



**Ministry of Marine Resources**  
GOVERNMENT OF THE COOK ISLANDS

**Policy Paper**

**Marine Resources Bill - 2016**

DRAFT

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## **1. Rationale**

The present Marine Resources Act was enacted in 2005. Since then, developments in the marine sector nationally, regionally and internationally, have been rapid and far-reaching. New legislation is required to accommodate these developments and enable the Ministry of Marine Resources (MMR) to discharge its responsibilities of fisheries management more effectively.

The new Marine Resources Act will update and replace the Marine Resources Act 2005 (“2005 Act”).

## **2. Background**

With the changes in the area of the marine sector informed through improved understanding of the science behind these changes, the Ministry acknowledges the need to develop a framework for the regulation of the conservation, management and development of marine resources and related matters. This legislation has been proposed by the Ministry for some time, but to date these have not been finalised and given effect to. The new Bill will fill a major gap in the laws which were identified some years ago, and which still remains. The proposed reforms will be implemented by a range of technical standards, marine management plans, regulations and operating procedures.

The new Marine Resources Act will cover six new areas: marine reserves and parks; quota management system; distant water fisheries; expanded port state measures; processing and export of fish; and administrative penalties.

## **3. Purpose**

This purpose of the proposed legislation is to provide the Ministry of Marine Resources with the legal mandate to implement measures for the conservation, management and development of marine resources, fish processing and export, and related matters.

## **4. Scope**

The scope of the new Marine Bill covers all of the Cook Islands. The overall responsibility for applying and enforcing the Bill will rest with the Ministry of Marine Resources.

## **5. Beneficiaries**

All Cook Islanders will benefit from the legislation as it will give them a clear understanding of both permissible and prohibited behaviour.

## **6. The new legislation**

The new Marine Resources Act will cover thirteen specific parts. The Act will also cover six new areas: marine reserves and parks; quota management system; distant water fisheries; expanded port state measures; processing and export of fish; and administrative penalties.

## 6.1 Definitions

Many of the definitions in the Bill remain the same as in the 2005 Act and are derived from ones that have been widely used in the region and so are consistent with those used by countries in the region.

## 6.2 Part 1: Fisheries Conservation and Management

- This Part sets out the objectives, functions and authority of the Ministry of Marine Resources to provide for the sustainable use of living and non-living marine resources for the benefit of the Cook Islands. It requires the Ministry to administer the Bill in a manner consistent with the Cook Islands international and regional obligations relating to the conservation and management of resources and the fishery waters.
- It also sets out the principles which the Minister and Secretary of Marine Resources are to take into account when exercising their responsibilities under the Bill. The principles include the participation by Cook Islanders in activities relating to the sustainable use of marine resources.
- The Bill requires that the Minister publish in the Gazette the international conservation and management obligations adopted by the Cook Islands. Such measures may be reflected in any license.
- Finally, this Part enables conservation management and development of fisheries of local interest to come under the management and development of Island Governments. Fisheries plans and bylaws may be made in respect of such fisheries.
- This part has been updated by separating the 'development of fisheries' into a new Part 4. Previously, under the 2005 Act, this part covered fisheries conservation, management and development.

## 6.3 Part 2: Specific Prohibitions

- This Part sets out the prohibitions under the Bill.
- It also provides for the protection of traditional fisheries.

## 6.4 Part 3: Marine Reserves and Park

This is a new part in the Bill which was not covered under the 2005 Act. This Part deals with marine reserves (Rau'i) and parks.

- It provides that the Queen's Representative may by Order declare any area of the fishery waters to be a marine reserve or park, which call for special management measures.
- Some of the purposes for which a reserve or park may be created include (although not limited to): to provide special protection to the flora and fauna of the area; protect and preserve the natural breeding and nursery grounds and habitats of aquatic life and to allow for the replenishment or restoration of aquatic life in any area where life has been depleted.
- The Minister may under this Part establish an advisory committee for each reserve or park.

- The advisory committee will decide whether to create or close a reserve or park. They will also take any action needed for the protection and preservation of a reserve or park.

#### 6.5 Part 4: Development and Management of Fisheries and Aquaculture

This Part is made up of two Sub Parts – fishery areas, plans, agreements etc., reproduced from Part 1 of the 2005 Act and quota management systems, which is a completely new inclusion.

