 - (k) the gross tonnage and gross registered tonnage of the vessel:
 - (l) the power of the main engine or engines of the vessel:
 - (m) vessel navigation and position fixing equipment:
 - (n) processing equipment:
 - (o) intended area of operation, intended port of discharge, and species to be targeted:
 - (p) any other information or relevant documentation required by the Secretary for the purpose of giving effect to international conservation and management measures.
- (3) The Secretary may issue or refuse the applicant a licence in accordance with this Part, and must notify the applicant of his or her decision within 30 days of receipt of the application.
- (4) If a Cook Islands distant water fishing vessel is used without having been issued with a distant water fishing licence under this Part or in contravention of any condition or restriction contained in applying to the distant water fishing licence, the master owner, charterer, and operator of the vessel each commits an offence and is liable on conviction to a fine not exceeding \$000,000.

65 Grounds for refusal of application for distant fishing water licence

- (1) The Secretary may refuse to grant a distant water fishing licence for any of the following reasons—
 - (a) if the vessel, its owners, charterers, or operators are not in good standing on the regional register maintained by the Pacific Islands Forum Fisheries Agency:

- (b) if the vessel is on a list of fishing vessels maintained by a regional fisheries management organization of vessels that are believed to have engaged in illegal, unreported, or unregulated fishing;
 - (c) if it has been established that the vessel has been involved in the commission of a serious violation of an international conservation and management measure and all outstanding sanctions imposed under Cook Islands law in respect of the violation are yet to be complied with;
 - (d) the Secretary has reason to believe that the vessel has been used for the trafficking of people or drug trafficking, or that fish workers on board the vessel have been treated in a cruel or inhumane manner.
- (2) The Secretary must not issue a distant water licence to a vessel that is not registered under the Ship Registration Act 2007.
 - (3) The Secretary must not issue a distant water fishing licence in respect of any vessel unless satisfied that the Cook Islands will be able to exercise effectively its responsibilities under applicable international conservation and management measures in relation to the vessel.
 - (4) The Secretary must not issue a distant water fishing licence in respect of any vessel if the vessel was previously authorised to be used for fishing on the high seas by a foreign State, and—
 - (a) the foreign State suspended that authorisation because the vessel undermined the effectiveness of international conservation and management measures, and the suspension has not expired; or
 - (b) the foreign State, within the 3 years preceding the application for a licence under this Act, withdrew that authorisation because the vessel undermined the effectiveness of international conservation and management measures; or
 - (c) the vessel is, at the time of application for a distant water fishing licence, on a list of vessels maintained by a global or regional fisheries organisation that are believed to have engaged in illegal, unregulated, or unreported fishing.
 - (5) The restrictions in **subsection (4)** do not apply if—
 - (a) the ownership of the vessel has changed since the vessel undermined international conservation and management measures; and
 - (b) the new owner has provided sufficient evidence to the Secretary demonstrating that the previous owner or operator has no further legal, beneficial, or financial interest in the vessel.
 - (6) A person who knowingly or recklessly provides any information required to be given under this section which is false in a material particular commits an offence and is liable on conviction to—
 - (a) a fine not exceeding not exceeding \$500,000; and
 - (b) an order suspending or cancelling the licence.

66 Conditions attaching to a distant water fishing licence

- (1) Every distant water fishing licence must be in the prescribed form and is subject to the following conditions—
 - (a) the vessel to which the licence relates must be marked in accordance with regulations made under **section 167**:

- (b) the licence holder must ensure that the vessel does not engage in any activities which undermine the effectiveness of international conservation and management measures; and
 - (c) the licence holder must report any information that the Secretary requires, including the area of fishing operations, vessel position, and catch statistics.
- (2) A distant water fishing licence may not be issued until the applicant has provided to the Secretary the name and address of an agent based in the Cook Islands who has legal authority—
- (a) to act on behalf of the vessel, its owner, charterer, operator, or master; and
 - (b) to receive formal communications under this Act; and
 - (c) to provide details of the beneficial ownership of the vessel.
- (3) If a Cook Islands distant water fishing vessel is used without having been issued with a distant water fishing licence under this **Part** or in contravention of any condition or restriction contained in applying to the distant water fishing licence, the master, owner, charterer, and operator of the vessel each commits an offence and is liable on conviction to a fine not exceeding \$1,000,000.

67 Secretary may vary conditions

- (1) The Secretary may vary any conditions of a distant water fishing licence if the Secretary is satisfied that this is necessary to ensure compliance by the Cook Islands with its obligations—
- (a) under the FAO Compliance Agreement or the Fish Stocks Agreement; or
 - (b) under any applicable international conservation and management measures.
- (2) If the Secretary varies any conditions of a distant water fishing licence, he or she must notify the licence holder and the local agent of that variation within 15 working days.
- (3) If conditions are varied under **subsection (2)**, the licence holder must begin complying with the conditions, as varied, within 15 working days after notification of variation.
- (4) If the Secretary considers it necessary to implement international conservation and management measures relating to the living resources of the high seas, as a matter of urgency, he or she may set a period of not less than 10 working days by which time compliance with the conditions of a licence, as varied under **subsection (2)**, must be observed.

68 Validity of a distant water fishing licence

- (1) A distant water fishing licence is valid for 1 year unless a different period is specified in the licence.
- (2) A distant water fishing licence ceases to have effect when the vessel in respect of which it was granted ceases to be entitled to fly the flag of Cook Islands.

69 Cancellation or suspension of a distant water fishing licence

- (1) The Secretary may cancel or suspend a distant water fishing licence if the Secretary—
 - (a) considers that it is necessary or desirable to do so for the conservation or management of living marine resources in the high seas; or
 - (b) has reason to believe that a vessel has been engaged in illegal, unreported, or unregulated fishing; or
 - (c) has reason to believe that the vessel has been used in the commission of a serious violation of an international conservation and management measure; or
 - (d) has reason to believe that the vessel has been involved in trafficking of people or drug trafficking, or the owner or operator or charterer has treated fish workers on board in a cruel or inhumane manner.
- (2) Before a distant water fishing licence is cancelled or suspended under **subsection (1)**, the holder of the licence must—
 - (a) be informed of the intention to cancel or suspend; and
 - (b) given reasons for such action.
- (3) The licence holder has 21 days from receiving notification under **subsection (2)** to make written submissions in reply.

70 Use of Cook Islands fishing vessels in areas under the jurisdiction of another State

- (1) A person may not use a Cook Islands fishing vessel for fishing or related activities—
 - (a) in an area under the national jurisdiction of a foreign country, except in accordance with the laws of that country and with a licence issued in accordance with this **Part**;
 - (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 this **Part**;
 - (d) in an area subject to international conservation and management measures, except in accordance with those measures.
- (2) If any vessel is used in contravention of **subsection (1)**, the operator and master of that vessel each commits an offence and is liable on conviction to a fine not exceeding \$1,000,000.

Miscellaneous

71 Secretary may introduce measures

- (1) The Secretary may, by setting out measures in a fishery plan or plans that apply to fishing beyond the EEZ, or by imposing conditions on individual licences, introduce the measures that are necessary and appropriate to carry out the obligations of Cook Islands under the FAO Compliance Agreement and the Fish Stocks Agreement, and applicable international conservation and management measures.
- (2) The measures may specify, but are not limited to, the following—

- (a) the area or areas in which fishing is authorized:
- (b) the period, times, or particular voyages during which fishing is authorized:
- (c) the descriptions, quantities, size, or presentation of fish that may be taken:
- (d) the method of fishing to be undertaken and type of gear to be used:
- (e) the marking of gear:
- (f) a requirement that the vessel carry observers on board during fishing operations on the high seas:
- (g) a requirement that access be permitted to foreign observers:
- (h) a requirement that specific MTUs be carried, and the requirements governing their operation:
- (i) measures to be taken to avoid catching non-targeted species:
- (j) requirements for recording and timely reporting of vessel position, catch of target and non-targeted species, fishing effort, and other relevant fisheries data:
- (k) requirements for verifying the catch of target species, non-target species, and discards; and
- (l) the stowage of gear.

72 Use of vessels of other flags by Cook Islanders on the High Seas

- (1) A person, being a Cook Islander or a body corporate established under the laws of Cook Islands, must not 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) For the purpose of this section, a qualifying authorisation is an authorisation 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
- (3) For the purpose of this section, any notice given by the Minister in the Gazette specifying any State or category of States as a State or States that issue qualifying authorisations recognized by the Government as qualifying authorisations for the purposes of this section is conclusive of its contents.
- (4) Any person who contravenes **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$100,000.

73 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, and whether or not any of those persons or the vessel holds a licence or other authorisation, must comply with all applicable laws of the Cook Islands.

- (2) The operator and master of any fishing vessel required by **section 63** to hold a licence for fishing outside the fishery waters or who is otherwise subject to the requirements of that section, must comply with all applicable laws of the Cook Islands.
- (3) If any vessel is used in contravention of **subsections (1) or (2)**, the operator and master of that vessel, each commits an offence and is liable on conviction to a fine not exceeding \$1,000,000.

