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# FISHERIES ACT, 2020

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No. 40 of 2020

## **FISHERIES ACT, 2020**

**AN ACT TO PROVIDE FOR THE REGULATION OF THE FISHERIES RESOURCES OF THE BAHAMAS; TO PROVIDE FOR THE LONG-TERM CONSERVATION, MANAGEMENT AND SUSTAINABLE DEVELOPMENT OF FISHERY RESOURCES BY THE APPLICATION OF THE PRECAUTIONARY AND ECOSYSTEM APPROACHES TO ENHANCE THE LIVELIHOOD OF COMMUNITIES DEPENDENT ON FISHING AND TO MEET THE NEEDS OF FUTURE GENERATIONS; TO PROVIDE FOR LICENSING OF COMMERCIAL FISHERS AND FISHING VESSELS; TO DETER, PREVENT AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING IN BAHAMIAN FISHERIES WATERS; TO REPEAL THE FISHERIES RESOURCES (JURISDICTION AND CONSERVATION) ACT, 1977 AND FOR CONNECTED PURPOSES**

[Date of Assent - 31<sup>st</sup> December, 2020]

**Enacted by the Parliament of The Bahamas**

### **PART I - PRELIMINARY**

#### **1. Short title and commencement.**

- (1) This Act may be cited as the Fisheries Act, 2020.
- (2) This Act shall come into force on such date as the Minister may appoint by Notice, published in the *Gazette*, and a notice may appoint different dates for different provisions or for different purposes of the same provision.

## 2. Interpretation.

In this Act —

“**aquaculture**” in relation to research, subsistence, ornamental or commercial sale means —

- (i) the cultivation, propagation or farming of fish or other living aquatic or marine resources,
- (ii) the cultivation, propagation or farming from eggs, spawn, spat or seed, or by rearing fish or aquatic or marine resources lawfully taken from the wild or imported into The Bahamas, or by other similar process.
- (iii) the collecting and holding of live fish at all stages of development including larvae, fry and fingerling, and
- (iv) mariculture, aquaponics relating to fish, and ranching;

“**archipelagic waters**” has the meaning assigned to it under section 3 of the Archipelagic Waters and Maritime Jurisdiction Act (*Ch. 282*);

“**authorised officer**” means any fisheries officer, police officer, customs officer, member of the Defence Force or any other officer designated by the Director;

“**authorised person**” means —

- (i) any person who assists an authorised officer in the exercise of his duties, or
- (ii) observers appointed under this Act;

“**Bahamian**” in relation to a commercial fishing vessel, means —

- (i) bona fide owned by a citizen of The Bahamas, resident in The Bahamas,
- (ii) a company registered in The Bahamas under the Companies Act (*Ch. 308*) in which all the shares are beneficially owned by citizens of The Bahamas, resident in The Bahamas, or
- (iii) a Limited Partnership or Partnership, the partners of which are citizens of The Bahamas, resident in The Bahamas;

“**Bahamian fisheries waters**” or “**fisheries waters**” mean —

- (i) inland waters,
- (ii) archipelagic waters,
- (iii) territorial sea,
- (iv) exclusive economic zone, and
- (v) any other waters over which The Bahamas has sovereignty or sovereign rights.

and includes the seabed and subsoil;



**“Bahamian fishing vessel”** means any vessel, or other craft —

- (i) used for, equipped to be used for, or intended to be used for, fishing or fishing related activity,
- (ii) registered under the Merchant Shipping Act (*Ch. 268*), the Boat Registration Act (*Ch. 277*) or the Water Skiing and Motor Boat Control Act (*Ch. 278*), and does not hold any other registration, and
- (iii) licensed under this Act;

**“Bahamian flagged vessel”** means any vessel registered under the Merchant Shipping Act (*Ch. 268*);

**“barter”** means trade of fish and fish products by two or more persons without use of money;

**“beneficially owned”** has the meaning assigned to it under the Register of Beneficial Ownership Act, 2018;

**“buy”** includes —

- (i) bartering or attempt to barter,
  - (ii) purchasing or attempt to purchase,
  - (iii) receiving on account or consignment,
  - (iv) receiving in order to send, forward or deliver for sale,
  - (v) brokering a sale,
  - (vi) purchasing or bartering for future goods or for any consideration or value, or
  - (vii) purchasing or bartering as an agent for another person,
- and “buyer” shall have a corresponding meaning;

**“co-management”** means a partnership arrangement in which the Government, fishers, organizations including non-governmental organizations, and other fisheries and marine resource stakeholders including tourism operators, share the responsibility and authority for decision making in the management of a fishery and the environment;

**“commercial aquaculture”** means aquaculture resulting or intending or appearing to result in selling or trading all or any fish subject to aquaculture operations;

**“commercial fishing”** means —

- (i) fishing resulting or intending, or appearing to result in selling or trading all or any fish caught, and
- (ii) having in possession or landing, fishery resources exceeding two hundred and fifty pounds in weight;

**“commercial fishing vessel”** means a vessel —

- (i) engaged in commercial fishing, and
  - (ii) licensed under this Act;
- “**Council**” means the Fisheries Advisory Council established under section 14;
- “**crew**” has the meaning assigned to it under the Merchant Shipping Act (*Ch. 268*);
- “**Department**” means the Department of Marine Resources;
- “**Director**” means the Director of the Department of Marine Resources appointed under section 12;
- “**document**” means a document in any form whether signed or initialled or otherwise authenticated by its maker or not, and includes —
- (i) any writing, printing or other information contained on any material,
  - (ii) any information recorded or stored in a digital or electronic format by means of any tape recorder, computer, or other electronic device, and any material subsequently derived from information so recorded or stored,
  - (iii) any label, marking or other writing that identifies or describes anything of which it forms a part, or is attached by any means,
  - (iv) any book, chart, map, plan, graph or drawing, or
  - (v) any photograph, film, negative, tape or other device in which one or more visual images are embodied so as to be capable of being reproduced;
- “**driftnet**” means any net or combination of nets composed of a panel or panels of webbing, the purpose of which is to enmesh, entrap or entangle fish by drifting on the surface of, or in, the water column;
- “**endangered species**” mean a species at risk of extinction and —
- (i) has been officially designated by the Minister, after consultation with the Director, as endangered based on scientific research, or
  - (ii) is categorized as endangered by the International Union for Conservation of Nature (IUCN) Red List of Threatened Species;
- “**exclusive economic zone**” has the meaning assigned to it under section 8 of the Archipelagic Waters and Maritime Jurisdiction Act (*Ch. 282*);
- “**export**” means —
- (i) to send or take out of The Bahamas.

- (ii) to attempt to send or take out of The Bahamas,
  - (iii) to receive on account or consignment for the purposes of subparagraph (i) or (ii), or
  - (iv) to carry or transport anything for the purposes of subparagraph (i) or (ii);
- “FAO”** means the Food and Agriculture Organization of the United Nations;
- “fish”** means any aquatic organism, invertebrate or vertebrate, and includes algae, finfish, shell fish, turtle, coral, reptiles, marine mammals and seabirds;
- “fish aggregating device”** means —
- (i) an object or group of objects, of any size, whether drifting, deployed or not, that is natural, manufactured or a combination,
  - (ii) buoys, floats, plastics, bamboo or logs floating on or near the surface of the water or on the seabed with which fish may associate, and
  - (iii) any natural floating object on which a device has been placed to facilitate its location;
- “fish product”** means any fish or part of fish that has been partly or wholly processed for consumptive purposes;
- “Fish Stocks Agreement”** means the 1995 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;
- “fisher”** means a person who engages in fishing or fishing related activities;
- “fisheries” or “fishery”** means —
- (i) one or more stocks of fish, or parts of any fish, which can be treated as a unit for conservation, development and management purposes, taking into account geographical, scientific, technical, customary, recreational, economic and other relevant characteristics, or
  - (ii) any fisheries and aquaculture operations based on such stocks;
- “fisheries officer”** means a public officer appointed under section 12;
- “fishery resource”** means fish of any kind found in the sea and includes living organisms belonging to sedentary species;

**“fishing”** means —

- (i) searching for, attracting, locating, catching, taking or harvesting of fish,
- (ii) attempting to search for, attract, locate, catch, take or harvest fish,
- (iii) engaging in any other activity that can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish,
- (iv) placing, searching for or recovering a fish aggregating device or associated equipment such as radio beacons,
- (v) any operation at sea in support of or in preparation for any activity described under subparagraphs (i) to (iv).
- (vi) the use of an aircraft relating to any activity described under subparagraphs (i) to (iv), or
- (vii) processing, carrying or trans-shipping of fish that have been taken;

**“fishing related activity”** means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, trans-shipping or transporting of fish that have not been previously landed at a port, as well as provisioning of personnel, fuel, gear and other supplies at sea;

**“fishing zone”** means areas within the fisheries waters designated by the Minister pursuant to section 28;

**“foreign fishing vessel”** means any fishing vessel other than a Bahamian fishing vessel and includes any support or ancillary vessel;

**“Forum”** means the National Fisheries Stakeholder Forum appointed under section 16;

**“gear”** in relation to fishing, means any —

- (i) equipment, tool or other material that can be used in fishing, including any net, rope, line, float, trap, casita, hook, diving compressor, scuba gear, freediving gear, winch or boat carried on board a vessel,
- (ii) craft, aircraft or vehicle that may be used for fishing,
- (iii) any beacon or geo positioning device used for fishing, or
- (iv) mobile transceiver unit;

**“Government”** means the Government of The Commonwealth of The Bahamas;

**“harm”** means to, or attempt to, fish, land, molest, harass or kill any fish;

**“high seas”** mean any area of waters beyond the national jurisdiction of any State including the internal waters, archipelagic waters of an archipelagic State, territorial sea, exclusive economic zone or other zone of national jurisdiction;

**“illegal fishing”** includes activities —

- (i) conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations.
- (ii) conducted by vessels flying the flag of States that are parties to a regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law, or
- (iii) in violation of national laws or international obligations, including those undertaken by cooperating States to a regional fisheries management organization;

**“IUU fishing”** means illegal fishing, unreported fishing and unregulated fishing;

**“international agreement”** includes any treaty, agreement or other regional or international instrument that is legally binding on The Bahamas;

**“international conservation and management measures”** mean measures to conserve and manage fisheries adopted by a relevant regional fisheries management organization and that are legally binding on The Bahamas;

**“IUU listed vessel”** means a vessel that is included in a list of vessels, designated by a regional fisheries management organization, that has engaged in IUU fishing or fishing related activities;

**“landing”** includes the transfer or offloading of any fish or fish product from a vessel to a landing site and excludes trans-shipment;

**“landing site”** means a place within the jurisdiction of The Bahamas, including a port, dock, berth, beach, bay, seawall, ramp or airstrip;

**“longline fishing”** means fishing by use of a line or cable to which is attached along its length, a minimum of ten fish hooks, and the line or cable extends or is capable of extending more than sixty feet from the point where it is cast;

**“marine protected area”** means an area —

- (a) used as a management tool —
  - (i) to protect critical habitat,

- (ii) to protect vulnerable species,
    - (iii) to rebuild stock, and
    - (iv) to provide insurance against overfishing or enhance fishery yield; and
  - (b) declared by the Minister pursuant to section 30, and includes no take zones;
- “marine resources”** mean fish, fisheries resources and non-living biological resources, aquatic species and fish raised or farmed by aquaculture;
- “marine scientific research”** means research for fish stock assessment and monitoring or observational studies;
- “master”** means the person in charge of a vessel;
- “Minister”** means the Minister responsible for Marine Resources;
- “mobile transceiver unit”** means a device installed on board a vessel, and used for —
- (i) vessel monitoring,
  - (ii) transmitting the position of the vessel, and
  - (iii) other details required under this Act;
- “observer”** means a person appointed by the Director under section 95;
- “operator”** means —
- (i) a person who is in charge of, directs or controls a vessel, including the master, owner or charterer,
  - (ii) a driver of a vehicle, or
  - (iii) a pilot of an aircraft;
- “owner”**, in relation to a fishing vessel —
- (a) means a beneficial owner; and
  - (b) includes —
    - (i) any part owner, or
    - (ii) a manager or director of a body corporate;
- “permit”** means the authorisation that a person shall obtain before engaging in a fishing or fishing related activity in Bahamian fisheries waters;
- “port”** includes offshore terminals and other installations for landing, trans-shipping, packaging, processing, refuelling or resupplying;
- “Port Controller”** or **“Controller”** has the meaning assigned to it under the Ports Authorities Act (*Ch. 269*);

- “Port State Measures Agreement”** means the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing adopted in Rome 2016;
- “prescribed”** means prescribed by regulations published in the *Gazette*;
- “previously landed”** means landed at a landing site and subsequently loaded into a container or other carrier vessel;
- “principles”** mean the conservation, management and sustainable development principles referred to under section 5;
- “recreational fishing”** means fishing done for leisure without earnings, gain or profit;
- “regional fishery body”** means a mechanism through which regional States or organizations that are parties to a sub-regional, regional or international fishery agreement or arrangement, work together towards the conservation, management and development of fish stocks in accordance with the Fish Stocks Agreement;
- “regional fisheries management organization”** means intergovernmental fisheries organizations or arrangements, that have the competence to establish conservation and management measures;
- “sedentary organism”** means an organism belonging to a sedentary species;
- “sedentary species”** mean any organism that, at the harvestable stage, either is immobile on or under the seabed or is unable to move except by remaining in constant physical contact with the seabed or subsoil;
- “sell”** includes —
- (i) any method of disposition for consideration, including cash, anything which has value or which can be exchanged for cash and barter,
  - (ii) disposition to an agent for sale on consignment,
  - (iii) 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, and
  - (iv) disposition by way of raffle or other game of chance, and “sale” and “sold” have a corresponding meaning;
- “sportsfishing”** means foreign fishing within the exclusive economic zone for sporting or purposes other than commercial;

**“subsistence”** in relation to fishing or aquaculture, means local, non-commercial fisheries or aquaculture for consumption by fishers and their families;

**“trans-shipment”** —

- (i) means the transfer of fish or fish products to or from any vessel, vehicle or aircraft, and
- (ii) includes the transfer of fish or fish products from a vessel to a land-based facility for the purpose of promptly unloading to another vessel, vehicle or aircraft, without being subject to importation into the country where the land-based facility is located;

**“trawl”** means a large tapered fishing net that is towed along the sea bottom or at a given depth below the surface;

**“unregulated fishing”** includes activities —

- (i) in the area of application of a regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization, or
- (ii) in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law;

**“unreported fishing”** includes activities —

- (i) which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations, or
- (ii) undertaken in the area of competence of a regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization;

**“vehicle”** means a vehicle which is wholly or partially propelled by mechanical means and which is designed or adapted for use on roads;

**“vessel”** has the meaning assigned to it under the Merchant Shipping Act (*Ch. 268*) and includes fishing vessel;

**“vessel monitoring system”** means an electronic satellite-based reporting system approved by the Director for the monitoring, control and surveillance of fisheries activities.



### **3. Application.**

This Act applies —

- (a) in relation to Bahamian fisheries waters —
  - (i) to fishers and any other person engaged in fishing and fishing related activities,
  - (ii) to fishing vessels licensed under this Act,
  - (iii) to Bahamian flagged vessels,
  - (iv) to foreign fishing vessels, or
  - (v) to aircraft, or any other craft;
- (b) in relation to fishing for sedentary organisms, and fishing related activities on the high seas, to fishing vessels licensed under this Act or Bahamian flagged vessels; and
- (c) in relation to land, to vehicles, aircraft, processing facilities, export or import facilities or any other premises or place relating to fisheries or aquaculture.