##### Fisheries Areas, Plans, Agreements

The Bill:

- Enables aquaculture management areas to be designated and for management plans to be made in respect of that particular fishery.
- Enables designated fisheries to be declared where a particular type of fishery is important to the national interest and requires management measures to ensure the sustainability of that particular resource.
- Requires a fisheries plan to be prepared by the Secretary identifying that fishery, describing its status, and setting up management measures to be applied in order to make that resource sustainable.
- Provides that a local authority (like an Island Government) may submit such a plan to the Secretary.
- Enables the Minister acting on advice from the Secretary, to issue a licence for exploratory fishing in types of fishery to be designated in the authorisation, for the purpose of determining the extent of that particular resource.
- Enables the Minister on behalf of the Government to enter into access agreements and fisheries management agreements, and the Cook Islands may enter into treaties providing for fisheries access, related activities and cooperation in fisheries management, exploration or exploitation. An access agreement can provide the authorisation of fishing, the issuance of fishing licences, and such other matters as may be required for the effective implementation of the access agreement in accordance with the objectives and provisions of this Bill.

##### Quota Management System

###### Policy context

Historically, controls on the level of longline fishing were based around limiting the number of boats allowed to fish, controlling their fishing methods (types of nets and lines etc.) and limiting the fishing seasons. However, this essentially meant too many boats chasing too few fish and many species of commercial fish were declining below sustainable levels. A quota management system is a type of individual fishing quota that will be used to manage fish stocks.

The Bill will allow for a Total Allowable Catch (TAC) to be set for bigeye and albacore which will be managed under the QMS. The TAC for albacore is determined by the Cook Islands peak catch history. The TAC for bigeye is determined by the same method. This provides a measure of the total annual allowable take by all groups including commercial, longline and purse seine

fisheries, and artisanal and subsistence based fishing activity. Once the TACs have been determined, a Total Allowable Commercial Catch (TACC) is set for each fishstock. Each TACC is determined after consideration of the TAC, taking into account artisanal and subsistence based activity in the fishery and any other relevant environmental social, cultural or economic factors. For the purse seine fishery, the Cook Islands has 1250 days available, an effort cap (TAE= total allowable effort) which is registered with the Western and Central Pacific Fishing Commission (WCPFC). The Purse Seine Regulations of 2013 has set a 30, 000 metric ton limit of purse seine catch (not species specific).

The QMS requires accurate and up-to-date technical information by those managing the QMS to ensure correct administration and compliance. To that end, the Ministry will develop Regulations, and a Longline Fisheries Management Plan to facilitate administration of the QMS and ensure compliance.

#### Provisions of the new Bill

- The Bill enables the Ministry to establish a quota management system that will help ensure sustainable use of fisheries resources through the direct control of harvest levels for each species in a nominated geographical area.
- The QMS stock will be owned exclusively by the Crown.
- A quota Management Advisory Committee may be established under the Bill.
- The role of the Committee is to provide transparent legal, economic, social and scientific advice to the Minister and the Secretary of the Fishery. It will provide a forum where issues relating to a fishery are discussed, problems are identified and possible solutions are developed. The outcome of these deliberations determines the recommendations and advice the Committee will provide to the Secretary and Minister.
- Non-payment of fees, levies or charges may result in the withholding of any quota.
- It provides that the Queen's Representative may by Order to establish TAC, TACC or Total Allowable Effort (TAE).

#### 6.6 Part 5: Licensing

This Part is also divided into two Sub Parts – Licensing which deals with the process and procedures of licensing and authorisations which deals with authorisation of scientific research operation and transshipment and bunkering.

Most of the provisions were taken from previous Part 4 (Licensing) of the Marine 2005 Act.

- The Secretary of Marine Resources is responsible for the licensing of Cook Islands vessels. The Minister is responsible for licensing foreign vessels. This clause sets out the grounds on which an application for a licence can be declined.
- This Part prohibits any foreign fishing vessel from entering the Cook Islands fishery waters except for a purpose recognized under international law or in accordance with a valid licence issued under the Bill.
- It enables every licence issued by the Minister or by the Secretary to impose conditions. These conditions can include the type and method of fishing, the areas within which fishing can be carried on and conditions relating to the type of fishing equipment or vessels.
- Licence fees can be prescribed.

- It provides that every licence, unless earlier cancelled, shall be valid for a period not exceeding 12 months.
- Requires the Secretary to maintain a register of all licences issued pursuant to this Bill.

### 6.7 Part 6: Distant Water Fisheries

This is a new Part in the Bill with changes to the sub headings but the provisions relating to distant water fisheries and requirements are the same from Part 2 of the 2005 Act. The Licensing and Miscellaneous Part is a new inclusion and provides very detailed expectations around the licencing of vessels.

- This Part enables the Cook Islands to give effort to international conservation measures, and establishes a system for the regulation and control of Cook Islands distant water fishery vessels operation beyond Cook Islands waters.
- Provides for the validity of a licence of 1 year.
- Sets out the circumstances with while a licence may be cancelled or suspended.
- Provides that no person can use a Cook Islands fishing vessel in any other country except in accordance with the laws of that other country and in accordance with a licence issued in accordance with clause 35 of this Bill. A Cook Islands fishing vessel in an area which is subject to international conservation measures, the vessel can only be used in accordance with those measures. A breach of this provision can result in a fine of not less than \$100,000.00 and not exceeding \$1,000,000.