74 Serious violation

If a Cook Islands distant water fishing vessel engages in a serious violation of an international conservation and management measure, the master, operator, owner, or charterer, as the case may be, commits an offence and is liable on conviction to a fine not exceeding \$1,000,000.

75 Security for release of fishing vessel

- (1) This section applies if a Cook Islands distant water fishing vessel is seized or detained under this Act.
- (2) If an information or charge is laid against the master, owner, or charterer of the vessel in respect of the offence for which the vessel has been seized or detained, the master, owner, or charterer of the vessel may, at any time before the determination of the charge, apply to the Minister for the release of the vessel on provision of security in accordance with **subsection (3)**.
- (3) After considering an application under **subsection (2)**, the Minister may order the release of the fishing vessel if the Minister is satisfied that reasonable security has been given to the Ministry in respect of the aggregate of the maximum penalty to which the owner, master, or charterer may be liable and taking into account the cost and expenses which the Ministry may recover.

Part 7 Port measures

76 Designation of ports

(1) The Minister may, designate a port or ports to which fishing vessels may seek entry, and shall publish such designation in the Gazette.

77 Port Entry

- (1) The Secretary may prohibit entry to a port of the Cook Islands to a vessel which has been identified as being engaged in or supporting fishing in contravention of any international conservation and management measure or in contravention of the laws of the Cook Islands or of another State unless it can be established that the catch on board has been taken in a manner consistent with the relevant conservation and management measures or of the laws of another State.
- (2) The Secretary may grant conditional entry to a fishing vessel for the purpose of inspecting it where he or she has reasonable grounds for believing that the vessel has been engaged in or supporting fishing in contravention of any international conservation and management measures or in contravention of the laws of the Cook Islands or of another State.

- (3) A prohibition under subsections (1) and (2) may apply to an individual vessel or to a fleet of vessels.
- (4) The Secretary may refuse entry or permit only conditional entry to a port of the Cook Islands to a fishing vessel which he has reasonable grounds to believe is without nationality, or has operated under the flags of two States and has used them according to convenience.
- (5) The Secretary may revoke authority to enter or remain in port or may require a vessel to be detained in port under such conditions as are approved where he or she later has reasonable grounds to believe that the vessel has been fishing in contravention of international conservation and management measures or in contravention of the laws of the Cook Islands or of another State or is without nationality, or has operated under the flags of two States and has used them according to convenience.
- (6) Where the Secretary has refused entry or conditional entry and later is satisfied that the basis on which refusal to enter a port should be reversed, he or she may do so on such conditions as he or she thinks fit.
- (7) References to ports in this section include offshore terminals and other installations for landing, transhipping, refuelling or resupplying vessels.

78 Offences

- (1) A person who fails to comply with a decision or order of the Minister or the Fisheries Officer made in accordance with this Part commits an offence and is liable to a fine not exceeding \$1,000,000 million dollars.

79 Communication of information concerning vessel

- (1) Where a vessel has been denied entry to a port in the Cook Islands under this Part, the Secretary shall communicate that information to the flag State of the vessel and to any regional fisheries management organization of which the flag State is a member, or otherwise in accordance with an applicable international conservation and management measure.

80 Force majeure or distress

- (1) Nothing in this Act affects the entry of vessels to port in accordance with international law for reasons of force majeure or distress, or prevents a port State from permitting entry into port to a vessel exclusively for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

Part 8 Processing and export

81 Competent Authority

- (1) For the purpose of this Part, the Competent Authority is—
- (a) the Secretary; or
 - (b) an officer or employee of the Ministry to whom the Secretary has delegated the functions and powers of the Competent Authority.

- (2) An officer or employee of the Ministry who is purporting to be acting as the Competent Authority under **subsection (1)** is, in the absence of proof to the contrary, presumed to be acting with authority delegated under that subsection.

82 Application of this Part

- (1) This **Part** applies in relation to any fish or fish product intended for human consumption if the fish or fish product—
- (a) is intended for, or undergoing processing within, the Cook Islands; or
 - (b) has been processed or is purported to have been processed in the Cook Islands; or
 - (c) has been caught on Cook Islands registered vessels and discharged in a foreign port; or
 - (d) is destined for export.
- (2) This **Part** does not apply to the following, unless declared otherwise by the Minister by notice published in the Gazette,—
- (a) fish or fish products intended for non-commercial export:
 - (b) fish or fish products intended for consumption within the Cook Islands.

83 Objectives of the Competent Authority

- (1) The objectives of the Competent Authority are to ensure—
- (a) the application in the Cook Islands of appropriate quality control measures and international seafood production industry standards and guidelines:
 - (b) the facilitation of exports from the Cook Islands of all categories of seafood for human consumption:
 - (c) compliance with fish export standards set by the Ministry of Marine Resources and Codex Code of practices for fish and fishery products:
 - (d) meet the requirements of importing countries:
 - (e) promote export of seafood by assuring its quality and safety:
 - (f) promote consistency between international technical standards and domestic seafood standards:
 - (g) promote integrity and competence of the Competent Authority through periodic audits.

84 Functions of the Competent Authority

- (1) The Competent Authority has the following functions—
- (a) to verify the operation of licenced seafood processing establishments and any licenced fishing vessels for compliance to sanitation, hygiene, food safety pre-requisites where required by law:
 - (b) to monitor, regulate, control and review all exports of seafood, fish and their parts and products, including fresh, frozen, under process and processed fish, to ensure they meet product quality, food safety requirements and are fit for export:
 - (c) to make recommendations with supporting evidence to the Minister with regard to licensing in accordance with the Act:
 - (d) to document, record and certify exports of seafood and seafood products originating in the Cook Islands:

- (e) to oversee the certification of products discharged from Cook Islands registered vessels into foreign ports, where required by overseas controlling authorities:
- (f) to liaise with seafood establishment operators, other State agencies, and importing country authorities on seafood safety and market access requirements:
- (g) to provide official assurances to importing country authorities of the quality and safety of seafood products for export:
- (h) to provide permits for fish being taken overseas for personal use:
- (i) to undertake all necessary actions to ensure that the export of seafood, fish, and their parts and products are safe and fit for purpose so as to provide quality assurance to meet the export requirements of importing countries:
- (j) to provide verification, audit and inspection and conformance information and services to individuals, agencies, and other organizations within the country and overseas in respect of seafood and fish products exports:
- (k) to levy fees and charges required for the purposes of this Part in accordance with any regulations made under **section 167** prescribing fees or charges:
- (l) to perform or exercise all functions, duties, and powers which, under any other written law, are or may become those of the Competent Authority or are delegated to him or her:
- (m) enter into and carry out arrangements with other technical and other competent authorities and any other bodies that he or she determines, for the purposes of carrying out the functions and duties of the Competent Authority:
- (n) to perform any relevant acts that is incidental to or consequential on the performance or exercise of the functions, duties, and powers of the Competent Authority under this Act.

85 Powers of the Competent Authority

- (1) The Competent Authority has, in addition to the powers otherwise conferred on him or her by this Act and any other law, powers to do everything that is necessary or convenient to be done for, or in connection with, the performance of the Authority's functions or duties.

86 Delegation of power by the Competent Authority

- (1) The Competent Authority may in writing delegate to an authorised officer any of his or her functions, duties, or powers conferred on or assigned to him or her under this Act.
- (2) An authorised officer is subject to the directions of the Competent Authority when exercising the powers of the Competent Authority under this Act.
- (3) An authorised officer who is purporting to be acting under any delegation under this section is, in the absence of proof to the contrary, presumed to be acting within the terms of the delegation.

- (4) A delegation may at any time be revoked by the Competent Authority, in whole or in part, but that revocation does not affect in any way anything done under the delegated authority.
- (5) A delegation does not prevent the Competent Authority from performing or exercising any function, duty, or power that he or she has delegated.

Part 9

Monitoring, control and surveillance

Authorised officers

87 Appointment of authorised officers

- (1) The Minister may, on the recommendation of the Secretary, by notice published in the Gazette, appoint any persons or classes of persons as authorised officers for the purposes of this Act.
- (2) Nationals of other States that are party to an applicable access agreement or related agreement may be appointed as authorised officers under **subsection (1)**.
- (3) Every Fisheries Officer is deemed to be an authorised officer for the purposes of this Act.

Powers of authorised officers

88 General powers of entry and search

- (1) For the purpose of enforcing 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 in that vessel, vehicle, or place:
 - (b) stop any person and examine any record, document, article, container, gear, apparatus, device, or fish in the possession of that person:
 - (c) enter or cross any land.

89 Powers of entry and search where offence suspected

- (1) This section applies if an authorised officer believes, on reasonable grounds,—
 - (a) that an offence is being or has been committed against this Act; and
 - (b) that there may be concealed or located or held in any vessel, vehicle, other transportation device, premises, place, parcel, package, record, or other thing—
 - (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 of the commission of an offence against this Act.