### **4. Objectives.**

The objectives of this Act are —

- (a) to promote sustainable exploitation, sustainable use and long-term conservation, management and sustainable development of fisheries resources and the ecosystems that support them;
- (b) to prevent, deter and eliminate IUU fishing and fishing related activities;
- (c) to prohibit the licensing of persons who are not citizens of The Bahamas and foreign fishing vessels, within the commercial fishing sector; and
- (d) to use fisheries resources to achieve and promote food security, socio-economic development and employment, for the benefit of present and future generations of the people of The Bahamas and, in particular, the communities most closely connected with and reliant on fisheries resources.

### **5. Conservation, management and sustainable development principles.**

- (1) The owners, operators, fishers and crew shall comply with the conservation, management and sustainable development principles referred to under subsection (2).
- (2) For the purposes of this Act, the conservation, management and sustainable development principles are as follows —

- (a) ensuring long-term conservation, management and sustainable use of fisheries resources to enhance food security and meet the needs of present and future generations;
  - (b) applying conservation, management and development practices based on sound management principles and generally recognised international standards and best practices;
  - (c) ensuring decision-making processes are based on the best available scientific evidence;
  - (d) preventing and reducing overfishing, in particular by ensuring that levels of fishing capacity and fishing effort do not exceed the capacity and effort in proportion to the sustainable use of fisheries resources;
  - (e) applying precautionary approaches to the conservation, management and development of fisheries and aquaculture;
  - (f) avoiding, minimising and mitigating the adverse effects of fishing and aquaculture on the marine and coastal environment;
  - (g) applying ecosystem approaches to the conservation, management and development of fisheries and aquaculture;
  - (h) collecting and sharing, in a timely manner and in accordance with generally recommended international standards and best practices, of complete and accurate data on fisheries and aquaculture;
  - (i) taking into account the rights, interests and needs of traditional, subsistence and other local fishers and fishing communities;
  - (j) adopting an integrated approach to fisheries and other ocean use management, by minimising, to the extent practicable, conflicts among fishers using the same maritime space and between fishers and other users of maritime space in Bahamian fisheries waters;
  - (k) promoting sustainable trade in fish and fish products;
  - (l) implementing and enforcing conservation and management measures, including appropriate measures for monitoring, control and surveillance; and
  - (m) applying principles of good governance, accountability and transparency, by involving fisheries stakeholders and fishing communities in decision-making.
- (3) For the purposes of this section, “sustainable use” includes —
- (a) maintaining fisheries resources to meet the reasonably foreseeable food security and other needs of future generations;
  - (b) avoiding, remedying or mitigating any adverse effects of fishing on the aquatic and marine environments; and

- (c) conserving, using, enhancing and developing fisheries resources for social, economic and cultural benefits.

## **PART II – CONTINUANCE OF THE DEPARTMENT OF MARINE RESOURCES**

### **6. Continuance of the Department.**

- (1) The department known and existing as the Department of Marine Resources (referred to as “the Department”) immediately before the commencement of this Act, is hereby continued.
- (2) The Department shall —
  - (a) be the governmental agency with the responsibility for the implementation and enforcement of this Act;
  - (b) comprise the Director, the Deputy Director, Assistant Directors, fisheries officers and such other staff as the Director considers necessary to carry out the functions of the Department; and
  - (c) be subject to the general control and direction of the Director.

### **7. Common seal or stamp.**

The common seal or stamp of the Department shall —

- (a) be kept in such custody of the Director or Deputy Director and shall be affixed to instruments;
- (b) be authenticated by the signatures of the Director, Deputy Director or any other member of the Department authorised by the Director; and
- (c) when affixed to any document and authenticated, be judicially and officially noticed, and, until the contrary is proved, any necessary authorisation of the Department for that document shall be presumed to have been given.

### **8. Functions of the Department.**

The functions of the Department are —

- (a) to develop strategies to manage, protect and conserve all fisheries resources of The Bahamas for present and future generations;
- (b) to determine the process by which fisheries policies and management plans are developed, publicised, implemented and enforced;

- (c) to provide and disseminate information and data relating to fisheries, including education and mechanisms for promoting effective stakeholders and communities' participation in fisheries management plans;
- (d) to set standards for collecting, storing, retrieving, analysing and publishing fisheries data;
- (e) to undertake scientific studies and research to assess the fishery stocks of The Bahamas;
- (f) to develop policies including policy relating to public consultation; and
- (g) to carry out any other function that may be conferred on the Department under this Act.

#### **9. Duties and powers of the Minister.**

- (1) The Minister shall promote regional and international cooperation and coordination between The Bahamas and other governments, regional fishery bodies, regional fisheries management organizations and international organizations for the sustainability of fishery resources.
- (2) The Minister may enter into agreements or arrangements with other governments, regional fishery bodies, regional fisheries management organizations and international organizations to promote cooperation in fisheries, including —
  - (a) harmonization of systems for collecting statistics;
  - (b) conducting surveys to assess the state of the fishery resources;
  - (c) harmonization of licensing procedures regarding foreign fishing vessels engaged in fishing pursuant to section 33; and
  - (d) enforcement measures in respect of foreign fishing vessels engaged in IUU fishing and fishing related activities.
- (3) The Minister shall have such other duties and powers as conferred on him under this Act.

#### **10. Minister's directions.**

The Minister may give to the Department directions of a general or specific nature as to the policy to be followed by the Department in the carrying out or in pursuit of its functions as appear to the Minister requisite in the public interest and the Department shall give effect to the directions.

#### **11. Minister's delegation of powers.**

The Minister may, in writing, delegate to the Director any power conferred on the Minister under this Act, except the power to make regulations.

## **12. Appointment of Director, Deputy Director, etc.**

- (1) The Governor-General, acting on the advice of the Public Service Commission, shall appoint the Director, Deputy Director, Assistant Directors and fisheries officers.
- (2) Notwithstanding any other Act, no person shall be appointed to the office of Director, Deputy Director or Assistant Director except that person is a public officer.

## **13. Duties and powers of the Director.**

- (1) The duties of the Director are to —
  - (a) advise the Minister on all matters relating to fisheries including —
    - (i) policies for influencing the management of fisheries resources and ecosystems,
    - (ii) climate change and its effects on marine resources,
    - (iii) the effect of pollutants on marine resources,
    - (iv) private sector proposals that would significantly affect fishery resources of The Bahamas,
    - (v) effective means of ensuring stakeholders and communities participation in fisheries to assist in decision making, and
    - (vi) effective means of ensuring compliance with the principles referred to under section 5;
  - (b) develop, coordinate and facilitate the implementation of national fisheries policy, strategies and plans concerning matters under this Act;
  - (c) manage and coordinate measures in relation to fisheries conservation and management, and aquaculture, including the development, implementation and review of fisheries management plans;
  - (d) manage and coordinate, at national, regional and international levels through regional fisheries bodies, regional fisheries management organizations or international organizations —
    - (i) the conservation, management, development and sustainable use of fisheries resources,
    - (ii) the management and development of aquaculture,
    - (iii) the monitoring, control, surveillance and enforcement of activities under this Act, and
    - (iv) any other activity under this Act;

- (e) engage in, and facilitate official communications relating to fisheries between the Department, regional and international fisheries bodies or organizations;
  - (f) promote and facilitate research, training and education on fisheries conservation and management;
  - (g) identify and advise the Minister on the establishment and maintenance of marine protected areas; and
  - (h) carry out any other duty assigned to the Director under this Act.
- (2) The Director shall —
- (a) perform the functions of the Department; and
  - (b) have such powers as are conferred on the Director under this Act.
- (3) The Director may, in writing, delegate to the Deputy Director, Assistant Director or fisheries officer any power or duty conferred on the Director under this Act, except —
- (a) the power to approve, renew, deny, vary, suspend or terminate a permit, licence or any other form of authorisation; and
  - (b) the duty relating to monitoring, control and surveillance operations.
- (4) No action, prosecution or other proceedings shall be brought or instituted personally against the Director, Deputy Director, or Assistant Director, in respect of any act done or omitted to be done in good faith in execution or intended execution of his duties and powers under this Act.

### **PART III – ESTABLISHMENT AND FUNCTIONS OF FISHERIES ADVISORY COUNCIL AND APPOINTMENT OF THE NATIONAL FISHERIES STAKEHOLDER FORUM**

#### **14. Establishment of Fisheries Advisory Council.**

- (1) There is hereby established a Fisheries Advisory Council.
- (2) The First Schedule shall give effect to the constitution and procedure of the Council.

#### **15. Functions of the Council.**

The functions of the Council are to advise the Minister on —

- (a) the conservation, development and sustainable use of fisheries resources;
- (b) joint venture investments in fisheries;

- (c) the coordination of national policies relating to fisheries with other Government departments or agencies; and
- (d) any other matter specified under this Act and regulations made under this Act.

**16. Appointment of National Fisheries Stakeholder Forum.**

- (1) The Director, after consultation with the Minister, shall appoint a National Fisheries Stakeholder Forum.
- (2) The Second Schedule shall give effect to the constitution and procedure of the Forum.
- (3) The functions of the Forum are —
  - (a) to consult with the Director and stakeholders in the fisheries sector;
  - (b) to represent to the Director the views of the fishing sector, fishing communities and other fisheries stakeholders in The Bahamas;
  - (c) to review proposals for new or amended policies, fisheries management plans, legislation or other conservation, enforcement, management and development measures; and
  - (d) to make recommendations to the Council, through the Director, on policies, fisheries management plans, legislation or other conservation, enforcement, management and development measures.

## **PART IV - RECORDS, ETC., INFORMATION AND REGISTERS**

**17. Records, accounts, etc.**

- (1) The Director may require a person referred to under subsection (2) to provide any record, account, return and raw scientific data in such manner and form as prescribed and at such time as the Director may specify.
- (2) The following persons shall keep and maintain in a specified format, records, accounts, returns, raw scientific data, information or other details require under this Act —
  - (a) holders of authorisations, certificates, permits or licenses issued under this Act;
  - (b) operators required to be registered or licensed under this Act;
  - (c) operators, representatives and agents, or masters engaged in fishing or fishing related activities —

- (i) in Bahamian fisheries waters,
  - (ii) at landing sites, or
  - (iii) at a port in The Bahamas;
  - (d) owners and persons in charge of any premises or vehicle where fish or fish products are received, bought, stored, transported, processed, sold or otherwise disposed of;
  - (e) persons engaged in the harvesting, receiving, buying, selling, transporting, storage, export, import or disposal of fish or fish products;
  - (f) persons engaged in aquaculture operations, sportsfishing, subsistence or recreational fishing;
  - (g) charterers;
  - (h) persons who conduct marine scientific research; and
  - (i) such other persons as determined by the Director.
- (3) The Director may, for the purposes of verification —
- (a) audit or inspect any —
    - (i) record, account, return, and raw scientific data, or
    - (ii) vessel, vehicle, aircraft, processing facility or premises where such details may be kept; and
  - (b) require from any person, further details regarding any record, account, returns and raw scientific data kept or maintained.
- (4) A person who is required to keep or provide any record, account, return and raw scientific data under this Act shall submit true, complete and accurate details of such documents.
- (5) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars.

## **18. Information gathering.**

The Director shall cause information relating to fishery resources to be collected by means of surveys, questionnaires or any other appropriate means for the purpose of —

- (a) conducting marine scientific research;
- (b) creating an inventory of data;
- (c) formulating objectives, guidelines and codes of practice;
- (d) reporting on the state of the marine environment; or
- (e) administering any provision of this Act or any regulations made under this Act.



## **19. Information that may be required.**

- (1) An owner, operator, fisher or any other person employed on a fishing vessel or engaged in fishing or fishing related activities shall be required, on the request of an authorised officer or authorised person, to provide information or other documents relating to any of the following matters —
  - (a) the number, sex, size, weight, species, product form, value or other particulars of any fish caught, cultured, processed, transported, sold or purchased;
  - (b) the time and place at which any fish was caught or landed and the person, company or vessel by which the fish was caught or landed;
  - (c) the time and place at which any fish was purchased and the person, vessel or company from which the fish was purchased;
  - (d) the vessels, gear and methods used and the number of persons employed for the purpose of catching fish;
  - (e) the buildings, equipment, products and methods used and the number of persons employed for the purpose of culturing or processing fish; and
  - (f) any other matter relating to the proper management and regulation of fisheries, or the conservation and protection of fish.
- (2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

## **20. Registers.**

- (1) The Director shall cause registers of authorisations, certificates, permits and licenses to be kept and maintained.
- (2) The registers shall —
  - (a) be kept at the Department and shall at all times be made available to the public during business hours; and
  - (b) contain information on —
    - (i) applications for permits and licenses,
    - (ii) authorisations, certificates, permits and licenses issued, renewed, suspended or cancelled under this Act, including the activity, date and duration,
    - (iii) each authorised or licensed person,
    - (iv) the vessel, facility and licensed activity,
    - (v) designated fishing zones, declared closed areas, and marine protected areas, pursuant to this Act,
    - (vi) non-compliance with the authorisations, certificates, permits and licenses and any action taken, and

- (vii) any other relevant information as determined by the Director.
- (3) The Director shall ensure that the information on each authorisation, certificate, permit and licence in a database is sufficient for —
  - (a) fisheries management;
  - (b) monitoring, control and surveillance; and
  - (c) the implementation of any international agreement and applicable international conservation and management measures.
- (4) The Director may, on request, provide the information referred to under subsection (3) to other States, and regional and international organizations.

## **21. Confidential information.**

- (1) A person carrying out duties or responsibilities under this Act shall preserve secrecy with regard to the information obtained in the course of that person's duties or responsibilities, and shall not disclose such information to any other person except —
  - (a) as may be required under this Act;
  - (b) to their counsel and attorney;
  - (c) with the consent of the person to whom the information relates; or
  - (d) as may be necessary —
    - (i) to enable the Director to publish statistical information relating to the fisheries sector,
    - (ii) to enable other Government agencies to enforce Bahamian laws,
    - (iii) to promote regional and international cooperation or coordination in monitoring, control and surveillance of fishing or fishing related activities, or
    - (iv) to advise the Minister.
- (2) The Director may, in writing, authorise —
  - (a) a person to receive or access confidential information; and
  - (b) the disclosure of confidential information relating to the real-time or other position of any vessel, upon request, to any authority, including a regional fisheries management organization, for the purposes of assisting with surveillance, search and rescue and other emergency responses.

## PART V – FINANCIAL PROVISIONS

### 22. Funds and resources of the Department.

- (1) Subject to subsections (2) and (3), the funds and resources of the Department shall consist of—
  - (a) such sums as may be provided by Parliament;
  - (b) all fees, fines and charges under this Act paid into the Consolidated Fund;
  - (c) such sums as may be donated to the Department by any person, government or organization;
  - (d) such sums from the proceeds of the sale of items or property forfeited or confiscated under this Act; and
  - (e) such other sums from any other source.
- (2) Notwithstanding the provisions of any law, where fees, fines, charges, donations or proceeds of the sale of items or property forfeited or confiscated under this Act or regulations made under this Act are paid into the Consolidated Fund, a rebate of seventy-five per centum of the sums so paid shall be allowed, and the rebate shall be paid out of the Consolidated Fund and applied to meet the necessary expenditure of the Department.
- (3) A sum equal to seventy-five per centum of the fees, fines or charges paid into the Consolidated Fund under subsection (2) shall be placed in a separate account to be held reserved by the Minister of Finance and expended upon—
  - (a) the rebate referred to under subsection (2); and
  - (b) such other matters, relating to the conservation, management, development and enforcement of fisheries resources, as the Minister after consultation with the Minister of Finance, may deem fit.