### 6.8 Part 7: Port Measures

#### Policy context

The policy for Port State Measures (PSM) stems from a regional perspective to introduce port measures into relevant FFA member countries fisheries legislation to combat Illegal Unregulated and Unreported (IUU) fishing that occurs in zone and on the High Seas. PSM are requirements established or interventions undertaken by port states which a foreign fishing vessel must comply with or is subjected to as a condition for use of ports within the port state.

National PSM would typically include requirements related to prior notification of port entry, use of designated ports, restrictions on port entry and landing/transshipment of fish, restrictions on supplies and services, documentation requirements and port inspections, as well as related measures, such as IUU vessel listing, trade-related measures and sanctions. The growing reliance on port states to combat non-sustainable fishing practices stems to a great extent from the failure of flag states to effectively control fishing operations carried out by vessels flying their flag.

#### Provisions of the Bill

This is a 'new' Part in the Bill with a new sub-heading and covers very detailed provisions. It incorporates specific conservation and management measures of the Western, Central and Pacific Fisheries Commission (WCPFC). The 2005 Act had broad references to port state measures.

- Provides for the designation of ports in the Cook Islands.
- Provides for the appointment of ports inspectors.

- Empowers the Secretary to prohibit entry to a Cook Islands port any vessel which has been identified as fishing in contravention of International conservation and management measures, or has been operated under two flags.

### 6.9 Part 8: Processing and Export

#### Policy context

This is a new Part in the Bill and establishes the Competent Authority with its functions/objects/power and delegation of powers. This Part was created because the seafood export sector faces critical demand to verify its suitability for human consumption by ensuring the whole chain of verification is managed according to international standards.

This Part will manage seafood and fish exports only. It will not give MMR control over food safety in general; this function will still remain part of the Ministry of Health's (MOH) responsibility. However, this Bill is proposing that MMR be given the authority to issue licenses for hygiene and sanitation for fish and seafood exports only.

MMR licenses fishing vessels but not its hygiene and sanitation as these are functions which belong to the MOH to issue Hygiene and Sanitary Licenses. MMR maintains that the hygiene and sanitation are part of the fishing processes, and keeping a track record of its condition strengthens the sector in meeting international requirements. Moreover, multiple licensing is becoming an out-dated practice and many countries have abolished such requirements. To that end, MMR is proposing under this Part, a single window licensing system which simplifies regulatory activities and is beneficial to both regulator and licensee.

The Competent Authority will have its own fishery verification officers who qualified in fishery science to verify many technical aspects like species of fish, inhabitation, migration, feeding habits, pathology, sourcing, etc.

MMR has conducted various training programs in the last two years to meet the competency requirements to conduct sampling, laboratory testing, inspection, audit as per international standards; ISO 17021, OECD GLP, Codex HACCP, ISO 9001, ISO 22002-1, ISO 17020 and ISO 19011. The competent manpower if formed under MMR can undertake the functions to verify seafood safety.

#### Provisions of the Bill

- This Part provides for the appointment of a person, known on the Competent Authority, who shall be the Secretary, or such person to whom the authority has been delegated.
- Sets out the areas to which this Part applies.
- Provides the objects of the Competent Authority – which are to verify and certify the export of seafood and ensure quality.
- Sets out the functions, pursuant to those providers. The scope of the Competent Authority is to facilitate, regulate, and control the safety of seafood exports only.
- Sets out the powers, pursuant to those objects and functions.
- Provides that the Competent Authority may delegate his functions and powers.



## 6.10 Part 9: Monitoring, Control and Surveillance

### Policy context

There are many influencing factors and global initiatives which have brought the subject of monitoring, control and surveillance to the fore in the international and national fora. The coming into force of the 1982 United Nation Convention on the Law of the Sea has once again raised the profile of the obligations States have with respect to the assessment of their fishing stocks, the allocation of the surplus to national needs to third parties and the further obligation to conserve their fisheries, including the fisheries habitat. Monitoring, control and surveillance (MCS), especially for the fisheries sector, is the implementing tool to meet these obligations.

Considerable efforts have been taken at the national, sub-regional (FFA/SPC/PNA) and regional levels (WCPFC) to mitigate IUU fishing in Pacific tuna fisheries. Many of these are likely to have been highly effective at achieving their intended purpose (e.g. the FFA and WCPFC VMS, the FFA Regional Register, the FFA Harmonised Minimum Terms and Conditions for Foreign Fishing Access, the Pacific Patrol Boat Program, Niue Treaty, 100% observer coverage on the PS fleet). The Cook Islands is trialling e-monitoring and e-reporting to help manage this issue.