- (2) If this section applies, the authorised officer may, for the purpose of enforcing this Act,—
- (a) enter or cross any land in order to enter, examine, and search any premises or place, or any vessel, vehicle, or transportation device (by stopping or opening where necessary); and
 - (b) examine and search (by stopping or opening where necessary) the parcel, package, record, or other thing.

90 Powers of detention

- (1) An authorised officer may detain any person, vessel, vehicle or other transportation device, fishing gear, implement, appliance, apparatus, material, container, goods, equipment, parcel, package, record, document, article, fish, or other thing for any period that is reasonably necessary to enable the fishery officer to carry out an examination or search under **section 88 or 89**.

91 Power to question persons and require production of documents

- (1) This section applies 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.
- (2) If this section applies, the authorised officer may, at any reasonable time,—
- (a) question that person or any other person; and
 - (b) require the person being questioned to provide an answer, including any explanation or information concerning—
 - (i) any vessel, or any place or thing; or
 - (ii) any fish or fishing method, gear, apparatus, record, document, article, device, or thing relating to the taking, sale, purchase, or possession of any fish.
- (3) **Subsection (2)** does not require any person to answer any question tending to incriminate that person.

92 Power of arrest

- (1) For the purpose of enforcing 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 immediately cease offending;
 - (b) request that person to give to that authorised officer—
 - (i) the name by which that person is commonly known; and
 - (ii) the person's family name or surname, date of birth, actual place of residence, and occupation; and
 - (iii) as much verification of those details as it is reasonable in the circumstances to require the person to provide:
 - (c) arrest that person without any warrant.
- (2) If an authorised officer arrests a person under **subsection (1)**,—

- (a) the authorised officer must deliver the person into the custody of a member of the Police as soon as practicable; and
 - (b) the provisions of the Criminal Procedure Act 1980-81 apply, except that the duties relating to the laying and filing of an information are 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 \$500,000, that person is not bailable as of right.

93 Power to give directions to master

- (1) For the purpose of enforcing 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, direct the master to take the vessel, as soon as reasonably practicable, to—
- (a) the nearest available port in the Cook Islands; or
 - (b) another port that is agreed between the master and the authorised officer.
- (2) If an authorised officer has given a direction under **subsection (1)**, he or she may also give to the master or any other person on board the vessel any reasonable directions in respect of any activity, method, procedure, item, gear, document, fish, property, or other thing while the vessel is proceeding to port.
- (3) The directions referred to in **subsection (2)** may be given by an authorised officer, whether or not he or she is on board the vessel at the time the order is given.

94 Power to use reasonable force and take copies of documents

- (1) For the purpose of enforcing this Act, an authorised officer may use any force that is reasonably necessary to enable the exercise of his or her powers under this Act.
- (2) While exercising powers of search or examination 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 the record or document from the place where it is kept, for any period of time that 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.

95 Powers of seizure

- (1) An authorised officer may seize—
- (a) Any vessel, vehicle or other transportation device, fishing gear, implement, appliance, apparatus, material, container, goods, equipment, parcel, package, record, document, article, fish, or other 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 that 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 those fish have been intermixed:

- (c) any article, record, document, or other thing that 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)** must be given to the Secretary.

96 General powers

- (1) An authorised officer may do all acts and things and give any directions that 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, in relation to any conduct (whether or not that conduct occurred in the fishery waters), exercisable—
- (a) within the Cook Islands; and
 - (b) in the fishery waters; and
 - (c) beyond 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 a vessel of that kind 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 a vessel of that kind and relating to fisheries inspection, compliance, or enforcement if—
- (a) 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 a party; and
 - (b) that agreement or instrument has been implemented in the Cook Islands by regulations or by notification in the Gazette.

Provision of assistance to, and liability of, authorised officers or observers

97 Persons may 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 any assistants that he or she considers necessary for the purpose.

98 Protection of authorised officer and others from liability

- (1) An authorised officer or observer who does any act under this Act, or omits to do any act required by this Act, is not under any civil or criminal liability as a result of that act or omission on the ground of lack of jurisdiction or mistake of law or fact, or on any other ground.
- (2) A person who, while assisting an authorised officer or observer under **section 98**, does any act under this Act or omits to do any act required by this Act is not under civil or criminal liability as a result of that act or omission on the

ground of lack of jurisdiction or mistake of law or fact, or on any other ground.

- (3) **Subclause (1) or (2)** does not apply to an authorised officer, observer, or person assisting, as the case requires, if he or she has acted, or omitted to act, in bad faith.
- (4) The Government is not directly or indirectly liable for an act or omission of any authorised officer, observer, or other person under this Act, unless the authorised officer, observer, or other person would himself or herself incur liability for the act or omission.

Dealing with seized property and bringing of charges

99 Release of seized property

- (1) The Secretary may, at any time until an information or charge is laid in respect of the alleged offence for which property was seized, on application by a person entitled to apply under **subsection (2)**, release the property to that person under bond in any sum and under those sureties and conditions (if any) that the Secretary specifies.
- (2) The following persons may make an application under **subsection (1)**—
 - (a) the person from whom the property was seized:
 - (b) the owner or person entitled to the possession of the property seized.

100 Failure to comply with bond on conditions of release

- (1) If any person to whom property is released under **section 99 (1)** fails to comply with the conditions of any bond or with any condition specified by the Secretary,—
 - (a) the property may be again seized at any time at the direction of the Secretary; and
 - (b) the provisions of this section apply to the property as if it had been seized under **section 95**; 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 to estreat the bond; and
 - (d) if the Secretary applies for an order to estreat the bond, the Registrar must fix a time and place for the hearing of the application and, not less than 7 days before the time fixed, serve on every person bound by the bond a notice of the time and place fixed for that hearing; and
 - (e) if on the hearing of an application for an order to estreat the bond, it is proved to the satisfaction of the Court that any condition of the bond has not been kept,—
 - (i) the Court may make an order to estreat the bond in an amount that it thinks fit; and
 - (ii) the estreatment applies to any person bound and on whom notice is proved to have been served; and
 - (f) any penalty payable under this section is recoverable as if it were a fine.

101 Disposal of perishable property and property where ownership is uncertain

- (1) If in the opinion of the Secretary, any fish or other article seized under **section 95**, may rot, spoil, deteriorate, or otherwise perish, the Secretary may arrange for its sale in any manner and for a price decided by the Secretary.
- (2) If the ownership of any property cannot be established at the time of seizure, the property seized is forfeit to the Government and must be disposed of as directed by the Secretary after the expiry of 90 days after the date of seizure if, within that time, it has not been possible to establish the ownership of the property.
- (3) A purchaser for valuable consideration of any fish, article, or property sold under **subsection (1) or subsection (2)** derives good and unencumbered title in respect of that fish, article, or property (as the case may be).

102 Proceeds of sale or disposal of property

- (1) Unless released under **section 99** or **subsection (2)**, all property seized under **section 95** and the proceeds from the sale of any property under **section 101**, must 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) if such a charge or information is laid, the completion of proceedings in respect of the alleged offence for which the property was seized or any sooner time that the Court determines.
- (2) If any information or charge has been laid in respect of the alleged offence for which the property was seized under **section 95**, and that property remains in the custody of the Government, the Court may at any time, on application by a person entitled to apply under **subsection (3)**, release the property under bond to the person subject to any sureties and conditions that the Court determines.
- (3) The following person may make an application under **subsection (2)**—
 - (a) the person from whom the property was seized; or
 - (b) the owner or person entitled to the possession of the property seized.

103 Determination of amount of bond or other security

- (1) In determining the value of the bond or other form of security, the Court—
 - (a) must have regard to the aggregate amount of—
 - (i) the value of the property to be released; and
 - (ii) the total maximum fine or fines provided for the offence charged or likely to be charged; and
 - (iii) the loss, damages, or costs the prosecution would be likely to recover under **section 125**, if a conviction were entered; and
 - (b) may set the value at the aggregate of the amounts referred to in **paragraph (a)**.

104 Timing of decisions to bring charges

- (1) A decision on whether to lay any information or charge in respect of an alleged offence for which any property is seized, detained, or taken possession

of under this Part must be made as soon as reasonably practicable after the property is seized, taken possession of, or detained.

105 No liability for spoilage or determination in quality

- (1) The Government is not liable to any person for any spoilage or deterioration in the quality of any fish seized under **section 95**.

106 Release of property in certain circumstances

- (1) This section applies if any property has been seized under **section 95** and—
- (a) a decision is made not to lay an information or charge; or
 - (b) the person charged with an offence for which the property is subject to forfeiture is acquitted.
- (2) Any property to which this section applies, or the proceeds from the sale of that property, must be released from the custody of the Government to the person entitled to the property, and in the case of proceeds of sale from property under **section 101**, those proceeds must—
- (a) be paid into the unclaimed monies account; and
 - (b) be dealt with under the Unclaimed Monies Act 1970.
- (3) An authorised officer who at the time of seizure returns to the water any fish seized under **section 95** that he or she believes to be alive is not under any civil or criminal liability to the person from whom the fish was seized, in the event of—
- (a) a decision being made not to lay an information or charge in respect of the fish; or
 - (b) the person being acquitted of the charge.
- (4) This section—
- (a) applies subject to **section 99**; but
 - (b) overrides **sections 101 to 105**.