### 23. Application of funds.

The funds of the Department shall be applied in defraying the following expenditure—

- (a) monitoring, surveillance and enforcement;
- (b) the promotion and development of fisheries and aquaculture in The Bahamas;
- (c) the promotion, elaboration and implementation of fisheries management plans;
- (d) fisheries and aquaculture management and development activities in the community and small-scale commercial fisheries and aquaculture sectors;

- (e) in the case of natural disasters, provision of assistance to Bahamian fishers and fishing communities;
- (f) fisheries and aquaculture research;
- (g) promotion of training and education in marine resources and the programmes of the Department;
- (h) grants to institutions, agencies, associations or other organizations for the purpose of promoting fisheries conservation and management;
- (i) the operation of monitoring, control, surveillance and enforcement assets and platforms including a vessel monitoring system;
- (j) contributions to donor aid projects as agreed with the donor agency;
- (k) providing supplementary funding for research intended to further the development of fisheries management, capacity building, scholarships, grants and support for the observer programme; and
- (l) such other purposes as may be determined by the Minister, with the approval of the Minister of Finance.

#### **24. Budget estimates and annual report.**

- (1) The Department shall prepare for each financial year an annual budget of revenue and expenditure.
- (2) The annual budget referred to under subsection (1), shall be submitted to the Minister three months before the beginning of the financial year.
- (3) The Department shall, three months after the end of each financial year, submit to the Minister a report of its activities, accompanied by a statement of its expenditure and revenue.
- (4) The Minister shall cause a copy of the report of the Department to be laid before both chambers of Parliament.
- (5) For the purpose of this section, “**financial year**” means any period of twelve months beginning on 1<sup>st</sup> July in any year.

## **PART VI - CONSERVATION, MANAGEMENT AND DEVELOPMENT**

### **DIVISION 1 - FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT**

#### **25. Fisheries management plans.**

- (1) For the purpose of developing a fisheries management plan, the Minister may designate priority fisheries.
- (2) The Director shall cause national fisheries management plans to be prepared as prescribed.
- (3) A fisheries management plan shall —
  - (a) identify the fishery;
  - (b) state the objectives to be achieved in the management and development of the fishery;
  - (c) describe the status of the fishery;
  - (d) specify management measures to be applied to the fishery;
  - (e) describe the process for the allocation of any fishing rights;
  - (f) include a risk assessment;
  - (g) state the requirements for monitoring, reporting, and assessment;
  - (h) specify performance indicators;
  - (i) identify compliance and enforcement measures; and
  - (j) include any other matter necessary for sustainable use of fisheries resources.
- (4) The Director shall, when preparing a fisheries management plan —
  - (a) obtain, to the extent available, appropriate scientific and other expert advice relating to fisheries management;
  - (b) consult with —
    - (i) the Council and the Forum on the proposed fisheries management plan,
    - (ii) the stakeholders affected by or with an interest in the plan, to the extent such members are not members of the Forum,
    - (iii) other relevant ministries and agencies of the Government on the proposed fisheries management plan, and
    - (iv) in relation to shared or transboundary fish stocks, relevant fisheries management authorities of other States in the region or sub-region, and where necessary through international,

regional or sub-regional fisheries management organizations;  
and

- (c) take into account —
  - (i) the fishing interests of commercial and recreational fishers,
  - (ii) the outcomes of consultations with stakeholders,
  - (iii) the recommendations of relevant regional fisheries management organizations and applicable international conservation and management agreements, and
  - (iv) the conservation and sustainability of fishery stocks.
- (5) The Minister shall, upon being satisfied that the criteria under subsection (3) and the prerequisites under subsection (4) have been complied with, adopt the fisheries management plan.
- (6) The fisheries management plan referred to under subsection (5) shall be as prescribed.

**26. Review, amendment and revocation of fisheries management plans.**

- (1) The Director shall cause each fisheries management plan referred to under section 25 to be reviewed by the Council and the Forum, based on the best scientific information available.
- (2) Where a fisheries management plan is reviewed, the Director shall request feedback from —
  - (a) any person or organization consulted during the preparation of the fisheries management plan; and
  - (b) such other person as determined by the Director.
- (3) If amendments to the fisheries management plan is required, the Minister may, taking into account the principles, the feedback referred to under subsection (2) and the advice of the Director, adopt the amendments and amend the relevant regulations.
- (4) The Minister may, on the advice of the Director, revoke a fisheries management plan.

**27. Conservation and management measures.**

- (1) The Minister may require conservation and management measures for any fishery resource on the recommendation of the Director and consistent with the principles under this Act and applicable international standards.
- (2) The Director may make recommendations to the Minister —
  - (a) on conservation and management measures; and
  - (b) based on —

- (i) relevant social, economic and ecosystem considerations,
  - (ii) consultations with the Council, Forum, other stakeholders and other Government agencies,
  - (iii) applicable international conservation and management measures, and
  - (iv) regional and international standards and requirements.
- (3) The conservation and management measures referred to under subsection (1) may —
  - (a) provide for allocations, areas, gear, closures (including times, seasons and areas), size limits, effort limitation, quota and reporting; and
  - (b) prohibit, the landing, transporting, trans-shipping, receiving or possession of fish, and any activity under this Act,and shall be as prescribed.
- (4) A person who contravenes any conservation and management measure for any fishery resource under this section commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding four years or to both.

## **28. Designation of fishing zones.**

- (1) The Minister may, by notice published in the *Gazette*, designate fishing zones within Bahamian fisheries waters and specify the rules or conditions that apply in the zone including the type of fishing or fishing related activities and research which may take place in the zones.
- (2) The zones designated under subsection (1) shall —
  - (a) be reserved for recreational fishers or sportsfishers;
  - (b) provide for mariculture or ranching;
  - (c) protect and conserve species, habitats, ecosystems and ecological processes of the marine environment;
  - (d) provide for the use of casitas, artificial reefs and traps for commercial purposes; or
  - (e) provide for marine research.
- (3) Notwithstanding subsection (2), the Minister may, by notice published in the *Gazette*, designate buffer zones for better management of the marine resources in a fishing zone and specify the rules or conditions that apply in the buffer zone.
- (4) A buffer zone referred to under subsection (3) shall not exceed two nautical miles around a fishing zone.

- (5) A person who engages in fishing or fishing related activities and research in the designated fishing zone or buffer zone in contravention of this section commits an offence and is liable on conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years, or to both.

**29. Closed season and closed area.**

- (1) Notwithstanding any other Act, the Minister may declare by notice published in the *Gazette* closed seasons or closed areas.
- (2) The Minister shall specify —
  - (a) when declaring a closed season —
    - (i) the period to which the closed season applies, and
    - (ii) the type of fish, fishery, fishing method or other parameters;
  - (b) when declaring a closed area —
    - (i) the area to which the closed area applies,
    - (ii) whether the closed area is of indefinite or limited duration, and in the case of limited duration, the period during which the area shall be closed, and
    - (iii) the type of fish, fishery, fishing method or other parameters.
- (3) If the Minister, after consultation with the Director, considers it necessary to close a season or area on an urgent basis, the Minister may declare the season or area closed, and —
  - (a) consult the Council and the Forum immediately after the commencement of the closed season or closed area;
  - (b) consider whether any amendments to the closed season or closed area is required; and
  - (c) give public notice immediately after the commencement of the closed season or closed area.
- (4) A person who engages in fishing or fishing related activities during a closed season or in a closed area commits an offence and is liable on conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years, or to both.

**30. Marine protected areas.**

- (1) The Minister shall, after consultation with the Director, declare by Order published in the *Gazette* an area to be a marine protected area.
- (2) The Director shall, prior to advising the Minister under subsection (1), consult with —
  - (a) the Council; and



- (b) any Government ministry or agency with responsibility for matters affected, or likely to be affected, by the declaration of the marine protected area.
- (3) Where a marine protected area is declared under subsection (1), the Director shall —
  - (a) ensure the development and implementation of conservation and management measures for that area; and
  - (b) establish, maintain and publish a register of the areas declared.
- (4) The Director may —
  - (a) appoint a management or co-management committee to be responsible for the management of an area declared under subsection (1); and
  - (b) make recommendations to amend, suspend or revoke a declaration made under subsection (1).
- (5) No person shall engage or allow any other person to engage in any activity that —
  - (a) is prohibited in a declaration made under subsection (1);
  - (b) is prohibited under a conservation and management measure adopted for the area;
  - (c) results in destruction or adverse impact on the fish or habitat in the area declared under subsection (1); or
  - (d) causes the objectives of the declared area to be unattainable.
- (6) A person who contravenes subsection (5) commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding four years, or to both.

## DIVISION 2 - PROHIBITED ACTIVITIES

### **31. Prohibition on fishing and fishing related activities.**

- (1) No person shall engage in any of the activities referred to under subsection (2).
- (2) The Minister may, by Order published in the *Gazette*, prohibit —
  - (a) fishing —
    - (i) at all times or during a specified period from any specified area of Bahamian fisheries waters, and the possession of such fish during the period or in the area,
    - (ii) for fish that are not of a specified size, dimension or biological condition,
    - (iii) for a designated species of fish.

- (iv) using a specified method or gear,
  - (v) by persons other than a specified class of persons,
  - (vi) by vessels other than a specified class or number of vessels.
  - (vii) in a manner that results in wastes, by-catch regulatory discards or economic discards,
  - (viii) above a regulated quantity or specified quota,
  - (ix) in a manner which is inconsistent with the conservation and management of fishery stocks, or
  - (x) in a manner that is inconsistent with this Act;
- (b) the trans-shipment, landing, buying, selling, receiving, possession, import or export of —
- (i) fish,
  - (ii) fish included in a specified class, or
  - (iii) illegally caught fish;
- (c) a person from having in his possession any gear or equipment, including any fish aggregating device and associated electronic equipment, of a specified kind, size or quantity;
- (d) the deployment or retrieval of a fish aggregating device and associated electronic equipment, or fishing within a specified radius of such device;
- (e) the use of a landing site by specified categories of fishing vessels for specified purposes;
- (f) any activity designated as prohibited in a fisheries management plan;
- (g) the conduct of a specified type of fishing related activity; and
- (h) such other activities as determined by the Director.
- (3) A person who contravenes subsection (1) or any Order made under subsection (2) commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding four years or to both.

**32. Prohibition on commercial fishing by persons who are not citizens of The Bahamas.**

- (1) No person shall —
- (a) engage in fishing, or be employed, on a commercial fishing vessel for fishing other than sportsfishing in the fisheries waters; and
  - (b) use, or be employed on, a commercial fishing vessel licensed under this Act for fishing other than charter sportsfishing,

unless that person is a citizen of The Bahamas.

- (2) No operator of a commercial fishing vessel shall —
  - (a) allow a person who is not a citizen of The Bahamas to engage in fishing in Bahamian fisheries waters or use the vessel other than for charter sportsfishing; or
  - (b) employ a person who is not a citizen of The Bahamas on board the vessel.
- (3) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding four years, or to both.

### **33. Restriction on foreign fishing vessels.**

No foreign fishing vessel shall engage in fishing or fishing related activities in Bahamian fisheries waters unless authorised by the Minister, after consultation with the Director, and such fishing or fishing related activity is conducted —

- (a) by a vessel owned or operated by an international organization of which The Bahamas is a member;
- (b) for marine scientific research purposes under the authority of and in accordance with the terms and conditions of a permit in that behalf granted by the Minister to the person operating the vessel;
- (c) for sporting purposes in accordance with any regulations made under this Act, by a vessel which has —
  - (i) first made entry in respect of the voyage on which it is engaged at a port of entry in The Bahamas, or
  - (ii) been imported into The Bahamas or constructed in The Bahamas.

### **34. Prohibition on fishing with explosives, chemicals, etc.**

- (1) No person shall, without written approval, for the purpose of killing, taking, stunning, stupefying or disabling fish —
  - (a) possess on board any vessel;
  - (b) use, allow to be used or attempt to use;
  - (c) carry, allow to be carried, possess or control; or
  - (d) place in Bahamian fisheries waters or assist in placing in Bahamian fisheries waters,  
any chemical, poison or noxious substance, bomb, electrical device, or material (whether manufactured or natural origin), dynamite or explosive substance or device.
- (2) No person shall —

- (a) land, trans-ship, buy, sell, deal in, transport, receive or possess any fish or fish product taken by any means which contravenes subsection (1); or
- (b) refuse to give on request, to an authorised officer, information on —
  - (i) any activity described under subsection (1), or the support of or any contribution to such activity, or
  - (ii) the source of the supply of any fish or fish product referred to under paragraph (a).
- (3) The Director may, subject to any applicable fisheries management plan, grant in writing an exemption from the requirements under subsection (1) for approved scientific research, for such period and subject to such conditions as the Director may determine.
- (4) A person who contravenes subsection (1), without an exemption granted under subsection (3), commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both.

**35. Prohibition on fishing for unexploited species.**

- (1) No person shall engage in fishing for unexploited species including ecologically important or rare species as prescribed.
- (2) Notwithstanding subsection (1), the Director may authorise targeted fishing for unexploited species only in cases where —
  - (a) a stock assessment has been completed on the species;
  - (b) a fisheries management plan has been adopted that sets sustainable levels for such fishing;
  - (c) management measures have been implemented, setting fishing levels and conditions recommended in the relevant fisheries management plan; and
  - (d) fishing is carried out in accordance with the terms and conditions of a licence pursuant to a fisheries management plan.
- (3) For the purpose of this section, “**unexploited species**” mean fish that are not traditionally harvested or typically caught in the fisheries waters as determined by the Director.
- (4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding four years, or to both.

**36. Prohibition on driftnet, trawl and longline fishing.**

- (1) No person shall —

- (a) engage or assist in any fishing or fishing related activity using a driftnet, bottom trawl or longline in Bahamian fisheries waters, or allow or use a vessel for such activities; and
  - (b) allow, use or assist a vessel that is licensed in The Bahamas to participate in or provide support to any driftnet fishing activities on the high seas.
- (2) A citizen of The Bahamas shall not engage or assist in any driftnet fishing activities on the high seas.
- (3) A person shall only engage or assist in any fishing and fishing related activity using a mid-water trawl with the permission, in writing, of the Director after consultation with the Minister.
- (4) A person who contravenes this section commits an offence and is liable on conviction —
  - (a) in the case of subsection (1), to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding four years;
  - (b) in the case of subsection (2), to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both.

**37. Prohibition on tampering with or destruction of property in the fisheries waters.**

- (1) No person, except an authorised officer or authorised person, shall —
  - (a) within Bahamian fisheries waters, remove any fish from any gear, enclosure or storage device unless the person is the owner or is acting on behalf of the owner and the gear has been deployed in accordance with this Act; and
  - (b) tamper with, destroy, damage or take a fish aggregating device, artificial reef, mooring buoy, float, tray, trap, casita, gear or enclosure or storage device which belongs to another person and has been authorised and deployed in accordance with this Act.
- (2) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year, or to both.

**38. Use, possession on vessel, import, purchase or sale of prohibited gear.**

- (1) No person shall —
  - (a) use for fishing, any gear; and

(b) import, buy or sell a driftnet, bottom trawl, longline or any other gear,

that is prohibited under this Act or regulations made under this Act.

- (2) No Bahamian vessel shall have on board any prohibited gear.
- (3) No foreign vessel in transit through Bahamian fisheries waters shall have on board any prohibited gear except such gear is stowed at all times and the vessel makes such reports as are required under this Act.
- (4) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years.

**39. Prohibition on possession and trade in fish and fish products.**

- (1) No person shall buy, sell, possess or otherwise trade in fish and fish products, taken or obtained in contravention of this Act.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both.

**40. Prohibition on interference with inspected fish or fish product.**

- (1) No person shall, except with the written permission of the Director —
  - (a) remove, alter or interfere with a trade description, seal, stamp or other mark applied to a container or a container system unit holding any fish or fish product that has been inspected by an authorised officer;
  - (b) add to, remove from, or otherwise change the composition of any consignment of fish that has been certified as inspected by an authorised officer; or
  - (c) unseal or leave unsealed any box inspected by an authorised officer.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both.