### Provisions of the new Bill

This part was covered in Part 5 of the 2005 Act and also covered in this Bill, with detailed provisions. For example, dealing with seized property and bringing charges, observes and their role, mobile transmission units.

- This Part enables the Minister to appoint authorised officers for the purposes of the Bill.
- It gives to every authorised officer (which includes a fisheries officer) powers to enter and search premises etc. for the purposes of enforcing the Bill.
- It gives to every authorised officer, a power of arrest.
- It empowers the Secretary of Marine resources to appoint persons to act as observers on vessels which are licensed under the Bill. The function of an observer is to monitor and ensure compliance with the provisions of the Bill. The operator master and every member of the crew of a vessel which has an observer on board must permit him to remain on board the vessel for the purpose of exercising his functions. They are also to allow him to have access to and to use of facilities including fish on board, the vessel's log and other records, fishing gear etc., so that he may carry out his functions properly. The operator of the vessel can also be made to pay the observer's travel costs to and from the vessel and the observer's salary together with insurance coverage.
- It requires operators of vessel to have on board, a mobile transmission unit (MTU) formerly known as automatic location communicator (ALC), at all times while in the fishery waters.

## 6.11 Part 10: Administrative Penalties

A new Part in the Bill, that deals with penalty (fines).

- It provides for the imposition of penalties where the offence carries a penalty of not more than \$250,000.00 and no information or charge has been laid.

- It describes the form to be served on an offender, and its content.
- It sets out the procedure as to how the alleged offence shall be dealt with either by the Court, or by the Minister, as provided in this Part.
- It prescribes the applicable penalty.

### 6.12 Part 11: Jurisdiction and Evidence

This is the former Part 6 of the 2005 Act but provides more description and specificities and includes some new provisions as follows:

- It sets out the jurisdiction of the High Court in respect of the provisions of this Act and in particular give it jurisdiction over offences committed within the fishery water, or outside the fishery waters by any Cook Islands fishing vessel. This clause also provides that no prosecution for an offence against the Bill may be commenced except by the Solicitor General, the Secretary of Marine Resources or a person authorised in that behalf by the Secretary.
- It provides that any unpaid fines and liabilities under the Bill can be sued for by lawsuit or other appropriate civil proceedings in the name of the Secretary.
- It provides that when any person on board a vessel commits an offence, the master of the vessel is also guilty of that offence.
- It provides that if a person is convicted under the Bill, the High Court may suspend or forfeit that person's fishing right or licence, for such period as the Court considers appropriate.
- It provides that the Court may by order prohibit fishing for up to three years for repeat offenders.

### 6.13 Part 12: Sale, Release and Forfeiture of Retained Property

This is the former Part 7 of the 2005 Act and deals with the process and procedure of how the property of a convicted person is dealt with. Some of the provisions:

- Enables the Court to forfeit certain property in favour of the Government where any person is convicted of an offence for which the maximum penalty is a fine of \$1 m or more. Forfeiture may also be ordered in respect of lesser offences as set out in that clause.
- Empowers the High Court on application of the Secretary, to make an order that any bond or security given in respect of forfeited property shall be applied against fines etc.
- It provides that if any property held or forfeited under the Bill has been unlawfully removed from the Government's custody, it can be liable to seizure at any time within the fishery waters.

### 3.14 Part 13: General

This is a new part in the Bill but with the incorporation of the provisions from Parts 8, 9 and 10 of the 2005 Act. Moreover, it deals with the transitional provisions/regulations and the repeal and consequential amendment provisions.

- It provides that if any provisions of this Bill is held to be invalid, such invalidity does not affect the remaining provisions of the Bill.
- It has a savings provision which continues in force all regulations, orders and notices made or given under the Marine Resources Act 2005, as if they were made or given under the Bill.
- It deems all licences and authorisations granted under the Marine Resources Act 1989 to be valid and to continue in effect, provided that if any such licence or authorisation is inconsistent with the Bill, the Secretary may vary the authorisation or licence so that it is consistent with this Bill.
- It empowers the Queen's Representative to make regulations for the purposes of the Bill. Sub-clause (2) sets out in detail the types of regulations that may be made.
- It repeals the Marine Resources Act 2005.
- It provides for consequential amendments as set out in a Schedule.

## 7. Implementation

The different Parts of this Bill will be implemented via Regulations and Fisheries Management Plans. It is being proposed that the Fisheries Management Plans which set out how the operations of a fishery will take place; will not be legally binding.

The Island Governments on each Outer Island will also have a role in implementing those Plans that will apply to them. Advisory Committees will also assist the Minister and Secretary in making decisions on the application of the Bill.

Notification to the public of different measures being implemented under this Bill will be via Gazette or newspaper.

## 8. Stakeholder Consultations

The Ministry has discussed Parts 4 sub-part 2 (Quota Management System) and 8 (Processing and Export) with key stakeholders.