107 Removal of parts from seized vessels, vehicles, or aircraft

- (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)** must be kept safely and returned to the vessel, vehicle, or aircraft on its release from lawful custody.
- (3) A person, except if acting under the authority of the Secretary, must not—
- (a) possess or arrange to obtain any part or parts removed under **subsection (1)**; or
 - (b) possess or arrange to obtain or make any replacement or substitute part or parts for those removed under **subsection (1)**; or
 - (c) 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.

Observers and obligations to observers

108 Observers

- (1) The Secretary may designate in writing persons to act as observers on vessels issued with licences or authorisations under this Act.
- (2) Persons may also be designated as observers—
 - (a) in accordance with any fishery plan or any access agreement or related agreement; or
 - (b) where required by any fishery plan or any access agreement or related agreement; or
 - (c) where an observer or class of observers has been certified under the terms of that plan or agreement or other bilateral or multilateral legal instrument to which Cook Islands is a party.
- (3) Persons designated under **subsection (2)** who are not Cook Islanders must, while carrying out their duties and functions and enforcing their rights, comply with the provisions of this Act.
- (4) Observers (whether designated under subsection (1) or (2)) may exercise scientific, compliance, monitoring, and other functions.

109 Obligations of operations, masters, and crew members of vessels

- (1) Observers must be allowed to board any vessel issued with a licence or authorisation under this Act and be allowed to remain on the vessel for the purpose of performing or exercising their functions, duties, and powers.
- (2) The operator, master, and each member of the crew of a vessel must allow and assist an observer to—
 - (a) board and remain on the vessel for the purpose of performing or exercising the observer's functions, duties, and powers, at any time and place that the Secretary requires:
 - (b) have full access to and the use of facilities and equipment on board the vessel which the observer determines is necessary to perform or exercise his or her functions, duties, and powers, 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) taking and removing from the vessel reasonable samples for the purposes of scientific investigation and other relevant information:
 - (vi) taking photographs of the fishing operations, including fish, fishing gear, equipment, charts, and records, and removing from the vessel any photographs or film that he or she takes or uses on board the vessel:
 - (vii) sending or receiving messages by means of the vessel's communications equipment:
 - (viii) gathering any other information relating to fisheries in the fishery waters or other areas that is authorised by licence or authorisation:

- (c) carry out the observers duties safely:
 - (d) disembark at any time and place decided by the Secretary or in accordance with an access agreement.
- (3) Any operator and master of any vessel with a licence issued in accordance with this Act must allow and assist any observer to—
- (a) have full access to any place within the Cook Islands where fish taken in the fishery waters or in areas of the high seas is unloaded or transhipped; and
 - (b) remove samples; and
 - (c) gather any information relating to fisheries.
- (4) The powers granted to observers may be exercised extra-territorially.

110 Cost of observers

- (1) The operator of a vessel must provide an observer, while on board the vessel, and at no expense to the Government, with food, accommodation, and medical facilities—
- (a) equivalent to the standard provided to officers; or
 - (b) to a reasonable standard that is acceptable to the Secretary.
- (2) In addition to meeting the requirements in **subsection (1)**, 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) any salary costs that are notified to the operator by the Secretary, being the full amount of salary payable to the observer in respect of the period on board the vessel:
 - (c) full insurance coverage.

Directions of authorised officers and observers

111 Directions of authorised officers

- (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 must—
- (a) immediately comply with every instruction or direction given by an authorised officer, as appropriate; and
 - (b) facilitate the safe boarding, entry, and inspection of the vessel, vehicle, or aircraft and any fishing gear, equipment, records, fish, and fish products by an authorised officer or observer.
- (2) Every person commits an offence who contravenes **subsection (1)**.

112 Offences relating to directions of authorised officers and observers

- (1) Every person commits an offence who—
- (a) assaults, obstructs, resists, delays, refuses boarding to, intimidates, or fails to ensure the safety of or otherwise interferes with an authorised officer or observer while the officer or observer is performing or exercising his or her functions, duties, or powers:
 - (b) incites or encourages any other person to assault, resist, or obstruct any—

- (i) authorised officer or observer while the officer or observer is performing or exercising his or her functions, duties, or powers; or
 - (ii) person lawfully acting under the officer's or observer's orders or in his or her aid:
- (c) uses threatening language or behaves in a threatening or insulting manner or uses abusive language or insulting gestures towards any—
- (i) authorised officer or observer while the officer or observer is performing or exercising his or her functions, duties, or powers; or
 - (ii) person lawfully acting under the officer's or observer's orders or in his or her aid:
- (d) fails to comply with the lawful requirements of any authorised officer or observer:
- (e) gives to any authorised officer or observer any particulars which are false or misleading in any material respect:
- (f) personates or falsely represents himself or herself to be an authorised officer or observer, or falsely represents himself or herself to be a person lawfully acting under an authorised officer's or observer's orders or in his or her 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 observer under this Act.
- (2) For the purpose of **subsection (3)**, any person who does not allow an authorised officer or observer, or any person acting under his orders or in his or her aid, to exercise any of the powers conferred on that person by this Act is deemed to be obstructing that officer, observer, or other person.
- (3) Every person who commits an offence against this section is liable on conviction to a fine not exceeding \$500,000.

113 Offences relating to disembarking outside Cook Islands

- (1) This section applies to every person who, being a master, owner, charterer, agent, or a company established under the laws of Cook Island, owns, partly owns, or controls a fishing vessel that transports an authorised officer or observer outside the fishery waters.
- (2) If any person to whom this section applies requires an authorised officer or observer to disembark outside the territory of jurisdiction of the Cook Islands, that person—
- (a) commits an offence; and
 - (b) on conviction is liable, in addition to any fine imposed under **subsection (3)**, to an order requiring payment of all costs of repatriation including board and lodging while out of the Cook Islands and direct transportation to Cook Islands.
- (3) Every person who commits an offence against this section is liable on conviction to a fine not exceeding \$500,000.

114 Identification of authorised officers and observers

- (1) An authorised officer or observer, when exercising any of the powers conferred on him or her by this Act, must on request produce identification to show that he or she is an authorised officer or observer under this Act.

Mobile Transmission Units

115 Mobile transmission units – vessel requirements

- (1) The operator of each fishing vessel licensed to fish under this Act must, as a condition of the operator's license, install, maintain, and operate a registered mobile transmission unit (MTU) at all times while in the fishery waters or any other area that is agreed or designated, and in accordance with—
- (a) the manufacturer's specifications and operating instructions; and
 - (b) any standards that are required by any body or organization of which Cook Islands is a member; and
 - (c) any other prescribed requirements.
- (2) The operator of each vessel referred to in **subsection (1)** must ensure that—
- (a) no person tampers or interferes with the MTU and that the MTU is not altered, damaged, disabled, or otherwise interfered with;
 - (b) the MTU is not moved from the required or agreed installed position, or removed, without the prior written permission of the Secretary;
 - (c) the MTU is switched on and is operational at all times when the vessel is within the fishery waters or any other area that is agreed or designated, and at any prescribed times before entry into those fishery waters or other area;
 - (d) on notification by the Secretary that the vessel's automatic location communicator has failed to transmit, the directions of the Secretary are complied with until the vessel's MTU is functioning properly;
 - (e) the MTU is registered in any way that the Secretary directs or as is prescribed, at the operator's expense.
- (3) The operator of each vessel referred to in **subsection (1)** or his or her authorised agent must, on notification by the licensing country of appropriate authority that the vessel's MTU has failed to report, ensure that reports containing the vessel's name, call sign, position (expressed in latitude and longitude to minutes of arc), and date and time of the report, are—
- (a) communicated to a delegated authority at intervals of 8 hours or any shorter period specified by the delegated authority, commencing at the time of notification of the failure of the MTU; and
 - (b) continue to be given until the MTU is confirmed to be operational by the licensing country with appropriate authority.
- (4) If it is not possible to make any 1 or more of the further position reports described in **subsection (3)**, or if the Secretary directs, the master of the vessel must—
- (a) immediately stow the fishing gear; and
 - (b) take the vessel directly to a port identified by the Secretary; and
 - (c) as soon as possible, report to the Secretary that the vessel is being, or has been, taken to port with gear stowed.

- (5) Any operator, master, owner, or charterer who does not comply with **subsections (1), (2), (3), or (4)** commits an offence and is liable on conviction to—
- (a) a fine not exceeding \$250,000; and
 - (b) an order cancelling the applicable licence.

116 Vessel monitoring system – information

- (1) Ownership of all vessel monitoring system information generated by an MTU required and operating under **section 115** is vested in the Crown.
- (2) All vessel monitoring information must be classified by the Government as confidential information, and is subject to any procedures for confidential information prescribed by regulations under this Act.
- (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 exceeding \$250,000.