**41. Prohibition on the introduction of genetically modified fish.**

- (1) No person shall, without the approval of the Minister after consultation with the Director, introduce, or cause to be introduced into Bahamian fisheries waters, genetically modified fish.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding five years, or to both.

**42. Prohibition relating to protected or endangered fish or fish product.**

- (1) No person shall take, harm, land, sell, deal in, transport, receive, buy, possess, import or export any fish or fish product declared or designated by the Minister as protected or endangered under this Act or any other relevant law, except for marine scientific research or educational purposes as authorised by the Director.
- (2) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding four years, or to both.

**43. Prohibition on taking, importing, exporting, landing, trans-shipping, transporting, selling, buying, etc., any illegal fish or fish product.**

- (1) No person shall contrary to the Agreement on Port State Measures —
  - (a) take, import, export, land, trans-ship, transport, sell, receive, acquire or buy any illegal fish or fish product in The Bahamas; or
  - (b) use or permit a vessel to be used to engage in fishing or fishing related activities for a purpose referred to under paragraph (a).
- (2) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding five years, or to both.

**44. Prohibition on pollution of fisheries waters.**

- (1) No person shall —
  - (a) possess; or
  - (b) introduce, attempt or cause to be introduced into Bahamian fisheries waters,  
  
any harmful substance including substances or explosives which may have toxic, hazardous or other harmful properties or effects in relation to fish or the aquatic or marine environment, and which may adversely affect the habitat or health of the fish.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding five years, or to both.

## PART VII – LICENSING PROCEDURES

### 45. Commercial fisher's licence.

- (1) No person shall engage in commercial fishing or fishing related activities in Bahamian fisheries waters unless that person is licensed under this Act.
- (2) A person who wishes to be licensed under subsection (1) shall apply to the Director in the prescribed manner.
- (3) The application referred to under subsection (2) shall be accompanied by such information as prescribed and any additional information that may be required by the Director.
- (4) The Director may, upon receipt of the application referred to under subsection (2) and payment of the prescribed fee, grant a commercial fisher's licence in the prescribed form.
- (5) A commercial fisher's licence is valid for the period specified in the licence.
- (6) The Director may revoke the commercial fisher's licence for non-compliance with this Act.
- (7) If a commercial fisher's licence is lost, destroyed or defaced, the Director may issue a duplicate licence on the written request of the holder of the licence and payment of the prescribed fee.

### 46. Fishing vessel licence.

- (1) Subject to subsection (2), no fishing vessel shall —
  - (a) engage in fishing or fishing related activities in Bahamian fisheries waters without a valid licence issued under this Act; and
  - (b) be licensed under this Act, unless the vessel is registered under the Merchant Shipping Act (*Ch.268*); the Boat Registration Act (*Ch. 227*) or the Water Skiing and Motor Boat Control Act (*Ch. 278*).
- (2) Subsection (1) shall not apply to a fishing vessel which does not exceed fifteen feet in length.
- (3) The fishing or fishing related activities referred to under subsection (1) includes —
  - (a) commercial fishing or related activities in Bahamian fisheries waters;
  - (b) scuba diving for fishing purposes to eradicate invasive species;
  - (c) flats fishing;
  - (d) diving with the aid of the air compressor for fishing purposes;
  - (e) fishing or related activities on the high seas;



- (f) marine scientific research in Bahamian fisheries waters;
  - (g) deployment, maintenance, monitoring and retrieval of any fish aggregating device and associated electronic equipment or as appropriate fishing around such a device;
  - (h) any other fishing or fishing related activity determined by the Director.
- (4) An application for a fishing vessel licence shall be made to the Director in the prescribed manner.
  - (5) The application referred to under subsection (4) shall be accompanied by such information as prescribed and any additional information that may be required by the Director.
  - (6) The Director may, on the receipt of the application referred to under subsection (4) and payment of the prescribed fee, grant a fishing vessel licence in the prescribed form.
  - (7) If the Director determines that the application referred to under subsection (4) is incomplete —
    - (a) the Director shall return the application to the applicant, stating the reasons for his decision; and
    - (b) the applicant may submit a revised application.
  - (8) A fishing vessel licence is valid for the period specified in the licence except where the licence is suspended or cancelled.
  - (9) A fishing vessel licence granted under this Act shall not be transferred or assigned, except —
    - (a) where the ownership of a vessel changes during the period of validity of a licence and a new owner applies for a licence that transfers the same permissions, terms and conditions to the new owner; and
    - (b) the Director approves the licence of the new owner in accordance with this Act.
  - (10) The Director may suspend or cancel a fishing vessel licence and inform the holder of the licence, in writing, of such suspension or cancellation.
  - (11) If a fishing vessel licence has been lost, destroyed or defaced, the licence may be replaced by the Director upon the written application of the holder of the licence and payment of the prescribed fee.
  - (12) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both.
  - (13) A person who engages in any activity for which a fishing vessel licence was granted after receiving notice of a suspension or cancellation of the

licence commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both.

**47. Electronic submission of applications.**

- (1) The Minister may enter into an agreement with a vendor to administer the electronic —
  - (a) submission and processing of an application; and
  - (b) issuance of permits and licenses,  
under regulations made under this Act.
- (2) An application submitted in accordance with subsection (1) shall be deemed to be an application made to the Director.
- (3) A vendor authorised in subsection (1) shall —
  - (a) grant the Director access to every application made in accordance with subsection (1) to facilitate the Director's approval of the application;
  - (b) only issue a permit or licence where the Director has approved the application;
  - (c) be entitled to charge, collect and retain a processing fee, as agreed in consultation with the Minister, in respect of every application made and permit or licence issued under regulations made under this Act; and
  - (d) charge, collect and transfer to the Director, in respect of every application made and permit or licence issued under any regulations made under this Act, the fees payable in accordance with the regulations.

**48. Renewal of fishing vessel licence.**

- (1) A person or owner shall, apply in writing to the Director for renewal of a fishing vessel licence.
- (2) The Director may renew the fishing vessel licence, if the Director is satisfied that the person or owner complies with the conditions under this Act.
- (3) The Director may, after issuing a fishing vessel licence for marine scientific research inform all relevant authorities.
- (4) Where the Director refuses to renew a fishing vessel licence, the Director shall state in writing the reasons for the decision, and notify the applicant.

#### **49. Grounds for refusal of fishing vessel licence.**

The Director may refuse an application for fishing vessel licence or renewal of fishing vessel licence on the grounds that —

- (a) the applicant does not meet the requirements under this Act;
- (b) the applicant has not complied with the terms of an existing licence, any other requirement under this Act or any other relevant Act;
- (c) the information in an application for, or renewal of, a licence is false, misleading or inaccurate;
- (d) the vessel subject to the licence has been utilized for fishing or fishing related activities in contravention of this Act;
- (e) the fees owed has not been paid in full.

#### **50. Conditions of fishing vessel licence.**

- (1) The holder of a licence granted under this Act shall —
  - (a) comply with the terms and conditions of the licence;
  - (b) comply with this Act and any other relevant Act;
  - (c) not engage in fishing or fishing related activities, except as authorised in the licence;
  - (d) in relation to a fishing vessel, produce to an authorised officer, on request, the original or a certified copy of the licence;
  - (e) for any activity licensed under this Act, other than for fishing vessels —
    - (i) display a certified copy of the licence in its registered business office, and
    - (ii) upon request, produce the original or a certified copy of the licence to an authorised officer.
- (2) A person who contravenes subsection (1), commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both.

#### **51. Suspension of fishing vessel licence.**

The Director may suspend a fishing vessel licence —

- (a) if the holder has contravened —
  - (i) this Act or the terms and conditions specified in the licence, or
  - (ii) any applicable fisheries management plan;
- (b) if the holder has not —
  - (i) complied with the required legal or administrative process, or

- (ii) paid a fine or discharged a penalty or complied with the requirements of an applicable determination;
- (c) if the vessel is unseaworthy and safety requirements are not complied with; or
- (d) for such other reasons as may be determined by the Director.

**52. Cancellation of fishing vessel licence.**

The Director may cancel a fishing vessel licence if —

- (a) the holder continues to contravene —
  - (i) this Act or the terms and conditions specified in the licence, or
  - (ii) any applicable fisheries management plan;
- (b) necessary, to ensure the sustainable use of the fisheries resources or to implement any conservation and management measure; or
- (c) information included in the application for the grant or renewal of the licence is found to be false, misleading or inaccurate.

**53. Appeal to Minister.**

- (1) A person who is aggrieved by a decision of the Director to —
  - (a) refuse an application for a fishing vessel licence or renewal of a fishing vessel licence;
  - (b) vary a term or condition of a fishing vessel licence; or
  - (c) cancel or suspend a fishing vessel licence,may, within thirty days of the receipt of written notice, appeal to the Minister.
- (2) The Director may, pending the hearing of an appeal withhold the decision until the determination of the appeal.
- (3) Upon receipt of the appeal referred to under subsection (1), the Minister may vary or reverse the decision or make such other determination as the Minister thinks just.

**54. Appeal to Supreme Court.**

- (1) Subject to subsection (2), a person aggrieved by a decision of the Minister under section 53 may appeal to the Supreme Court against that decision within fourteen days on receipt of written notice, but such appeal shall not operate as a stay of the decision of the Minister.
- (2) No appeal shall lie to the Supreme Court under subsection (1) except on a ground of appeal on a question of law.

- (3) Upon the hearing of an appeal the Supreme Court may make such order, including an order for costs, as the Court thinks just.

## **55. Reporting.**

- (1) The operator of a Bahamian fishing vessel or foreign fishing vessel licensed under this Act shall —
- (a) at all times while the vessel is in Bahamian fisheries waters or on the high seas where it is authorised to fish, maintain a fishing log book in English and make such reports relating to fishing or fishing related activities;
  - (b) make reports in a format and language required by the Director, by email or other electronic means, relating to the position of the vessel and the catch on board at the following times —
    - (i) prior to the estimated time of entry into and departure from the exclusive economic zone,
    - (ii) each Friday while the vessel is in the exclusive economic zone,
    - (iii) prior to the estimated time of entry or departure from port, and
    - (iv) upon entry into or departure from an area closed for fishing;
  - (c) ensure that any information or data which may be required to be transmitted by a mobile transceiver unit or other electronic means is transmitted continuously, accurately and effectively to the designated receiver;
  - (d) provide such daily information during the course of a fishing trip in Bahamian fisheries waters or on the high seas and in the form as prescribed;
  - (e) provide a weekly report on any observer on board the vessel;
  - (f) certify that information provided pursuant to paragraphs (a) to (e) is true, complete and correct; and
  - (g) provide the reports required pursuant to paragraphs (a) to (e) in such other form and by such other means as may be prescribed or determined by the Director.
- (2) The Director may require such other reports in respect of any licensed vessel, fisheries or aquaculture activity.
- (3) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years, or to both.

## PART VIII - REQUIREMENTS

### 56. Gear stowage.

- (1) The operator of a —
  - (a) foreign fishing vessel not licensed for fishing or fishing related activities in Bahamian fisheries waters; or
  - (b) Bahamian fishing vessel not licensed for fishing or fishing related activities on the high seas,shall ensure that all gear on board is at all times stowed or secured in such a manner that it is not readily available for fishing.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding four years, or to both.

### 57. Reporting by transiting foreign fishing vessels.

- (1) The operator of a foreign fishing vessel navigating Bahamian fisheries waters shall report its name, international radio call sign, flag registration, the date and time, position (to 1 minute of arc), crew complement, intended activity, and catch on board, to the Director electronically or manually, as follows —
  - (a) at prescribed distance or time intervals prior to entry into the fisheries waters;
  - (b) on entry into the fisheries waters;
  - (c) at prescribed time intervals while in the fisheries waters; and
  - (d) on departure from the fisheries waters.
- (2) Where the operator of a foreign fishing vessel is navigating Bahamian fisheries waters and refuses or otherwise fails to report the information described in subsection (1), it shall be deemed, in the absence of evidence to the contrary, that all fish on board have been caught in the fisheries waters in contravention of this Act.
- (3) The Director shall work cooperatively with other Government agencies in the enforcement of subsection (1) and may, in consultation with such agencies, take appropriate enforcement measures.
- (4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding five years, or to both.

**58. Requirements for fishing on the high seas.**

- (1) No person shall use a Bahamian fishing vessel to engage in fishing or fishing related activity on the high seas without a licence.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding two years, or to both.

**59. Requirements for import and export of live fish.**

- (1) No live fish shall be imported or exported without a valid import or export licence.
- (2) No licence shall be —
  - (a) granted for the import of live fish unless the person applying for such licence provides a certificate of health of the fish including verification that sanitary standards are complied with, from the exporting country; and
  - (b) issued for the import or export of live fish unless all requirements in the Veterinary Surgeons Act (*Ch. 245*), the Animal Health and Production Act, 2016 (*No. 7 of 2016*) and the Wildlife Conservation and Trade Act (*Ch. 250A*) are complied with in relation to such import or export.
- (3) The Director shall, prior to issuing a licence for the import or export of live fish, require a risk assessment which shall take into account —
  - (a) in the case of import, the possible effects of the release of such fish into the wild;
  - (b) in the case of export, the potential impact of the export of live fish on any Bahamian fishery and the health of the fish being exported shall be verified in accordance with the Veterinary Surgeons Act (*Ch. 245*) and the Animal Health and Production Act, 2016 (*No. 7 of 2016*); and
  - (c) in any other case, any matter that the Director considers necessary.
- (4) The applicant shall bear the full costs of —
  - (a) the risk assessment required under subsection (3); and
  - (b) any quarantine which may be necessary for the import or export of live fish.
- (5) A risk assessment required under subsection (3) shall be carried out by a qualified person approved by the Director.

**60. Requirements for trans-shipment.**

- (1) No person shall whether associated with the donor or receiving vessel or facility in Bahamian fisheries waters, engage in or assist trans-shipment activities without a licence issued under subsection (2).
- (2) The operator of a fishing vessel intending to engage in, or engaging in trans-shipment activities shall —
  - (a) apply for and obtain a licence for trans-shipment from the Director;
  - (b) only trans-ship at the time and port or other location authorised for trans-shipment and on such terms and conditions as specified in the licence;
  - (c) not conduct any trans-shipment activities with a carrier vessel that does not hold a valid licence under this Act and any other relevant Act;
  - (d) provide seventy-two hours prior notice of a request to trans-ship, or such other prior notice as prescribed;
  - (e) provide such other information as required by the Director;
  - (f) comply with such procedures as prescribed or as required by the Director including taking on board an observer;
  - (g) submit full reports on the trans-shipment operations as prescribed within twenty-four hours after the operations end; and
  - (h) pay all fees as prescribed.
- (3) The Department may enter into inter-agency agreements for the purpose of trans-shipment activities on the high seas.
- (4) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding four years, or to both.

**61. Requirements for marine scientific research.**

- (1) Notwithstanding any other Act, an application for a licence to conduct marine scientific research in Bahamian fisheries waters shall be made in writing to the Director, three months in advance of the expected commencement date of the marine scientific research, and shall include a research plan with a full description of —
  - (a) the nature and objectives of the project;
  - (b) the method and means to be used, including name, tonnage, type and class of vessels, and a description of scientific equipment;
  - (c) the precise geographical areas in which the project shall be conducted;
  - (d) the expected date of —



- (i) first appearance and final departure of the research vessels, or
    - (ii) deployment of the equipment and its removal; and
  - (e) the name of the sponsoring institution, its director, the person in charge of, and personnel participating in, the project.
- (2) The conditions of a licence to conduct marine scientific research include —
- (a) the right of the Department, if it so desires, to participate or be represented in the marine scientific research project, especially on board research vessels and other craft or marine scientific research installations, when practicable, and without obligation to contribute towards the costs of the project;
  - (b) the submission of preliminary reports after each expedition;
  - (c) on the completion of the research project, the submission of the final results, conclusions and any publication relating to the project;
  - (d) the provision of all data and samples, which may be divided without detriment to their scientific value, derived from the marine scientific research project to the Director in a comprehensive data format;
  - (e) the provision of an assessment of such data, samples and research results to the Director;
  - (f) in the case of paragraph (c), the right of the Department to ensure that the research results are made internationally available through appropriate national, regional or international channels, as soon as practicable;
  - (g) informing the Director immediately of any major change in the research project;
  - (h) unless otherwise agreed, the removal of the marine scientific research installations or equipment on the completion of the research project;
  - (i) the provision of a list of the participants in the research project; and
  - (j) the provision of the sponsors and the sum of the financial contributions of each sponsor to the Director.