117 Mobile transmission units – evidence

- (1) All information or data obtained or discovered by the use of an MTU is presumed, unless the contrary is proved, to—
- (a) come from the vessel so identified;
 - (b) be accurately transmitted or transferred;
 - (c) be given by the master, owner, and charterer of the vessel:
- (2) Evidence may be given of information and data obtained or ascertained by the use of an MTU, whether from a printout or visual display unit.
- (3) **Subsections (1) and (2)** apply whether or not the information was stored before or after any transmission or transfer of information or data.
- (4) An MTU installed and operated in accordance with this Act must be judicially recognised as notoriously accurate.
- (5) **Subsection (4)** applies whether or not the information was stored before or after any transmission or transfer.
- (6) Any person may give a certificate stating—
- (a) his or her name, address, and official position;
 - (b) that he or she is competent to read the printout or visual display unit of any machine capable of obtaining or discovering information from an MTU;
 - (c) the date and time the information was obtained or discovered from the MTU and the details of that information;
 - (d) the name and call sign of the vessel on which the MTU is or was located as known to him or her, or as discovered from any official register, record, or other document; and
 - (e) a declaration that there appeared to be no malfunction in the MTU, its transmissions, or other machines used in obtaining or ascertaining the information or data.
- (7) **Section 126** applies to a certificate given under this section.

118 Unlicensed foreign fishing vessels in transit

- (1) The operator of an unlicensed foreign fishing vessel which passes through the fishery waters and which does not have a registered functioning MTU on board in accordance with **section 110** must report the following to the Secretary—
 - (a) its entry into and exit from the fishery waters; and
 - (b) the quantity and species of fish on board; and
 - (c) its position every 12 hours.
- (2) If an unlicensed foreign fishing vessel fails to report in accordance with **subsection (1)** or does not have on board a registered functioning MTU, it must be presumed, in the absence of evidence to the contrary, that any fish found on board has been taken without authorisation in the fishery waters.

Part 10
Administrative penalties

119 Imposition of administrative penalty

- (1) This section—
 - (a) applies in respect of any offence that carries a penalty of a fine not exceeding \$250,000 and is an offence against this Act or against any other Cook Islands law that relates to fishing or aquaculture; but
 - (b) does not apply in respect of any alleged offence if any information or charge has been laid in respect of the alleged offence.
- (2) The Secretary may serve a notice in a form approved by the Secretary on a person if the Secretary has reasonable grounds to believe that—
 - (a) an offence to which this section applies may have been committed by the person in respect of any vessel licensed or required to be licensed under this Act; and
 - (b) having regard to all the circumstances relating to the alleged offence it is of a minor nature and, having regard to the previous conduct of the vessel and of the person concerned in Cook Islands fishery waters, it would be appropriate to impose a penalty under **section 122**.

120 Form of section 119 notice

- (1) A notice under **section 119** must contain—
 - (a) the date and nature of the alleged offence; and
 - (b) a summary of the facts on which the allegation that an offence has been committed is based (which summary must be sufficient to fully and fairly inform the person of the allegation against the person); and
 - (c) any other matters (other than previous convictions) that the Secretary considers relevant to the imposition of a penalty; and
 - (d) a statement setting out the provisions of this section.

121 Procedure

- (1) Any person on whom a notice under **section 119** is served may, within 28 days after the notice is served on the person, by a notice in writing in a form

approved by the Secretary and served on the Secretary, require that any proceedings in respect of the alleged offence must be dealt with before a court.

- (2) If **subsection (1)** applies,—
 - (a) no further action may be taken under **section 122** by the Secretary;
 - (b) nothing in this section prevents the subsequent laying of any information or charge in respect of the alleged offence, or the conviction of the person of the offence by a court, or the imposition of any penalty under any enactment or forfeiture under this Act on such a conviction.
- (3) Any person on whom a notice under **section 119** is served who does not require that any proceedings in respect of the alleged offence be dealt with before a Court may, by notice in writing served on the Secretary,—
 - (a) admit the offence; and
 - (b) make submissions to the Secretary as to the matters the person wishes the Secretary to take into account in imposing any penalty under this section.
- (4) A person on whom a notice under **section 119** is served is deemed to have admitted the offence if the person does not, within 28 days after the notice is served on the person,—
 - (a) require that any proceedings in respect of the alleged offence be dealt with before a court; or
 - (b) admit the offence.

122 Penalty

- (1) If, under **section 121**, a person admits or is deemed to have admitted an offence,—
 - (a) the Secretary may, after taking into account any submissions made by the person under **section 121**, impose on that person a monetary penalty not exceeding one-third of the maximum monetary penalty to which the person would be liable if the person were convicted of the offence by a court; and
 - (b) any licences, permits or authority held by that person may be suspended or cancelled as provided in **section 56**.
- (2) If the Secretary imposes a penalty on a person under this section in respect of an offence, the Secretary must give the person notice in writing in a form approved by the Secretary of the particulars of the penalty imposed on the person.
- (3) A person on whom a penalty is imposed under this section must pay the amount of the penalty to the Government within 28 days after the notice of the penalty is served on the person.
- (4) A penalty that has been imposed under this section is recoverable by the Government from the person on whom it has been imposed, in the same manner as a fine is recoverable on conviction for any offence.
- (5) Despite any other provisions in this Act, or any other enactment, where any offence has been admitted or deemed to have been admitted under this section, no other or further information or charge may be laid in respect of the offence against the person by whom it is admitted.

Part 11

Jurisdiction and evidence

123 Jurisdiction of High Court

- (1) **Subsection (2)** applies to any act or omission in contravention of any of the provisions of this Act committed—
 - (a) by any person within the fishery waters; or
 - (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.
- (2) If this section applies to any act or omission, the act or omission may be dealt with and judicial proceedings taken or administrative penalties imposed as if the act or omission had taken place in the Cook Islands within the local limits of the jurisdiction of the High Court.
- (3) If an authorised officer or observer is lawfully exercising any powers conferred under this Act outside the fishery waters or any person who is subject to this Act commits any act or omission outside those waters which, if committed within the fishery waters, would be an offence against this Act, the exercise of those powers or the commission of that act or omission is deemed to have occurred within the fishery waters.
- (4) **Subsection (3)** is subject to any of the following that make provision to the contrary—
 - (a) an applicable access agreement;
 - (b) a fisheries management agreement;
 - (c) any other bilateral or multilateral legal instrument.
- (5) 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 115 (2)**, is deemed to have been committed within the fishery waters.
- (6) If any regulation or licence condition requires the reporting of any fact while a vessel is on the high seas, any proceedings may be taken or an administrative penalty imposed in respect of failure to report or the misreporting of that fact as if it had occurred within the fishery waters.

124 Who may bring prosecutions or proceedings under the Act

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 who is authorised for that purpose by the Secretary.

125 Liability for non-payment of penalties

- (1) The following 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—

- (a) all pecuniary penalties and all forfeitures incurred or imposed under this Act:
 - (b) the liability to forfeiture of any article seized under the authority of this Act:
 - (c) all rents, charges, expenses, and duties and all other sums of money payable under this Act.
- (2) Proceedings referred to in **subsection (1)** are civil proceedings, and the fact that a bond or other security has been paid may not be pleaded or made use of in answer to or in stay of any proceedings of that kind.

126 Liability for loss, damage, or costs incurred

- (1) A person who commits an offence against this Act may, on conviction, be held liable to the Government 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 other thing in respect of that offence.
- (2) The amount of compensation for any loss, damage, or costs referred to in **subsection (1)** may be awarded by the Court as restitution in addition to, and may be recovered in the same manner as, a fine.

Certificate evidence

127 Certificate evidence

The Secretary or any person designated in writing by him or her 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 that document:
- (c) a particular location or area of water was, on a specified date or dates,—
 - (i) within the fishery waters; or
 - (ii) within a closed, limited, restricted, or in any other way controlled area of the fishery waters; or
 - (iii) 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 occurred in a way stated in the certificate:
- (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 as a 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 Executive Director of the fisheries organisation or arrangement concerned:
- (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 supplied:
- (l) any specified interest in any specified fishing right was or was not held by a person named in the certificate.

128 Certificate as to location of vessel

- (1) If 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, the place or area stated in a certificate given by an authorised officer that complies with **subsection (2)** is 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 must, in any certificate referred to in **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 **paragraph (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 or she checked the instrument as soon as possible after the time concerned against an instrument that is judicially recognised.
- (3) For the purposes of this section, **authorised officer** includes—
 - (a) fisheries enforcement officers, surveillance officers, and those charged with similar responsibilities in other countries; and
 - (b) high seas inspectors duly authorised under a multilateral legal instrument to which Cook Islands is a party.

129 Photographic evidence

- (1) If 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 on the photograph, it must be presumed, unless the contrary

is proved, that the photograph was taken on the date and at the time and in the position so appearing.

- (2) The presumption set out in **subsection (1)** applies only 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 instruments of that kind.

130 Other requirements relating to photographic evidence

- (1) Any authorised officer who takes a photograph of the kind described in **section 129 (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 or she checked those instruments a reasonable time before and after the taking of the photograph and, if necessary, in accordance with **section 129 (2) (b)**, and that they all appeared to be working correctly;
 - (d) the matters set out in **section 129 (2) (a)**;
 - (e) the accuracy of the fixing instrument used within specified limits;
 - (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.
- (2) For the purposes of this section, **authorised officer** includes—
 - (a) fisheries enforcement officers, surveillance officers, and those charged with similar responsibilities in other countries; and
 - (b) high seas inspectors duly authorised under a multilateral legal instrument to which Cook Islands is a party.

General rule about certificates

131 Validity and procedures for certificates

- (1) Unless the contrary is proved, a document purporting to be a certificate given under **section 127, 117 (6) 128, 129 or 130** is deemed to be a valid certificate and to have been duly given.
- (2) A certificate given under **section 127, 117 (6) 128, 129 or 130** is, unless the Court finds the defendant is unduly prejudiced by the failure to object, conclusive proof of all the facts stated in it if the certificate—
 - (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 7 days of the date of service, serve notice of objection and the grounds of objection in writing on the prosecutor.
- (3) **Subsection (4)** applies to a certificate if—

- (a) a copy of the certificate is served less than 28 days before its production in court; or
 - (b) written notice of objection and the grounds of objection is served on 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.
- (4) If this subsection applies to a certificate, the certificate is, unless the contrary is proved, sufficient evidence of all the facts contained in it.

132 Headings to certificates and other formal requirements

- (1) Any certificate given under **section 127** (must be headed “Certificate given under **section 127** of the Marine Resources Act”).
- (2) No certificate given under **section 127** may be used as proof of the facts stated in it, unless it is served with a copy of **section 131 and this section**.
- (3) Any certificate given under **section 117 (6)** must be headed “Certificate given under **section 117 (6)** of the Marine Resources Act”.
- (4) No certificate given under **section 117 (6)** may be used as proof of the facts stated in it, unless it is served with a copy of **section 131 and this section**.
- (5) Any certificate given under **section 128** must be headed “Certificate given under **section 128** of the Marine Resources Act”.
- (6) No certificate issued under **section 128** may be used as proof of the facts stated in it unless it is served together with a copy of **section 131 and this section**.
- (7) Any certificate given under **section 129** must be headed “Certificate made under **section 129** of the Marine Resources Act”.
- (8) No certificate given under **section 129** may be used as proof of the facts stated in it unless it is served with a copy of **section 131 and this section**.
- (9) Any certificate given under **section 130** must be headed “Certificate given under **section 130** of the Marine Resources Act”.
- (10) No certificate given under **section 130** may be used as proof of the facts stated in it, unless it is served together with a copy of **section 131 and this section**.

133 Effect of omissions or mistakes

Any omission from or mistake made in any certificate given under **section 127, 117 (6) 128, 129 or 130** does not make it invalid unless the court considers—

- (a) the omission or mistake is material to any issue in the proceedings concerned; or
- (b) the defendant is unduly prejudiced by the omission or mistake.

134 No obligation to call issuer of certificate

If in any proceedings a certificate given under **section 127, 117 (6) 128, 129 or 130** section is produced to the Court,—

- (a) the prosecution is not obliged to call the maker of the certificate; and
- (b) the court must rely on the facts in the certificate, unless the contrary is proved.

Other presumptions

135 General presumptions

- (1) All fish found on board any fishing vessel which has been used in the commission of any offence against this Act is presumed to have been caught in the commission of that offence, unless the contrary is proved.
- (2) If, 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 is 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 is 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 is deemed to be that of the operator and master of the vessel.

136 Further presumptions

- (1) In any proceedings for an offence against this Act involving the use of driftnets to catch fish, unless the contrary is proved, the fish that are the subject of the charge are presumed to have been caught using driftnets if—
 - (a) an authorised officer gives evidence that he or she had reasonable grounds to believe that any fish to which the charge relates were caught by the use of driftnets; and
 - (b) the Court considers that, having regard to the evidence, the grounds are reasonable.
- (2) In any legal proceedings for an offence against this Act involving the catching of fish in a particular area, unless the contrary is proved, the fish are presumed to have been caught in that area if—
 - (a) an authorised officer gives evidence of reasonable grounds to believe that any fish to which the charge relates were caught in a specified area of the fishery waters; and
 - (b) the Court considers that, having regard to that evidence the grounds are reasonable.
- (3) 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 is presumed to be true, unless the contrary is proved.

137 Presumption as to authority

A return, log, record, or other information purporting to be made, kept, or supplied by or on behalf of any person is, for the purposes of this Act, deemed

to have been made, kept, or supplied by that person or by that person's authority, unless the contrary is proved.

Liability for, and defences to, offences

138 Strict liability

- (1) In any prosecution for any offence against this Act it is not necessary for the prosecution to prove that the defendant intended to commit an offence.
- (2) It is a defence in any prosecution for an offence against this Act 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.

139 Liability of directors and managers

- (1) If a body corporate is convicted of an offence against this Act, every director and every person concerned in the management of the body corporate is guilty of an offence if it is proved that—
 - (a) the act that constituted the offence took place with the person's authority, permission, or consent; or
 - (b) 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.

140 Liability of principal for actions of agent in relation to records and returns

- (1) **Subsection (2)** applies if a person (the **principal**) is required by or under this Act to—
 - (a) keep any account, log, or record; or
 - (b) supply 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 supply of any return, log, or information, or the completing of any form.
- (2) Every act or omission of any person acting or purporting to act as agent for the principal in respect of any requirement referred to in **subsection (1)** is deemed for the purposes of this Act to be the act or omission of the principal, unless **subsection (3)** applies.
- (3) This subsection applies if 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—
 - (a) keeping any account, log, or record; or

- (b) supplying any return, log, or information; or
- (c) completing any form; or
- (d) taking any action in respect of those matters.

141 Statutory defence available to principal

- (1) A defence specified in **section 138 (2)** is available to a principal prosecuted in respect of the act or omission of an agent if the principal satisfies the Court that it would be in the interests of justice to allow the principal the benefit of any defence provided for in **section 138 (2)** 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.
- (2) For the purposes of this section, a person may be regarded as acting as an agent for a principal whether or not that person is employed by the principal and whether or not acting for reward.

142 Liability 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 a person for the purpose of engaging in fishing, is deemed for the purposes of this Act to be the act or omission of the person.

143 Statutory availability of section 138 (2) defence to other persons

- (1) Subject to **subsection (2)**, any defence specified in **section 138 (2)** in relation to a prosecution under this Act is available to a person only to the extent that it is available to the officer, employee, master, or crew member in relation to whose act or omission the prosecution is brought.
- (2) A defence specified in **section 138 (2)** 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, it would be in the interests of justice to allow the person the benefit of any defence provided for in **section 138 (2)**, 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 the person became aware—
 - (i) of the act or omission of the officer, employee, master, or crew member in relation to which the prosecution is brought; or
 - (ii) that the officer, employee, master, or crew member appeared or was likely to benefit from that act or omission.

144 Liability of master

- (1) If an offence against this Act has been committed by any person on board or employed on a fishing vessel, the master of the vessel is also guilty of the offence.

Miscellaneous

145 Destruction of evidence

- (1) A person must not 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 the intent to avoid seizure or the detection of an offence against this Act.
- (2) Any person who contravenes **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$250,000.

146 Forfeiture and suspension of fishing rights, licences, etc

- (1) If any person is convicted of an offence against this Act, the High Court may order that any applicable fishing right, licence, authorisation, or permit be forfeited or suspended for any period that the Court considers appropriate.

147 Banning order

- (1) **Subsection (2)** applies if any person is convicted of an offence against this Act or any regulation made under this Act and within 7 years after 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.
- (2) If this subsection applies, the Court may, in addition to any other fine or penalty provided under this Act, make an order prohibiting, for a period of up to 3 years from the date of the further conviction, that person from engaging in—
 - (a) fishing;
 - (b) fishing related activities;
 - (c) any other activity regulated under this Act.

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

148 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 is 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)** applies to any person carrying out any duties or responsibilities imposed or required under this Act while the person is an employee, agent, or representative of the Government.

149 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 is deemed to have been served on the defendant if the summons is served on the authorised agent of the operator of the vessel.
- (2) For the purposes of **subsection (1)**, the authorised agent is 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 licenced under this Act.

150 Matters to be taken into account by Court in sentencing

- (1) If any person is convicted of an offence against this Act, the Court, in imposing sentence, must take into account the purpose of this Act and must have regard to—
- (a) the difficulties inherent in detecting fisheries offences; and
 - (b) the need to maintain adequate deterrents against the commission of fisheries offences.