## **PART IX - AQUACULTURE MANAGEMENT AND DEVELOPMENT**

### **62. Aquaculture areas.**

- (1) The Minister may designate areas or zones where —

- (a) research or commercial aquaculture operations may be undertaken; or
  - (b) aquaculture operations are prohibited.
- (2) The Director may not issue a licence for commercial aquaculture operations in an area or zone unless —
- (a) the area or zone has been designated by the Minister, after consultation with the Department of Town Planning by a notice published in the *Gazette*; and
  - (b) the licence gives the holder of the licence the exclusive right to carry out such operations in the designated area or zone.

**63. Aquaculture requirements.**

- (1) No person shall engage in aquaculture without a licence granted under this Part.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction —
  - (a) in the case of commercial, research or ornamental aquaculture, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years, or to both;
  - (b) in the case of subsistence aquaculture, to a fine not exceeding ten thousand dollars.

**64. Aquaculture development plan.**

- (1) The Director shall, in consultation with the Council, prepare an aquaculture development plan for the approval of the Minister.
- (2) The aquaculture development plan shall have a duration of five years and may be renewed, modified or replaced at the end of each five year period or as the Director deems necessary.
- (3) The aquaculture development plan shall include —
  - (a) a statement of the objectives and priorities of the plan and a strategy for achieving the objectives;
  - (b) performance indicators to monitor the extent to which the objectives of the plan are being attained;
  - (c) a strategy for monitoring progress on an annual basis, and as appropriate, an evaluation of the implementation of the aquaculture plan that preceded the evaluation;
  - (d) a description or identification of any area of water or land which is suitable for aquaculture development and the type of aquaculture for which the area is suitable;

- (e) a description of the methods for undertaking any type of aquaculture;
- (f) identification of the species of fish for aquaculture;
- (g) acceptable drugs and medications that may be used, and the purposes for such usage;
- (h) requirements for the importation and manufacture of seed and feed that may be used for aquaculture;
- (i) requirements or standards for water quality, aquaculture waste, escapement and the introduction, transfer, release, disaster preparedness and response inclusive of hurricane, storm surge, oil spill and other natural or anthropogenic adverse impact and harvesting of fish for purposes related to aquaculture;
- (j) responses to introduced species or invasive species;
- (k) conflict prevention and resolution mechanism;
- (l) methods required to provide enforcement; and
- (m) any other matter concerning aquaculture that the Director considers necessary.

**65. Monitoring of non-commercial aquaculture activities.**

- (1) An authorised officer shall monitor aquaculture practices and operations in accordance with this Act.
- (2) Where an authorised officer has cause to believe that any fish in, or fish products from, any aquaculture facility are infected with a disease which can reasonably be foreseen to become, or which has become, of epidemic proportions, the authorised officer shall notify the Director.
- (3) If the Director, after consultation with the authorised officer and relevant agencies, is satisfied that the fish or fish products subject to notification under subsection (2) are so infected, the Director shall give notice in writing to the owner of the relevant aquaculture facility requiring the destruction of all fish or fish products or the taking of such other measures as the Director may specify in the notice.
- (4) A person who receives a notice under subsection (3) shall comply with its requirements, and in default of such compliance, the authorised officer may enter the relevant facility and take or cause to be taken such measures as may be necessary for the person to comply with the notice and any expenses incurred shall be recoverable as a civil debt from the person so notified.
- (5) Notwithstanding subsection (4), a person who contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding

fifty thousand dollars or to imprisonment for a term not exceeding one year, or to both.

**66. Introduction, transfer, import, export, release of live fish.**

- (1) No person shall engage in the following activities in relation to research or commercial aquaculture without a licence granted under this Act by the Director after consultation with the Council —
  - (a) place or, cause to be placed any species of live fish in any place in the fisheries waters, except where —
    - (i) the fish species being so placed previously occurred in the fisheries waters, or
    - (ii) a fish farmer is stocking a pond with fish obtained from another fish farmer with whom he shares the same water catchment area;
  - (b) introduce or cause to be introduced into ponds, hydroponics, aquaria or the fisheries waters any species of fish;
  - (c) transfer any eggs, fingerlings or seed of exotic species or such adult species of fish from one aquaculture establishment in The Bahamas to another, or from any location in The Bahamas to another;
  - (d) import or export live fish for the purpose of commercial aquaculture; or
  - (e) release into the fisheries waters any fish except for indigenous wild fish caught in The Bahamas.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding five years, or to both.

**67. Inspection, etc., of fish designated for import, export or domestic use.**

- (1) The Director may inspect or cause to be inspected any fish —
  - (a) before or after they are imported for the purpose of aquaculture; and
  - (b) produced by aquaculture operations that are designated for export or domestic use.
- (2) The Director —
  - (a) may seize, hold, quarantine, disinfect or destroy or cause to be seized, held, quarantined, disinfected or destroyed any live fish that have been imported or that are designated for import, export or domestic use for purposes of aquaculture; and

- (b) shall take such other measures, where the Director determines that the fish or fish species are diseased or invasive.

**68. Aquaculture waste.**

- (1) A person engaged in aquaculture in The Bahamas shall ensure that aquaculture waste —
  - (a) does not cause an offensive condition;
  - (b) is secured or treated in a manner designed to prevent it being blown, washed or swept off the area used for aquaculture; and
  - (c) complies with all applicable Bahamian laws relating to the environment.
- (2) Where the person engaged in aquaculture refuses to comply with the requirements under subsection (1), the Director —
  - (a) shall, in consultation with the Department of Environmental Health Services, notify the person in writing of the requirement to take measures to restore the area where the waste is being stored to such standard as the Director may specify within a stated period of time; and
  - (b) may, upon inspection, require the person to redesign the area.
- (3) A person who is notified by the Director under subsection (2) shall immediately comply with the requirements set out in the notification.
- (4) A person who contravenes subsections (1) and (3) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both.

**69. Escapement.**

- (1) A person engaged in aquaculture in The Bahamas shall take appropriate measures to prevent the risk of the escape of aquaculture stock into the wild.
- (2) Where there has been an escape of hatchery reared aquaculture stock or damage to a farming structure, equipment or facility that may lead to the escape of hatchery reared aquaculture stock, the operator of the aquaculture facility shall —
  - (a) take immediate measures to minimise the damage and to repair any damage caused to the extent possible;
  - (b) immediately notify the Director by radio or electronic transmission, and within twelve hours, in writing, of the escape or damage, including —

- (i) the species of fish affected,
  - (ii) the date, or an estimate of the date, on which the escape or damage took place,
  - (iii) the number of fish that escaped,
  - (iv) the age or developmental stage, or an estimate of the number and biomass, of the fish at the time of the escape, and
  - (v) the details of the circumstances in which the escape or damage took place.
- (3) The operator referred to under subsection (2) shall, within seven days after notifying the Director submit a comprehensive report of the action taken to deal with the escape or damage.
- (4) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding four years, or to both.

**70. Use of drugs, chemicals, etc., restricted.**

- (1) No person shall, in an aquaculture facility, use any drug, pharmaceutical, antibiotic or other chemical for the treatment of fish diseases or for the enhancement of fish growth without the written approval of the Director.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both.

**71. Information and data on wild, genetically modified species.**

The Director may collect information and data on wild and genetically modified species from all facilities to assess the impact of aquaculture on the environment.

**72. Prohibition on interference with aquaculture facility.**

- (1) No person, except an authorised officer, shall —
- (a) interfere with or harvest the product of an aquaculture facility without the written approval of the holder of an aquaculture licence;
  - (b) place any object in the water, or promote or undertake any activity in a manner so as to obstruct an aquaculture operation from being carried out by another person;
  - (c) destroy, damage, displace or alter the position of any equipment lawfully deployed in relation to an aquaculture licence; or
  - (d) without lawful excuse cause the release of any product from an aquaculture facility.

- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both.

### **73. Transboundary aquaculture ecosystems.**

The Minister may consult with other coastal States to ensure that governments and aquaculture farmers protect transboundary aquatic ecosystems from —

- (a) escapement of aquaculture species into shared water bodies;
- (b) waste from aquaculture activities;
- (c) diseases that are likely to become or have reached epidemic proportions;
- (d) effluent that might affect transboundary aquatic ecosystems; or
- (e) any other thing that may endanger aquatic ecosystems.

### **74. Aquaculture regulations.**

- (1) The Minister may, after consultation with the Director and the Council, make regulations for the purpose of sustainable management of aquaculture including —
- (a) fish hatchery standards;
  - (b) qualifications of persons authorised to offer aquaculture extension services;
  - (c) the mode of establishment of fish cages or any such form of aquaculture establishment in the fisheries waters and on land;
  - (d) aquaculture extension systems;
  - (e) fish disease surveillance, control and management in aquaculture establishments;
  - (f) the use of biotechnology to increase productivity;
  - (g) codes of practice for fish farmers;
  - (h) accreditation requirements for any class of persons engaging in specified aquaculture-related activities; and
  - (i) any other measure that the Minister considers necessary for the proper management of aquaculture.
- (2) Any regulations made under this section may prescribe penalties inclusive of a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years for contravention of the regulations.

## PART X - MONITORING, CONTROL AND SURVEILLANCE

### DIVISION 1 - VESSEL MONITORING SYSTEM

#### 75. Vessel monitoring system.

- (1) The Director may establish and operate a vessel monitoring system for the purpose of monitoring the compliance of fishing vessels licensed under this Act.
- (2) Any information generated by a vessel monitoring system operated under subsection (1) and required to be reported to the Department, shall be —
  - (a) the property of the Government; and
  - (b) confidential information.
- (3) The Director may require an operator holding a licence under this Act to supply, install, maintain and operate, in accordance with any requirements prescribed —
  - (a) a specified mobile transceiver unit;
  - (b) another device that forms an integral part of a vessel monitoring system operated by the Department; or
  - (c) devices under paragraph (a) or (b).
- (4) The operator referred to under subsection (3) shall ensure that —
  - (a) no person tampers or interferes with the mobile transceiver unit, and the mobile transceiver unit is not altered, damaged, disabled or otherwise interfered with; and
  - (b) the mobile transceiver unit —
    - (i) is not moved from the required or agreed installed position, or removed without the prior written approval of the Director,
    - (ii) is switched on and is operational at all times when the vessel is in Bahamian fisheries waters and on the high seas, and
    - (iii) is registered at the operator's expense.
- (5) If a mobile transceiver unit stops working, the operator of the vessel on which it is installed shall immediately —
  - (a) notify the Director that the unit has stopped working; and
  - (b) either —
    - (i) cause the vessel to cease fishing and sail to the nearest port within The Bahamas or such other port as approved by the Director, or
    - (ii) submit electronic reports to the Director, every six hours, or at such intervals as determined by the Director, giving the



vessel's name, call sign, position (to 1 minute of arc), and the date and time of the report.

- (6) An operator who fails to comply with subsection (3), (4) or (5) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both.
- (7) A person who —
  - (a) without lawful excuse, renders inoperative or otherwise interferes with a mobile transceiver unit so that it does not operate accurately or in accordance with any licence conditions; or
  - (b) discloses information from a vessel monitoring system to any other person not authorised to receive such information.

commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both.

## DIVISION 2 - PORT STATE MEASURES

### **76. Inter-agency, international cooperation and Port State Measures.**

- (1) The relevant Government agencies shall, in implementing the Agreement on Port State Measures —
  - (a) integrate fisheries related port State measures with port State control measures to prevent, deter and eliminate IUU fishing and fishing related activities;
  - (b) cooperate and exchange information with the Department; and
  - (c) develop policies to prevent IUU fishing and fishing related activities.
- (2) The relevant Government agencies are —
  - (a) the Department of Marine Resources;
  - (b) the Office of the Attorney-General;
  - (c) The Bahamas Maritime Authority;
  - (d) the Ministry of Foreign Affairs;
  - (e) the Ministry responsible for Transport;
  - (f) the Port Department;
  - (g) the Ministry responsible for Immigration;
  - (h) the Royal Bahamas Defence Force;
  - (i) the Royal Bahamas Police Force;
  - (j) the Customs Department; and
  - (k) any other ministry or agency as determined by the Minister.

- (3) The Director shall be the contact point for information exchange and communication relating to fishing including IUU fishing, and the operations of fishing vessels at national, regional and international levels.

#### **77. Prerequisites for entry into or use of port.**

- (1) The operator of a foreign fishing vessel shall not enter or use a port in The Bahamas except —
  - (a) the port has been declared a port under section 11 of the Ports Authorities Act (*Ch. 269*);
  - (b) the operator has requested entry into port and provided such information as prescribed or required by the Director and Port Controller, at least seventy-two hours before entry;
  - (c) the Controller, after consultation with the Director, has authorised entry of the vessel into port and communicated such authorisation to the master, and agents of the vessel in The Bahamas; and
  - (d) upon arrival at port, the master or agent provides the authorisation for entry into the port to the Controller and the Director.
- (2) The Director shall, after consultation with the Controller, submit a list of all declared ports to the Food and Agriculture Organization through the Ministry of Foreign Affairs.
- (3) For the purposes of this Part, “**use of port**” means use for landing, transshipping, packaging, or processing of fish or for other port services including, refuelling and resupplying, maintenance and dry docking.
- (4) An operator who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding five years, or to both.

#### **78. Denial of entry into port.**

- (1) If there is sufficient proof that a vessel seeking entry into a port in The Bahamas has engaged in IUU fishing or fishing related activities, or is an IUU listed fishing vessel, the Port Controller, after consultation with the Director —
  - (a) shall deny entry to such vessel; or
  - (b) notwithstanding paragraph (a), may allow such vessel to enter a port to —
    - (i) inspect the vessel, and
    - (ii) take other appropriate actions in conformity with international law that are as effective as denial of port entry,

and shall communicate any decision taken under paragraph (a) or (b) to the master or agent.

- (2) The Controller, after consultation with the Director —
  - (a) may deny entry into, or use of, port to a vessel that he has reasonable grounds to believe has contravened this Act; and
  - (b) shall not authorise the use of port to a vessel that has been allowed entry under subsection (1)(b), except the findings of the inspection indicate that the vessel was not engaged in IUU fishing and fishing related activities.
- (3) Where entry is denied under subsection (1)(a) or (2)(a), the Director shall, after consultation with The Bahamas Maritime Authority (“the Authority”), notify the flag State of the vessel and as appropriate, relevant coastal States, regional fisheries management organizations and other international organizations.
- (4) An operator who enters or uses the port, or any person who assists the vessel to enter or use the port, where entry into a port has been denied or use of port has not been authorised, commits an offence and is liable on conviction to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding five years, or to both.

#### **79. Force majeure or distress.**

- (1) The Port Controller, after consultation with the Director, may grant a foreign fishing vessel entry into port for force majeure or distress, provided that —
  - (a) the claim of force majeure or distress shall not be valid if the claim is contrived, untrue or otherwise intentionally created, or its objective is to avoid liability;
  - (b) the burden of proof that a claim of force majeure or distress is valid and does not fall within prohibitions under paragraph (a), shall be on the operator;
  - (c) an authorised officer and officers from the Port Department and the Authority may board and inspect the vessel at any time for the purpose of verifying the claim of force majeure or distress;
  - (d) a vessel that claims force majeure or distress shall be subject to the direction of the Controller or Director; and
  - (e) the vessel —
    - (i) may enter port for such period of time as necessary to remedy the claim, and
    - (ii) is permitted entry only for the purpose of rendering assistance to persons or vessels in distress.

- (2) A person who makes or supports an invalid claim of force majeure or distress under subsection (1)(a) commits an offence, and is liable on conviction to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding five years, or to both.

**80. Denial of use of port after entry.**

- (1) Where a vessel enters a port, the Port Controller, after consultation with the Director, shall deny such vessel the use of port if —
  - (a) the vessel does not have a valid licence to engage in fishing or fishing related activities —
    - (i) under this Act,
    - (ii) required by its flag State, or
    - (iii) required by a coastal State;
  - (b) there is clear evidence that the fish on board was taken in contravention of requirements under this Act or applicable requirements of a coastal State;
  - (c) the flag State does not confirm within a reasonable time, on the request of the Director, that the fish on board was taken in accordance with the requirements of a relevant regional fisheries management organization; or
  - (d) the Director has reasonable grounds to believe that the vessel was engaged in IUU fishing or fishing related activities, except the operator proves —
    - (i) that the vessel was acting in a manner consistent with relevant conservation and management measures, or
    - (ii) in the case of provision of personnel, fuel, gear and other supplies at sea, that the provisioned vessel was not, at the time of provisioning, a vessel engaged in IUU fishing or fishing related activities.
- (2) Notwithstanding subsection (1), the Controller, after consultation with the Director, may allow a vessel the use of port services, if it is proven that —
  - (a) such services are necessary for the safety or health of the crew or the safety of the vessel; or
  - (b) the vessel is to be scrapped.
- (3) Where the use of port is denied under subsection (1), the Director, after consultation with the Authority, shall notify the decision to the flag State of the vessel and, as appropriate, to relevant coastal States, regional fisheries management organizations or other international organizations.
- (4) Where the use of port is denied, an operator or any other person who assists the vessel to use the port commits an offence and is liable on

conviction to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding five years, or to both.

#### **81. Withdrawal of denial of use of port.**

Where the use of port has been denied pursuant to section 80, the Port Controller, after consultation with the Director, shall —

- (a) withdraw such denial in respect of a vessel only if there is sufficient proof that the grounds on which use of port was denied were inadequate or that such grounds no longer apply; and
- (b) immediately notify the withdrawal to a State or an organization initially notified under section 80.

#### **82. Inspections of foreign fishing vessels in port.**

- (1) The Director shall, after consultation with the Port Controller, and as soon as practicable, inspect a foreign fishing vessel in port, if —
  - (a) the vessel has been denied entry or use of a port;
  - (b) the Director receives a request from another State or regional fisheries management organization to inspect the vessel; and
  - (c) there are clear grounds for suspecting that a vessel has engaged in IUU fishing or fishing related activities.
- (2) During inspections of a vessel in port, authorised officers and officers from the Port Department and the Authority shall —
  - (a) carry out inspections in conformity with such procedures and forms as prescribed or determined by the Director or Controller; and
  - (b) complete a written report within forty-eight hours for each inspection and submit it to the Director and Controller.
- (3) The master shall, in relation to inspection of a vessel —
  - (a) assist the authorised officer and officers from the Port Department and the Authority; and
  - (b) on request, provide information, materials and documents or certified copies thereof.
- (4) The Director, after consultation with the Authority, shall send the results of the inspection to the flag State of the inspected vessel, and as appropriate to —
  - (a) a State where there is evidence on inspection that the vessel has engaged in IUU fishing or fishing related activities within its national jurisdiction;
  - (b) a State where the master is a national;

- (c) other relevant States and Parties signatory to a relevant international or regional agreement concerning Port State Measures;
- (d) relevant regional fisheries management organizations; and
- (e) relevant international organizations.

**83. Denial of use of port after inspection.**

- (1) If, after an inspection, the Director has reasonable grounds to believe that a vessel has engaged in IUU fishing or fishing related activities —
  - (a) the Port Controller, after consultation with the Director, shall deny the vessel the use of its port for landing, trans-shipping, packaging and processing of fish that have not been previously landed and for other port services, including refuelling and resupplying, maintenance and drydocking; and
  - (b) the Director, after consultation with the Authority, shall, immediately notify the findings to the flag State and, as appropriate, relevant coastal States, regional fisheries management organizations and other international organizations, and the State where the master is a national.
- (2) Notwithstanding paragraph (1)(a), the Controller, after consultation with the Director, shall not deny a vessel the use of port services, where such services are essential to the safety and health of the crew or the safety of the vessel, provided the needs are duly proven.
- (3) Where use of a port has been denied under subsection (1)(a), the operator or any other person who assists the vessel to use the port, commits an offence and is liable on conviction to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding five years, or to both.

**84. Requirements of Bahamian fishing vessels in port States.**

- (1) The operator of a Bahamian fishing vessel shall —
  - (a) cooperate with port State inspections conducted pursuant to the Agreement on Port State Measures; and
  - (b) not land, trans-ship, package or process fish, and use port services, in a port State that is acting in a manner inconsistent with the Agreement on Port State Measures.
- (2) If there are clear grounds to believe that a Bahamian fishing vessel —
  - (a) has engaged in IUU fishing or fishing related activities; and
  - (b) is seeking entry into, or is in the port of, another State.

the Director shall, after consultation with the Authority and as appropriate, request the State to inspect the vessel or take such other measures consistent with the Agreement on Port State Measures.

- (3) An operator who fails to comply with subsection (1)(b) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both.

### DIVISION 3 – POWERS AND DUTIES, ETC., OF AUTHORISED OFFICERS

#### **85. Powers and duties of authorised officers and persons.**

- (1) An authorised officer, in exercising his powers and duties under this Act, may —
  - (a) require the assistance of an authorised person;
  - (b) where he reasonably believes that a vessel is being or has been used in contravention of this Act or regulations made under this Act —
    - (i) take the vessel or require the master to take the vessel as soon as reasonably practicable to the nearest available port in The Bahamas or such port as may be determined by the authorised officer,
    - (ii) remain in control of the vessel until the investigation is completed,
    - (iii) allow the master to depart from the port, within seventy-two hours after arrival in port, if there are no reasonable grounds to suspect that the master or vessel has contravened this Act or regulations made under this Act; and
  - (c) use such force as necessary for the purpose in accordance with the Penal Code (*Ch. 84*).
- (2) An authorised officer shall —
  - (a) be provided with a form of identification as prescribed; and
  - (b) produce such identification on entry into any premises or place, or on request.
- (3) An authorised person shall —
  - (a) do such things as are reasonably necessary to assist the authorised officer in the exercise of his duties including bringing a vessel to the nearest designated port in The Bahamas;
  - (b) only be allowed to assist for the purposes and times during which the authorised person is required to act; and
  - (c) be offered the same protection as an authorised officer.

**86. Powers of entry, search, etc., with or without warrant.**

- (1) An authorised officer may, with a warrant or without a warrant —
  - (a) stop, enter, board, examine and search —
    - (i) any vessel in port or within Bahamian fisheries waters, or
    - (ii) a Bahamian fishing vessel on the high seas;
  - (b) enter, examine and search any premises or place —
    - (i) in or on which he has reason to suspect may be found evidence of an offence under this Act, or
    - (ii) to determine whether an offence under this Act has been or is being committed;
  - (c) stop and search any vehicle to which this Act applies;
  - (d) stop any person; and
  - (e) pass across any land or body of water,  
and may examine and search any document, record, article, container, gear, equipment, apparatus, device, fish, fish product and contents thereof.
- (2) An authorised officer may detain —
  - (a) a person for a period not exceeding seventy-two hours; and
  - (b) a vessel, vehicle, parcel, package, article, gear, equipment, apparatus, device, container, fish or fish product for such period as is reasonably necessary to conduct an examination.
- (3) Notwithstanding subsection (1), an authorised officer may, in respect of premises used only as a dwelling house, conduct searches and seizures with a warrant issued by a Magistrate.
- (4) For the purposes of this Part, “premises” includes premises that are part of, or attached to, a dwelling house but does not include a dwelling house.

**87. Powers of entry, search, etc., with warrant.**

- (1) Where a Magistrate is satisfied by information on oath or by affirmation given by an authorised officer or authorised person, that there are reasonable grounds for suspecting —
  - (a) that an offence under this Act has been or is being committed and that evidence of the commission of the offence may be found at any dwelling house or premises specified in the information;
  - (b) that any records, accounts, return, raw scientific data and information required to be kept under this Act which ought to have been produced and have not been produced may be found at such dwelling house or premises,



the Magistrate may by warrant authorise, the authorised officer or authorised person to enter and search the dwelling house or premises specified in the information on one occasion at any time within one month after the date of issue of the warrant.

- (2) The search warrant shall be subject to such conditions as the Magistrate may specify in the warrant.
- (3) The authorised officer or authorised person shall be provided with a form of identification, and shall produce such identification and the warrant for inspection upon initial entry on a dwelling house or premises.
- (4) The warrant referred to under subsection (1), may allow the authorised officer or authorised person to —
  - (a) use such assistance as may be reasonable in the circumstances;
  - (b) use such force as is reasonable in the circumstances for the purpose of entering the dwelling house or premises; and
  - (c) search for and seize anything referred to in the warrant or which he believes on reasonable grounds to be evidence of the commission of an offence under this Act.

#### **88. Power to take, detain and secure information and samples.**

Subject to sections 86 and 87, an authorised officer may —

- (a) inspect, take, detain and secure samples, documents, logbooks or other information, including electronically stored information, or copies, from any vessel, premise, facility or other place;
- (b) take extracts of, or make copies of any document from any vessel, premise, facility or other place;
- (c) take possession of and remove any record or document from any vessel, premise, facility or other place, for such period as reasonably necessary for the purpose of examination;
- (d) if necessary, require a person to reproduce, or assist the authorised officer to produce in a useable form, information recorded or stored in a document or electronically;
- (e) require any person associated with a vessel, vehicle, premise, facility or other place or activity to provide such information as may be reasonably required for the purposes of the investigation;
- (f) take and secure any item, logbook or document for use as evidence; and
- (g) use or cause to be used any data processing system at the place, to examine any data contained in or available to the data processing system.

**89. Power of arrest.**

- (1) For the purposes of this Act, where an authorised officer —
- (a) believes on reasonable grounds that a person is committing or has committed an offence under this Act;
  - (b) or authorised person is assaulted by a person in the exercise of his powers or duties under this Act; or
  - (c) or authorised person is offered a bribe by any person,
- the authorised officer may —
- (i) order the person to immediately cease and desist,
  - (ii) request the person to provide the name by which that person is commonly known and the person's family name or surname, date of birth, actual place of residence, and occupation, and such verification as is reasonable in the circumstances, or
  - (iii) without warrant, arrest that person.
- (2) Where the authorised officer arrests a person under subsection (1) and the authorised officer is not a police officer, the authorised officer shall —
- (a) cause the person to be delivered into the custody of the most senior police officer, as soon as practicable; and
  - (b) outline the particulars of the arrest and submit the relevant offences against this Act or regulations made under this Act to the police officer.

**90. Power of seizure.**

- (1) An authorised officer may seize —
- (a) any vessel, vehicle or other conveyance, gear, implement, appliance, material, container, goods, equipment, or object, 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 under this Act;
  - (b) any fish or fish product, which the authorised officer believes on reasonable grounds, is being or have been, taken, killed, transported, bought, sold, or in the possession of a person or on board a vessel, in contravention of this Act, and any fish with which such fish have been intermixed;
  - (c) an article or item, which the authorised officer believes on reasonable grounds, is evidence of the commission of an offence under this Act;
  - (d) a passport and crew record book —

- (i) of the master and crew directed to return to, and remain in, port under this Act, until the vessel is permitted to depart,
  - (ii) of any person arrested, until that person is brought before a Court or the matter is otherwise disposed of and the Director gives authorisation, or
  - (iii) pursuant to any order of the Court; and
- (e) any other item which the authorised officer has reasonable grounds to believe —
  - (i) has been or is being used to commit an offence under this Act,
  - (ii) is forfeited, or
  - (iii) is unlawfully removed from custody.
- (2) Any property seized under subsection (1) shall be delivered into the custody of the Commissioner of the Royal Bahamas Police Force (“the Commissioner”) and the Minister shall be notified of such seizure.
- (3) Any perishable item seized under subsection (1) may be disposed of in accordance with Part XI and photographs shall be taken of the seized items for evidence.
- (4) An authorised officer shall —
  - (a) give written notice to —
    - (i) the person from whom any property, article, perishable item or any other item was seized, or
    - (ii) any other person whom the authorised officer believes is the owner or person entitled to possession of the property, article, perishable item or any other item seized; and
  - (b) state the grounds for such seizure in the notice.

**91. Power to issue written warning.**

- (1) An authorised officer may —
  - (a) where he believes on reasonable grounds that a person is committing or has committed an offence under this Act; and
  - (b) providing the offence is not a serious offence, issue a written warning in lieu of charging or arresting such person, and that person shall sign a copy of the warning.
- (2) Where a person signs a warning under subsection (1), the authorised officer may seize items in accordance with section 90, and such items shall be confiscated.

## 92. Offences against authorised officers.

- (1) An operator or crew of a vessel who refuses to allow or assist an authorised officer —
- (a) to safely board and disembark the vessel;
  - (b) to take, measure, store on or remove from the vessel and retain, such reasonable samples or whole specimens of fish for scientific purposes; and
  - (c) to have access to —
    - (i) and use of the facilities, gear and equipment on board as the authorised officer may determine is necessary to exercise his powers or duties, including the bridge, fish and fish products on board, gear and areas used to hold, process, weigh or store fish,
    - (ii) the vessel's records including its logbook, charts, documents and other information relating to fishing, whether required to be carried and maintained under this Act, or
    - (iii) navigational and communications equipment,

commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both.

- (2) A person who —
- (a) wilfully delays or obstructs the authorised officer or authorised person in the exercise of his powers and duties under this Act;
  - (b) refuses to assist an authorised officer's entry into or inspection of —
    - (i) any premises, facility or export facility, including holding stations and plants and suspected storage areas, facilities or locations,
    - (ii) any fish or fish products, gear, equipment or records;
  - (c) refuses to answer a question, provide information or produce documents when required to do so by an authorised officer or authorised person;
  - (d) knowingly or intentionally supplies false or misleading information to the authorised officer or authorised person;
  - (e) conceals or attempts to conceal, or attempts to prevent, any person from being questioned by an authorised officer or authorised person,

commits an offence and is liable on conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years, or to both.

- (3) A person who —
- (a) resists lawful arrest for an offence under this Act, interferes with or obstructs the arrest of another person by an authorised officer or authorised person;
  - (b) advertises or holds out as —
    - (i) an authorised officer, or
    - (ii) a master or crew of a fishing vessel;
  - (c) bribes or intentionally attempts to bribe an authorised officer or authorised person;
  - (d) assaults or molest, threaten by use of abusive or offensive language any authorised officer or authorised person in the execution of his duties,

commits an offence and is liable on conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years, or to both.

**93. Protection from liability.**

- (1) No action, prosecution or other proceedings shall be brought or instituted personally against an authorised officer or authorised person, in respect of any act done or omitted to be done in good faith in execution or intended execution of his duties and powers under this Act.
- (2) The Department is not liable for any act or omission of an authorised person unless the person would incur liability for the act or omission.