Part 12

Sale, release, and forfeiture of retained property

151 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 may, in addition to imposing any fine, order that the following 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 under **section 95**;

- (b) any fish found on board any foreign vessel at the time it was seized or detained under this Act and in any other case any fish in respect of which the offence was committed (whether or not seized under **section 95**;
 - (c) any proceeds from the sale of that property or fish under **section 101**;
 - (d) any illegal fishing gear in respect of which the offence was committed (whether or not seized under **section 95**.
- (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 be forfeit to the Government—
- (a) any property used in respect of the commission of the offence (whether or not seized under **section 95**;
 - (b) any fish in respect of which the offence was committed (whether or not seized under **section 95**;
 - (c) any proceeds from the sale of that property or fish under **section 101**;
 - (d) any illegal fishing gear in respect of which the offence was committed (whether or not seized under **section 95**.
- (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 be forfeit to the Government—
- (a) any fish in respect of which the offence was committed (whether or not seized under **section 95**;
 - (b) any proceeds from the sale of such fish under **section 101**;
 - (c) any illegal fishing gear in respect of which the offence was committed (whether or not seized under **section 95**.

152 Application of bond

- (1) On the making of an order for forfeiture under **section 151**, the High Court may, on application of the Secretary, make an order that any bond or security given in respect of that forfeit property or fish be applied as follows in the order stated—
- (a) first, to the discharge of the property or fish ordered forfeit under **section 151**;
 - (b) secondly, to the payment of all fines or penalties imposed in respect of the offences giving rise to the forfeiture ordered;
 - (c) thirdly, to the discharge of all orders for restitution of any loss, damages or costs made under **section 126**.

153 Removal of seized goods

- (1) If 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 under this Act at any time within the Cook Islands or the fishery waters.

154 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 any manner that the Minister directs.
- (2) Any property, fish, or other item seized under this Act or any money held under **section 102** but not forfeited in any legal proceedings—
 - (a) may be held by the Government until all fines, orders for restitution or costs, and penalties imposed under this Act have been paid; and
 - (b) if payment is not made within the time allowed, sold and the balance of the proceeds released after deduction of all fines, orders for restitution or costs, penalties imposed under this Act, and costs of sale.

155 Liability for loss, damage, or deterioration of items in custody

- (1) The Government is liable to any person only to the extent of the loss, damage to, or deterioration in the condition of any property or other item, while in the custody of the Government under this Act.

156 Removal of item in custody

- (1) Every person commits an offence and is liable on conviction to a fine not exceeding \$250,000 who removes any vessel, vehicle, aircraft, or other item held in the custody of the Government under this Act (whether or not the person knew that the vessel, vehicle, aircraft, or other item was held in the custody of the Government).

**Part 13
General**

157 Rights of Appeal

- (1) Any person affected and aggrieved by -
 - (a) the refusal of the Secretary to issue or renew an authorization, licence or permit, or limit the taking of a marine organism in accordance with this Act;
 - (b) the cancellation or suspension by the Secretary in accordance with this Act of an authorization, licence or permit;
 - (c) a decision of the Secretary in relation to the allocation, adjustment, or cancellation of an authorization, licence or permit, or the taking of a marine organism may, within 30 days of the receipt of notification of that decision appeal against it in writing to the Minister, whose decision, shall be final.

158 Duty of confidentiality

- (1) Any person carrying out duties or responsibilities in the Ministry or otherwise under this Act must not, unless authorised in accordance with this Act, reveal any information or other data of a confidential nature acquired because of their authority, duties, and responsibilities to any person not having that authority or carrying out those 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.
- (4) Despite **subsection (2)**, the following information is confidential—
 - (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) any other information or data specified in regulations made under **section 167** as confidential.
- (5) Information may be disclosed to the extent—
 - (a) that disclosure is authorised or required under this Act or any other law; or
 - (b) that the person providing the information authorised its disclosure; or
 - (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, on request, to the responsible authority for the purposes of surveillance, search and rescue, or other emergency, and may authorise the release of any other confidential information for any prescribed purposes.

159 Rewards

- (1) The first person who provides information leading directly to a conviction or administrative determination for an offence against this Act may, at the discretion of the Secretary, receive a sum of 1% of the total fine or other penalty imposed or \$50, whichever is less.
- (2) The Secretary, in consultation with the Solicitor General and the Financial Secretary, is responsible for allocating rewards in accordance with such procedures as may be prescribed, and the Secretary's decision is final.
- (3) Officials of the Government are not eligible for a reward under this section.

160 Failure to furnish or false statements in information for purpose of Act

- (1) Every person commits an offence and is liable on conviction to a fine not exceeding \$500,000 who—
 - (a) fails to provide or supply any document, record, return, log, or other information when lawfully requested to do so under this Act; or
 - (b) makes any false or misleading statement or any material omission in any communication, application, document, record, return, log, or other information for the purposes of this Act.

161 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) direct 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 that record, return, log, or other information is to be kept and supplied to the Secretary.
- (2) Every person who fails to comply with a direction of the Secretary under **subsection (1)(a)** commits an offence and is liable on conviction to a fine not exceeding \$250,000.

162 Giving of notices

- (1) If under this Act any notice or other document is to be given, served on, or supplied 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 person's legal representative or counsel or any other person that the Court directs;
 - (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 to 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 residence; 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 to any other person authorised to act on the person's behalf, at that person's or other person's usual or last known address.
- (2) Any notice or other document sent by post is 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 or not received within that period.
- (3) For the purposes of this section,—
 - (a) **electronic transmission** means any transmission of information sent electronically, and includes any transmission sent by fax, electronic mail, or electronic data transfer;
 - (b) **address** includes a fax number or an electronic mail address.

163 No action to be brought against certain persons

No action may be brought against the Government, any statutory body or authority, or a public or judicial officer in respect of any performance of its or his or her functions or duties under this Act.

164 Severability

- (1) If any provision of this Act or amendments or additions, or their application to any person, thing, or circumstance, is held invalid,—
 - (a) the invalidity does not affect the provisions, application, amendments, or additions that can be given effect without the invalid provisions or application; and
 - (b) the provisions of this Act and the amendments or additions are severable.

Transitional provisions

165 Savings

- (1) All regulations, orders, and notices made or given under the Marine Resources Act 2005, except so far as they are inconsistent with this Act, continue to have effect as though made, given, or issued under this Act.

166 Validity of licences and authorisations

- (1) All licences or authorisations granted or appointments made under the Marine Resources Act 2005, which are in force immediately before the commencement of this Act, continue on the commencement of this Act to have full force and effect as if the Marine Resources Act 2005 were still in force—
 - (a) for the term for which they were granted or made; or
 - (b) until they expire or are revoked according to law.
- (2) Despite **subsection (1)**, if the Secretary considers that any term or condition of any licence or authorisation granted or appointment made under the Marine Resources Act 2005 is inconsistent with the provisions of this Act to an extent that is unacceptable, he or she must 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 will 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 or she receives a notice under **subsection (3)**.
- (3) 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, may give notice to the Secretary that the variation is unacceptable, in which case the licence, authorisation, or appointment, as the case may be, ceases to have effect on the date specified.

167 Regulations

- (1) The Queen's Representative may, by Order in Executive Council, make any regulations that are necessary to give effect to the provisions of this Act and for its due administration.

- (2) Without limiting **subsection (1)**, regulations made under this section may provide for all or any of the following—

Conservation

- (a) prescribing measures for the conservation, management, development, licensing, and regulation of fisheries or any particular fishery, including the designation of any fishery and the provision of any fishery plan:

Fisheries Advisory Committee

- (b) making provision for rules of procedure and other matters concerning the operation for the Committee established under **section[9A]** of this Act.

Marine reserves and parks

- (c) doing all or any of the following in relation to marine reserves and marine parks—

- (i) providing for the general management of marine reserves or marine parks:
- (ii) setting fees for entrance to, and activities in, a marine reserve or marine park:
- (iii) providing for the development and adoption of management plans in respect of marine reserves or marine parks:
- (iv) providing for research permits and fees for issuing those permits:
- (v) providing for management plans for marine reserves or marine parks, including—
- (A) physical, biological, socio-economic, and cultural aspects of the marine reserve or marine park:
- (B) conservation and management objectives and management programmes:
- (vi) providing for the setting up of advisory committees for particular fisheries or marine reserves or marine parks:
- (vii) rau’i - providing for the temporary closure of an area or areas, or species, in consultation with the Aronga Mana of the area concerned:

Bio-prospecting

- (d) providing for the licensing, regulation and prohibition of bio prospecting.