**DIVISION 4 - APPOINTMENT, FUNCTIONS AND DUTIES OF OBSERVERS**

**94. Observer programme.**

- (1) The Director may establish an observer programme.
- (2) The purpose of the observer programme established under subsection (1) shall be to collect, record and report information and data for scientific, conservation, management or compliance purposes including —
  - (a) the species, quantity, size, age, and condition of fish taken;
  - (b) the methods used and areas and depths at which fish are taken;
  - (c) the effects of fishing methods on fish and the environment;
  - (d) all aspects of the operation of any vessel;
  - (e) processing, transportation, trans-shipment, storage, or disposal of any fish;

- (f) monitoring the implementation of and compliance with conservation and management measures, including any vessel monitoring system established under this Act; or
  - (g) any other matter that may assist the Director to obtain, analyse or verify information regarding fisheries.
- (3) An observer may be deployed by the Director on any vessel used for fishing, research, trans-shipment, transportation or landing of fish within Bahamian fisheries waters or on the high seas.
  - (4) The operator of a fishing vessel shall comply with the conditions of the observer programme specified in a licence granted under this Act.
  - (5) An operator who contravenes subsection (4) commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding four years.

**95. Appointment of observers.**

- (1) The Director may, in writing, after consultation with the Minister —
  - (a) appoint observers for the observer programme;
  - (b) authorise observers from other States for the purposes of implementing an agreement to which The Bahamas is a party.
- (2) An observer referred to under subsection (1)(b), exercising duties within Bahamian fisheries waters or on the high seas shall comply with the requirements in the authorisation, this Act and any other relevant law.

**96. Offences against observer.**

- (1) No operator, crew or any other person shall obstruct, assault, intimidate, interfere, bribe or attempt to bribe an observer in the exercise of his duties.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both.

**97. Responsibilities of operator to observer.**

- (1) The operator or licence holder of a vessel on which an observer is deployed shall —
  - (a) provide free of charge, food, and accommodation of a standard no less than that provided to an officer or approved, in writing, by the Director;
  - (b) include the observer in emergency drills.

- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding one year, or to both.

**98. Observer costs.**

- (1) The Minister or the Department shall —
- (a) bear the costs of remunerating observers under the observer programme; and
  - (b) recover the costs of operating the observer programme by the imposition of fees on operators of vessels or licence holders.
- (2) The costs referred to under subsection (1) include —
- (a) full insurance coverage;
  - (b) per diem;
  - (c) allowances;
  - (d) equipment;
  - (e) training;
  - (f) all travel and associated expenses to and from the vessel to which the observer is assigned;
  - (g) other costs associated with the management and administration of the observer programme as determined by the Director.
- (3) For the purpose of this section, “full insurance coverage” means protection and indemnity insurance and includes —
- (a) personal injury;
  - (b) loss of life;
  - (c) loss of equipment and personal effects;
  - (d) medical costs, including emergency evacuation, if required;
  - (e) repatriation costs;
  - (f) liability for property damage, death and personal injury; and
  - (g) dive insurance.
- (4) The Director may refuse to renew a licence, if the licence holder fails to pay the fees referred to under subsection (1) within the time specified, in writing, by the Director.

**99. Placement of observer.**

- (1) The Director shall, before placing an observer on a vessel, give the operator or licence holder reasonable notice of his intention to place the observer.

- (2) The operator or licence holder, for purposes of observer placement and deployment, shall notify the Director —
  - (a) at the beginning of each licensing period, of any port where the operator or licence holder, intends to base its operations, and if placement is not possible at such port, the operator or licence holder, shall be responsible for any extra costs incurred in observer placement; and
  - (b) of the intended time of entry into, and subsequent departure from, a port at such reasonable time prior to such entry and departure as determined by the Director.
- (3) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both.

**100. Duty of operators, etc., to allow and assist observers.**

- (1) The operator or licence holder of a vessel on which an observer is placed shall allow and assist the observer, in the exercise of his duties —
  - (a) to board and remain on such vessel for the purpose of carrying out his duties, at such time and place as the Director may require;
  - (b) to receive and transmit messages and communicate with the shore and other vessels by means of the vessel's communications equipment;
  - (c) to have full access to, and use of, facilities and equipment on board the vessel, including —
    - (i) the bridge, fish on board and areas which may be used to hold, process, weigh and store fish,
    - (ii) the vessel's records and documentation,
    - (iii) gear on board, and
    - (iv) navigation equipment and radios;
  - (d) to take and remove from the vessel reasonable samples for the purposes of scientific investigation and other relevant information;
  - (e) to take photographs or recording of the fishing operations, including fish, gear, equipment, charts and records, and remove from the vessel such photographs or recording as he may have taken or used on board the vessel;
  - (f) to gather such other information relating to fisheries as may be required;
  - (g) to carry out the observer's duties safely; and
  - (h) to disembark at such time and place as determined by the Director.



- (2) The vessel referred to under subsection (1), may be —
  - (a) in Bahamian fisheries waters;
  - (b) at any place where fish taken from Bahamian fisheries waters is unloaded or trans-shipped as required by or authorised in the licence; or
  - (c) in the case of a Bahamian fishing vessel, on the high seas.
- (3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both.

**101. An operator or crew not to tamper, etc., the observer electronic monitoring system.**

- (1) An operator of a vessel on which an electronic observer device is placed, including a camera or other surveillance device designed to monitor operations, shall maintain such device in working order and keep such device continuously switched on.
- (2) No crew on board the vessel shall tamper or interfere with, cover, disable or destroy the observer electronic monitoring system.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both.
- (4) For the purposes of this section “**observer electronic monitoring system**” includes an electronic system which features a camera or other technology designed to send images for the purpose of observing the operations of a vessel, and excludes a mobile transceiver unit.

## **PART XI - DISPOSAL, RELEASE AND FORFEITURE OF SEIZED ITEMS**

**102. Requirements for seized property, etc.**

- (1) Subject to section 90(2), all property seized, except where such property has been released or disposed of under this Act, shall be held in the custody of the Commissioner acting on behalf of the Minister until —
  - (a) a decision is made not to lay any information or charge in respect of the alleged offence for which the property was seized; or
  - (b) where such a charge or information is laid, upon the completion of proceedings in respect of the alleged offence for which the property was seized, or such time as the Court may determine.

- (2) The decision whether or not to lay any information or charge in respect of an alleged offence for which any property is seized under this Act shall be made as soon as practicable after the property is seized, taken possession of, or detained.
- (3) Any property seized under this Act, or the proceeds from the sale of such property shall —
- (a) on a decision being made not to lay information or charge; or
  - (b) on the acquittal of any person charged with an offence for which the property is subject to forfeiture,
- be immediately released from the custody of the Commissioner to the person entitled to it, except where a warning has been issued such person shall acknowledge the seizure by signature in accordance with section 91.
- (4) Where any information or charge has been laid in respect of the alleged offence for which the property was seized, and that property remains in the custody of the Commissioner, the Court may at any time, on application by —
- (a) the operator from whom the property was seized; or
  - (b) the owner or his agent entitled to the possession of the property seized,
- release the property under bond to any such person, and any such release may be subject to such sureties and conditions as the Court may determine.
- (5) In determining the value of the bond or other form of security under subsection (4), the Court shall take into account the aggregate amount of —
- (a) the value of the property to be released;
  - (b) the maximum fine provided for the offence; and
  - (c) the loss, damages or costs the prosecution would be likely to recover if a conviction was entered, and the Court may set the value at such aggregate amount.
- (6) Where the ownership of any property seized, cannot at the time of seizure be determined, the property seized shall be forfeited to the Government and shall be disposed of as directed by the Minister after ninety days from the date of seizure if, within that time, it has not been possible to determine the ownership of the property.
- (7) Where disposal of seized property pursuant to subsection (6) is effected by sale, a purchaser for valuable consideration of any item sold shall derive good and unencumbered title in respect of that item.

- (8) Notwithstanding any other provision, an authorised officer who at the time of seizure returns to the water any fish seized, that he believes to be alive, shall not be under any liability to the person from whom the fish was seized where —
- (a) a decision is made not to lay an information or charge in respect of the fish; or
  - (b) the person is acquitted of the charge.
- (9) For the purposes of this Part, “**Minister**” means the Minister of Finance.

**103. Sale, destruction or donation of perishable item.**

- (1) Any perishable item, including fish, fish products or other items, which has been seized or confiscated under this Act shall be subject to the disposition of the Minister, who may —
- (a) sell or authorise the sale of such item within legal parameters;
  - (b) destroy or dispose of the item in accordance with requirements relating to food and the environment; or
  - (c) donate the item to charity where the items meet legal standards for human consumption or other activity, and sale is not possible,
- and the proceeds from such sale, if any, shall be held in trust pending the final disposition of any proceedings under this Act and then transferred to the Consolidation Fund.
- (2) The Minister shall notify the owner of the intended sale of any perishable item referred to under subsection (1), where the owner —
- (a) can be identified; and
  - (b) has not been convicted,
- and the owner or his nominee may be present at the sale.
- (3) If the Minister is unable to determine the true ownership of an item at the time of seizure, the Minister may, taking into account the perishability of the item seized, sell, destroy, dispose of or donate the perishable item in accordance with subsection (1).
- (4) A purchaser for valuable consideration of any item sold under this section shall derive good and unencumbered title in respect of the item.
- (5) Subject to subsection (1), all items seized and the proceeds from the sale of such items shall be held in the custody of the Minister until —
- (a) a decision is made not to lay any information or charge in respect of the alleged offence for which the item was seized;
  - (b) where a charge or information is laid, the completion of proceedings in respect of the alleged offence for which the item was seized; or

- (c) the Court has issued an order in relation to such proceeds, and where the owner is entitled to the return of the items, failure to take possession within a reasonable time or such time as may be specified by the Minister, shall result in confiscation of the items.
- (6) The decision whether or not to lay any information or charge in respect of an alleged offence in relation to any item seized, shall be made as soon as practicable after the item is seized, taken possession of, or detained.

**104. Release of seized items upon bond, etc.**

- (1) A person from whom any item was seized or the owner or person entitled to possession of the item seized may, within sixty days of such seizure apply to the Court for the release of the item.
- (2) Upon receipt of an application under subsection (1), the Court may order, unless the vessel, property or other item is required as an exhibit in Court or reasonably required for any further investigation of offences under this Act —
  - (a) the payment into Court of a bond, surety or other security, taking into account —
    - (i) the fair market value of the vessel, property or other item and catch on board,
    - (ii) the maximum fine provided for the offences charged or likely to be charged,
    - (iii) the costs likely to be recovered by the prosecution if a conviction is entered; and
  - (b) the release of the vessel, property or other item, upon receipt of the bond, surety or other security referred to under paragraph (a), and may require such conditions for such release as it considers necessary.
- (3) If there is an appeal from an order of forfeiture, the Court may —
  - (a) continue any such bond, surety or other security deposited in accordance with subsection (2)(a) during the pendency of the appeal and any retrial or rehearing on remand; or
  - (b) require additional security to be deposited with the Court.
- (4) The discharge of a bond, surety or other security under this Act shall be conditional upon the return of the released item to the Court without any impairment of its value, or until any final proceedings under the Act have been disposed of or discontinued, and any fines, penalties or other determinations are paid.

- (5) Where a security is paid under subsection (2)(a), the security, shall be held until any proceedings under this Act have been disposed of or discontinued, and any fines, penalties or other determinations are paid.
- (6) Where a bond has been paid under subsection (2)(a) and the vessel or property has been released —
  - (a) an order for forfeiture under this Act shall operate as an order for the forfeiture of the sum paid in respect of the value of the vessel or property; and
  - (b) the payment of a fine or penalty ordered on conviction shall be made from the security; and any order for costs shall be applied against the security.

#### **105. Failure to comply with the conditions of a bond.**

Where a person to whom property or an item is released fails to comply with the conditions of a bond, surety or other security or with any condition specified by the Minister —

- (a) the property or item may be re-seized at the direction of the Minister, and be subject to the same provisions when it was originally seized;
- (b) the Minister may apply to the Court for an order for estreat of the bond, surety or other security;
- (c) if the Minister makes an application under paragraph (b), the Registrar shall fix a time and place for the hearing of the application, and shall, within seven days before the time fixed, cause to be served on every person bound by the bond a notice of the time and place so fixed;
- (d) if on the hearing of the application referred to under paragraph (c). the Court determines that a condition of the bond, surety or other security has not been complied with, the Court may make an order to estreat the bond to an amount as it thinks fit to a person bound on whom notice was served; and
- (e) any fine or penalty payable shall be recoverable as if it were a debt.

#### **106. Release of seized items.**

- (1) Where any item has been seized under this Act, and upon —
  - (a) a decision being made not to lay an information or charge;
  - (b) the acquittal of a person charged with any offence for which the item is subject to forfeiture; or

- (c) the final disposition of any offence for which the item is subject to forfeiture, without an order for forfeiture being made in accordance with this Act,

the item, or the proceeds from the sale of such item, shall, subject to subsection (2), be immediately released from the custody of the Minister to the person entitled to the item.

- (2) The Court may order that —
  - (a) the release of an item, or proceeds from the sale of such item referred to under subsection (1), is subject to payment of all fines, penalties, orders for costs and other determination imposed in respect of an offence; and
  - (b) such item be sold, if payment is not made within the time specified, and the balance of the proceeds returned to the owner or his nominee after deducting all fines, penalties, orders for costs and other determinations under this Act and the costs for the sale.
- (3) Any property or other item seized under this Act or any monies held but not forfeited in any legal proceedings may be held by the Government until all fines, orders for costs and penalties imposed have been paid, and if payment is not made within the time specified, be sold and the balance of the proceeds released after deduction of all fines, orders for costs, penalties imposed and costs of sale.

#### **107. Forfeiture on conviction.**

The Court may, upon the conviction of a person for an offence under this Act, in addition to imposing a fine, order that the following be forfeited to the Government —

- (a) any item used or otherwise involved in respect of the commission of the offence, including any fish, fish product, vessel including its gear, furniture, accessories, stores, cargo and aircraft, equipment, explosive or noxious substance, whether or not seized under this Act;
- (b) any fish or fish product, on board any foreign fishing vessel at the time the vessel was seized or detained under this Act;
- (c) any proceeds from the sale of items, fish or fish products.

#### **108. Application of bond.**

When making of an order for forfeiture under this Act, the Court may, upon application of the Minister, make an order that any bond or security given in respect of that forfeited property, item, fish or fish product shall be applied for —

- (a) the discharge of the property, item, fish or fish product ordered forfeited under this Act;
- (b) the payment of all fines or penalties imposed in respect of the offence giving rise to the forfeiture ordered; and
- (c) the discharge of all orders for restitution of any loss, damage or costs made under this Act.

**109. Use or disposal of forfeited property.**

Any property, fish or other item ordered to be forfeited under this Act, at the expiry of the time limited for appeal, and if no appeal is lodged, may be —

- (a) retained and used for any purpose of the Government;
- (b) destroyed, sold, leased or donated to a charitable organization.

**110. Removal of item in custody.**

A person who removes a vessel, vehicle, aircraft, fish, fish product or other item held in the custody of the Commissioner commits an offence and is liable on conviction to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding five years, or to both.

## **PART XII - EVIDENCE**

**111. Burden of proof.**

- (1) In any proceedings under this Act, where a person is charged with having committed an offence involving an act for which a licence is required under this Act, the evidential burden is on the person to prove that at the material time the requisite licence or authorisation was held by that person.
- (2) Where a person is charged with contravention of section 17 or 55, the evidential burden is on that person to prove that the information given was true, complete and correct.