Fisheries and aquaculture

doing all or any of the following in relation to fisheries and aquaculture—

- (i) providing for the licensing, control, and use of fish aggregating devices and the rights to the aggregated fish, and prescribing times and the minimum distances from those devices from which any vessel may fish:
- (ii) regulating or prohibiting the use of self-contained underwater breathing apparatus:

- (iii) regulating or prohibiting the use of spear guns or other similar devices:
- (iv) providing for standards and measures for the safety of local fishermen and fishing vessels:
- (v) regulating aquaculture and access to land leased for aquaculture and to the waters adjacent to that land:
- (vi) regulating mariculture, including coral gardens:
- (vii) prescribing the terms and conditions of leases for aquaculture:
- (viii) requiring the provision of statistical and other information related to fisheries:
- (ix) providing for the control, inspection, and conditions of operation of fish processing establishments:
- (x) requiring the prevention of marine pollution:
- (xi) regulating or prohibiting, either generally or in any specified fishery,—
 - (A) the taking of coral and shells:
 - (B) the setting of fish fences or nets:
 - (C) the taking of aquarium fish:
 - (D) aquaculture operations:
 - (E) the taking of trochus, pearl oyster, turtles, clams, sea cucumber, and lobsters:
 - (F) fishing of all kinds within any lagoon or any part of any lagoon, the time or times of year during which that fishing may occur or is prohibited, and approving, restricting, or prohibiting the equipment or methods which may be used in connection with that fishing:

Licensing of vessels

- (f) doing all or any of the following in relation to licensing of vessels—
 - (i) providing for 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 under this Act, including the forms to be used, issuing requirements, grounds for denial, terms and conditions, and fees, charges, royalties, and other forms of compensation related to that licensing, authorisation, or registration;
 - (ii) providing for licensing, authorisation, or registration in respect of any fisherman or class of fisherman, fishing gear, and other equipment or devices used for fishing:
 - (iii) providing for the regulatory operation of, and conditions and procedures to be observed by, any fishing vessel while in the fishery waters:
 - (iv) providing for 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:
 - (v) regulating the catching, loading, landing, handling, transshipping, transporting, possession, and disposal of fish:

- (vi) providing for the attribution of catch or catch data:
- (vii) regulating or prohibiting the use of bunkering vessels or requiring them to be operational in accordance with an international conservation and management measure:
- (viii) regulating the conditions under which vessels may be chartered:
- (ix) providing for the appointment, maintaining of, and procedures for agents appointed to receive and respond to process under this Act:
- (x) providing the setting up and maintenance of a catch documentation or certification scheme in respect of fish caught:
- (xi) the implementation of any access or related agreement or other agreement or arrangement entered into under this Act:
- (xii) the manner in which any fishing gear is to be stowed:
- (xiii) the appointment, powers, and duties of authorised officers and observers:
- (xiv) the duties and procedures to be followed by the master and crew of any vessel in relation to authorised officers and observers:

Competent Authority

- (g) doing all or any of the following in relation to the functions to be carried out by the Competent Authority—
 - (i) prescribing fees and charges that are to be charged by the Competent Authority:
 - (ii) prescribing the contents, criteria, and conditions governing the issuing of certificates by the Competent Authority to export fish or fish product:
 - (iii) prescribing the form and fees for a certificate to export fish or fish product:
 - (iv) prescribing additional grounds for which a fish processing establishment licence may be suspended or cancelled:
 - (v) prescribing additional standards and conditions of licences for fish processing establishments:
 - (vi) prescribing operational requirements for fish processing establishments:
 - (vii) providing for a quality management system to deal with fish processing establishments, including the setting of performance bonds:
 - (viii) prescribing the forms of notices issued under the Act:

Procedure

- (h) prescribing rules of procedure, and penalty rates for administrative penalties:

Port measures

- (i) doing all or any of the following in relation to port measures—

- (i) providing for the designation and publication of ports in Cook Islands to which foreign fishing vessels, Cook Islands distant water fishing vessels, or local fishing vessels authorised to fish on the high seas or fishery waters may be permitted access:
- (ii) providing for the designation of port inspectors:
- (iii) providing for the training and qualifications of port inspectors:
- (iv) prescribing the procedures, the contents of, and the results to be obtained from, an inspection regime, including the adoption of port measures adopted by a sub-regional, regional, or global fisheries organisation, or under a treaty or arrangement:
- (v) prescribing the powers of inspectors, the mode of conducting an inspection, including the power to inspect—
 - (A) the catch (whether processed or not) in any area of a Cook Islands distant water fishing vessel:
 - (B) any fishing gear:
 - (C) any equipment or other gear and document which the inspector considers necessary to verify compliance with relevant conservation and management measures:
- (vi) requiring the provision of any assistance or information that may be needed in order to undertake inspections:
- (vii) requiring that a vessel or class of vessel provides any notice that is specified in the regulations before entering its port or its exclusive economic zone for the purpose of port access, including—
 - (A) vessel identification:
 - (B) any authorisation to fish:
 - (C) information on its fishing trip and vessel monitoring systems:
 - (D) quantities of fish on board:
 - (E) and any other prescribed documentation or information:
- (viii) providing for the denial of the use of the port for landing, transshipping, packaging, and processing and the other port services, including, among other matters, refuelling and resupplying, maintenance, and dry-docking if the vessel is believed to have been used for activities in contravention of sub-regional, regional, or global conservation and management measures:
- (ix) regulating or prohibiting the landing, transshipment, packaging, or processing of fish, or refuelling or resupplying a vessel, including the prohibition of port access of a vessel,—
 - (A) which has been identified or reported as having been engaged in or supporting fishing activities in contravention with regional, sub-regional, or global conservation measures; or
 - (B) where there are reasonable grounds for presuming that a vessel has been engaged in that activity:
- (x) regulating or prohibiting the port access of a vessel that has been included on the list of vessels maintained by sub-regional, regional,

or global fisheries organisations that are believed to have engaged in illegal, unregulated, or unreported fishing:

- (xi) regulating or prohibiting the landing, transshipment, packaging, or processing of fish, or refuelling or resupplying a vessel, including the prohibition of port access of a vessel which has been identified or reported as having been engaged in or supporting—
 - (A) fishing activities in areas under national jurisdiction in contravention of the laws of a particular country; or
 - (B) fishing on the high seas without an authorisation to do so from its flag state or where there are reasonable grounds for presuming that a vessel has been engaged in that activity:
- (xii) authorising the cooperation and exchange of information (including inspection results) by electronic means or otherwise, with other States and sub-regional, regional, or global fisheries organisations:
- (xiii) providing for a system of appeal against specified decisions taken in respect of fishing vessels under this Act or the regulations:
- (xiv) providing for any other measures that may be agreed to by sub-regional, regional, or global fisheries organisations, or under a treaty or arrangement:

Monitoring, Control and Surveillance

- (j) monitoring, control and surveillance of fishing and related activities, including provisions relating to the operation of a vessel monitoring system, the collection, storing and transmission of information obtained by electronic means, including electronic log books, sensors, cameras or otherwise regarding a vessel's electronic equipment and its fishing or related activities, and the use of data and other information, including-monitoring, e-monitoring equipment, readings, printouts, displays and pictures of or produced by any electronic systems, and the management and use of such information.

Offences and penalties

- (k) doing either or both of the following in relation to offences and penalties—
 - (i) prescribing offences against the regulations and penalties for those offences, not exceeding a fine of \$250,000 and, where the offence is a continuing one, a further fine not exceeding \$5,000 for every day that the offence has continued:
 - (ii) prescribing any other matter, which is required or authorised to be prescribed by this Act.

168 Schedules

The Minister may amend from time to time any Schedule attached to regulations made under this Act that sets out fees payable or any forms prescribed under this Act, and such schedules shall have the same legal effect as regulations made under this section.

169 Delegation

(1) The Secretary may, by written instrument, delegate to any Fishery Officer, observer or staff member of the Ministry all or any of her or his powers or functions under this Act, except this power of delegation.

170 Extra-territorial effect of the Act

(1) This Act, unless the contrary intention appears, applies to all:

- (a) fishery waters and areas over which the Cook Islands exercises sovereignty sovereign rights or jurisdiction;
- (b) fishing, utilization of fish and genetic material derived from them and any other activity or matter falling within the scope of this Act;
- (c) persons, vessels, vehicles, aircraft, export facilities or other craft or place engaged in or otherwise connected with any activity falling within the scope of this Act;
- (d) persons, including non-citizens, and vessels, including foreign fishing vessel, in and in relation to
 - (i) the fishery waters; and
 - (ii) areas beyond the fishery waters,
 - (A) following hot pursuit initiated in the fishery waters and conducted in accordance with international law; or
 - (B) as required pursuant to this Act or international conservation and management measures, or permitted by international law or any international agreement; and
- (e) all Cook Islands fishing vessels and all persons on them or dealing with or having any relevant relationship to them or persons on them, in and in relation to any areas within or beyond national jurisdiction in so far as it is not in conflict with the territorial jurisdiction of another State.

(2) This Act has extraterritorial application according to its provisions and tenor.

171 Repeal

(1) The enactment specified in **Schedule 1** is repealed.

172 Consequential amendment

(1) The enactment specified in **Schedule 2** is amended to the extent set out in that schedule.

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Schedule 1
Enactment repealed

The Marine Resources Act 2005

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Schedule 2
Amendment to Act

Enactment	Amendment
The Cook Islands Investment Corporation Act 1998	By deleting from 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.”

This Act is administered by the Ministry of Marine Resources.
Printed under the authority of the Cook Islands Parliament—2016.

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