**112. General presumptions.**

Unless the contrary is proved —

- (a) all fish found on board any fishing vessel which has been used in the commission of an offence under this Act shall be presumed to have been caught in the commission of the offence;
- (b) where, in any legal proceedings for an offence under this Act —

- (i) 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 an enforcement vessel or aircraft as being the place in which the event took place shall be evidence of the place in which the event took place, and
- (ii) an authorised officer gives evidence of reasonable grounds to believe that any fish to which the charge relates were taken in a specified area of Bahamian fisheries waters, and the Court considers that, having regard to that evidence the grounds are reasonable, the fish shall be presumed to have been so taken;
- (c) any position fixing instrument on board a vessel or aircraft used for the enforcement of this Act is presumed to be accurate;
- (d) any person on a commercial fishing vessel who is not licensed to fish under this Act is presumed to be fishing illegally;
- (e) where the operator of a foreign fishing vessel not licensed under this Act is navigating Bahamian fisheries waters and refuses to report information required, it shall be presumed that all fish found on board have been caught within the fisheries waters in contravention of this Act;
- (f) a return, log, record or other information purporting to be made, kept or provided by or on behalf of any person shall be deemed to have been made, kept or provided by the person or his agent; and
- (g) an entry in writing or other mark in or on any log, chart or other document required to be maintained under this Act or used to record the activities of a fishing vessel shall be deemed to be that of the operator and master.

### **113. Certificate evidence.**

- (1) For the purposes of this Part, the Director, or any person authorised by the Director may provide a certificate stating that —
  - (a) a specified vessel was or was not, on a specified date, a Bahamian fishing vessel or a foreign fishing vessel;
  - (b) a specified vessel or person was or was not, on a specified date, the holder of a specified licence;
  - (c) a particular location or area of water was, on a specified date, within the fisheries waters, or within a closed, limited, restricted or in any other way controlled area of the fisheries waters, or an area of the fisheries waters subject to specified conditions;
  - (d) an appended chart or map shows the boundaries, on a specified date, of the fisheries waters, closed or limited areas or any other area or zone delineated for a specified purpose;



- (e) a particular item or piece of equipment is a gear;
  - (f) the death of, or injury to, a fish was caused in a particular manner;
  - (g) the applicable international conservation and management measures are in force, as declared in an appended copy of a statement signed by the Director;
  - (h) an appended document is a true copy of a treaty or international conservation and management measure or other international agreement;
  - (i) a call sign, name or number is that of, or allotted under a system of naming or numbering of vessels to, a particular vessel;
  - (j) any specified return, log, record or information required to be kept or provided under this Act was or was not kept or provided;
  - (k) a particular position or catch report, a copy of which is appended, was given in respect of a specified vessel;
  - (l) an appended position or catch report or other record was given in respect of a specified vessel;
  - (m) a specified vessel, mobile transceiver unit or other item fulfils or does not fulfil registration requirements under this Act;
  - (n) an appended document is a true certificate of calibration of a specified measuring device;
  - (o) an offence appears to have been committed against the laws of another State, as declared in an appended copy of a statement signed by competent authorities of such State;
  - (p) a certification as to the condition of fish given under this Act was made in accordance with this Act and by the person who is signatory to the certificate;
  - (q) a photograph —
    - (i) is a true and accurate representation of what it is meant to represent, or
    - (ii) a photograph was taken by a specified person.
- (2) Where in any proceedings under this Act, the place or area in which a vessel is alleged to have been at a particular date and time or during a particular period of time is material to an offence charged, then a place or area stated in a certificate given by an authorised officer shall be evidence, unless the contrary is proved, of the place or area in which the vessel was at the date and time or during the period of time stated.
- (3) An authorised officer shall in a certificate referred to under subsection (2) state —
- (a) his name, address, and official position;

- (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 that the vessel was located;
  - (e) the position fixing instruments used to fix the place or area stated under paragraph (d) and their accuracy within specified limits;
  - (f) a declaration that the authorised officer checked the position fixing instruments in a reasonable time before and after the instruments were used to fix the position and such instruments appeared to be working correctly;
  - (g) if a position fixing instrument which is not judicially recognised as accurate or a designated machine is used, a declaration that the authorised officer checked the instrument as soon as possible after the time concerned against such instrument.
- (4) The requirements under section 114 shall apply to certificates issued under this section.

**114. Validity and procedures for certificates.**

- (1) Unless the contrary is proved, a document purporting to be a certificate issued under section 113 shall be deemed a certificate issued under this Act.
- (2) Where a certificate issued under section 113 is served on a defendant —
  - (a) seven or more days before its production in Court in proceedings under this Act, the certificate is, unless the contrary is proved, evidence of the facts averred in it;
  - (b) twenty-eight or more days before its production in Court and the defendant does not, within seven days of the date of service, serve notice of objection in writing on the prosecutor, then the certificate is, unless the Court finds the defendant is unduly prejudiced by a failure to object, evidence of the facts averred in it.

**115. Vessel monitoring system, etc., evidence.**

- (1) All information or data obtained by the use of a device required under a vessel monitoring system, including an observer electronic monitoring system, established in accordance with this Act shall be presumed, unless the contrary is proved, to —
  - (a) originate from the vessel so identified;
  - (b) be accurately relayed or transferred;
  - (c) be given by the operator,

and evidence may be given of information and data so obtained whether from a printout or visual display unit.

- (2) A monitoring device installed and operated in accordance with this Act shall, unless the contrary is proved, be judicially recognised as accurate.
- (3) The presumption under subsections (1) and (2) shall apply whether or not the information was stored before or after any transmission or transfer.
- (4) A person may provide a certificate stating —
  - (a) his name, address and official position;
  - (b) that he is competent to read the printout or visual display unit of any machine capable of obtaining information from a vessel monitoring device;
  - (c) the date and time the information was obtained from the vessel monitoring device and the details of it;
  - (d) the name and call sign of the vessel on which the vessel monitoring device was located as known to that person or obtained from any official register, record or other document; and
  - (e) a declaration that there appeared to be no malfunction in the vessel monitoring device, its transmissions, or other machines used in obtaining the information.
- (5) The requirements under section 114 shall apply to certificates issued under this section.

#### **116. Prohibition on interference with evidence.**

- (1) No person shall destroy, alter, disable, dispose of, conceal or otherwise interfere with evidence related to an offence under this Act.
- (2) Without limiting the generality of subsection (1), no person shall —
  - (a) on board any vessel being pursued, about to be boarded or notified that it shall be boarded by an authorised officer, whether within Bahamian fisheries waters or on the high seas, throw overboard or destroy any fish, fish product, equipment, document, explosive, noxious substance or other thing with intent to avoid its seizure or the detection of any offence under this Act;
  - (b) destroy, damage, render inoperative or otherwise interfere with any premises or facilities licensed under this Act; or
  - (c) where a mobile transceiver unit is required under this Act, whether within Bahamian fisheries waters or on the high seas —
    - (i) destroy, damage, render inoperative or otherwise interfere with any part of such mobile transceiver unit aboard a vessel, or

- (ii) feed or input into a mobile transceiver unit or an applicable vessel monitoring system, information or data which is not officially required or is meaningless.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding four years, or to both.

## **PART XIII - JURISDICTION, PROCEDURE, LIABILITIES, ETC., OFFENCES AND PENALTIES**

### **117. Jurisdiction.**

Any offence against this Act that is committed —

- (a) in Bahamian fisheries waters;
- (b) on the high seas by a citizen of The Bahamas; or
- (c) by use of a Bahamian fishing vessel,

shall be —

- (i) deemed to have been committed within The Bahamas, and
- (ii) prosecuted in the Supreme Court.

### **118. Procedure.**

(1) Where —

- (a) the Director believes on reasonable grounds that there has been any violation of this Act; or
- (b) an authorised officer has arrested a person who has committed an offence (the “alleged offender”) under this Act,

the Director may —

- (i) request the police to lay and file information against the alleged offender,
- (ii) notify, in writing, the Director of Public Prosecutions, and
- (iii) in the case of foreign fishers and foreign fishing vessels, notify the Ministry of Foreign Affairs, the Ministry of Finance and the Department of Immigration.

(2) No prosecution in respect of an offence against this Act may be instituted in any Court without the consent of the Director of Public Prosecutions, except for fixed penalty offences.

### **119. General offences.**

A person who commits an offence under this Act for which no penalty is provided is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both.

### **120. Fixed penalties.**

- (1) Notwithstanding anything to the contrary in this Act or any other Act, an authorised officer who has reason to believe that a person has committed a minor offence as prescribed, may serve the person with a written penalty notice.
- (2) The penalty specified in the penalty notice shall be a fixed penalty as prescribed.
- (3) The penalty notice shall —
  - (a) be in the form as prescribed;
  - (b) contain a description of the offence;
  - (c) specify the fixed penalty for the offence as prescribed;
  - (d) state that if the person wishes to waive an appearance before the Court, the amount specified in the notice shall be paid to the Court within thirty days after the notice is served.
- (4) The authorised officer shall, at the time of service of notice pursuant to subsection (1), notify the person that he shall —
  - (a) appear before the Magistrate on the date specified in the notice; or
  - (b) in accordance with procedures set out in subsection (3), pay the fixed penalty, in lieu of appearance before the Magistrate.
- (5) A person who wishes to pay the fixed penalty referred to under subsection (4)(b) shall —
  - (a) within thirty days of the date of the notice, sign the notice in acknowledgement of guilt and return it, together with the sum cited therein, to the Court;
  - (b) be treated for all purposes in law as a person who has not committed, been charged with, prosecuted for, convicted of or sentenced for the offence in respect of which payment was made.

### **121. Deprivation of monetary benefits.**

If a person is convicted of an offence under this Act, and the Court is satisfied that monetary benefits accrued to the person because of the offence —

- (a) the Court may order the person to pay an additional fine in an amount equal to the Court's finding of the amount of the monetary benefits; and

- (b) the additional fine may exceed the maximum amount of any fine that may otherwise be imposed under this Act,

and in lieu of the payment of such monetary benefits by way of the fine, to a term of imprisonment for one year consecutively to any other term of imprisonment given on the same charge.

#### **122. Service of notice.**

- (1) Except as otherwise provided under this Act, a notice shall be in writing and —
  - (a) served on the person or a person authorised to act on his behalf;
  - (b) served, in the case of a notice to be served for any proceedings for an offence under this Act, on such person as the Court may direct; or
  - (c) sent by post or electronic transmission to the person or a person authorised to act on his behalf, at the person's usual or last known address or place of business.
- (2) Where the operator of a foreign fishing vessel licensed to engage in fishing or fishing related activity under this Act is a defendant in the prosecution of an offence, service of any summons on the defendant may be —
  - (a) delivered personally to the defendant or his agent; or
  - (b) sent to the defendant or his agent by registered letter at the defendant or his agent's last known address or place of business.
- (3) A notice sent by post is deemed to have been served seven working days after the date on which it was posted.
- (4) For the purpose of this section, “**electronic transmission**” means any transmission of information sent electronically, and includes any transmission sent by facsimile, electronic mail or electronic data transfer.

#### **123. Banning order.**

- (1) In addition to any fine or other penalty under this Act, the Court may order a person to be banned from fishing in Bahamian fisheries waters or engaging in any other activity for which a licence is required under this Act for a period up to five years, if that person has —
  - (a) engaged in illegal fishing or unauthorised entry into or use of port, or has assaulted or otherwise caused injury to an authorised officer and authorised person;
  - (b) committed any other offence considered by the Court to be serious in nature; or

- (c) committed a second or subsequent offence under this Act.
- (2) The Director may suspend or cancel a licence or refuse to renew a licence, where the Court does not issue a banning order under subsection (1).
- (3) A person who fails to comply with an order made under subsection (1), commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding four years, or to both.

#### **124. Liability for loss, damage or costs incurred.**

A person who commits an offence under this Act may, upon conviction, and in addition to any fine or other penalty under this Act, be held liable to the Government for —

- (a) any loss or damage caused by the offence, including loss or damage to the ecosystem or loss to biological value or amenity;
- (b) any costs incurred —
  - (i) in detecting, apprehending, investigating or prosecuting the offence,
  - (ii) in detaining or seizing any property, fish, article or object in respect of that offence, and
  - (iii) for repatriation of a master or crew of a vessel seized,

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

#### **125. Liability of company or entity.**

Where a director, shareholder, employee or agent of a company or entity —

- (a) acting on behalf of the company or entity; and
- (b) engaged in fishing or fishing related activities under this Act,

commits an offence, the company or entity is liable if it authorised, or had knowledge of, the act or omission that constituted the offence.

## **PART XIV - MISCELLANEOUS**

#### **126. Regulations.**

- (1) The Minister may, after consultation with the Director, make regulations generally for the proper carrying out of the provisions of this Act.

- (2) Without prejudice to the generality of subsection (1), the Minister may, after consultation with the Director, make regulations —
- (a) respecting managing, regulating or controlling fishing and fishing related activities and the possession and disposal of fish or fish products;
  - (b) prescribing requirements for permits, licenses, registration, authorisation and other documents under this Act;
  - (c) regulating the method by which, or the circumstances under which, fish may be held, stored, conveyed or identified, including the use of any containers, marks or labels;
  - (d) regulating or prohibiting activities which may have an adverse impact on fisheries resources or the marine coastal and aquatic environment;
  - (e) prescribing fisheries management plans;
  - (f) regulating access to, and fishing and fishing related activities in, marine protected areas;
  - (g) regulating, controlling and managing research, surveys, study and education regarding fish, fisheries resources and the marine, coastal and aquatic environments;
  - (h) providing for the marking of vessels licensed under this Act and of nets, and other gear and equipment;
  - (i) providing for the sale or disposal of unclaimed gear found in Bahamian fisheries waters;
  - (j) respecting the Port State Measures Agreement;
  - (k) respecting monitoring, control and surveillance of fishing and fishing related activities, including rules for procedures for the conduct of boarding and inspection of fishing vessels within Bahamian fisheries waters and on the high seas, and the requirements for vessel monitoring systems and observer electronic monitoring systems;
  - (l) prescribing quota management systems;
  - (m) respecting accounts, records, documents or information that any person or class of persons may be required to keep or provide;
  - (n) prescribing fees, fixed penalties, charges, management levies, resource rent, or royalties payable in respect of any matter under this Act;
  - (o) prescribing forms and other documents under this Act;
  - (p) respecting any international agreement, including applicable international conservation and management measures;
  - (q) prescribing any other matter required under this Act.



- (3) Subject to subsection (2), regulations made under this Act may prescribe penalties inclusive of a fine not exceeding one hundred thousand dollars or imprisonment for a term not exceeding three years for contravention of the regulations.

#### **127. Transitional provisions.**

- (1) On the commencement of this Act —
  - (a) any certificate, authorisation, licence or permit issued under the repealed Fisheries Resources (Jurisdiction and Conservation) Act, 1977 (the “former Act”) continues to be valid under the terms and conditions and for the period originally stated in it, and may be suspended, cancelled or renewed in accordance with this Act;
  - (b) any subsidiary legislation made under the former Act and in force before the commencement of this Act, so far as it is not inconsistent with this Act continues in force as if made under this Act, until similar subsidiary legislation is made under this Act, or revoked;
  - (c) any legal proceedings commenced by or against the “Department of Agriculture and Fisheries” (the “former Department”) in relation to fisheries matters, before the commencement of this Act may be continued on or after that date by or against the Department of Marine Resources (“the Department”), as if the Department was a party to the proceedings;
  - (d) any document of the former Department, so far as it relates to any period on or after the commencement of this Act, and if not inconsistent with the context or subject matter, shall be taken to be a document of the Department.
- (2) Any reference to the former Department in any Act or subsidiary legislation before the commencement of this Act shall be construed as a reference to the Department.
- (3) Any agreement or instrument executed before the commencement of this Act by the former Department shall continue to have effect.
- (4) Any reference to fisheries officers in any Act or subsidiary legislation before the commencement of this Act shall be construed as a reference to a fisheries officer under this Act.

#### **128. Consequential amendments.**

The enactments specified in the Second Schedule are amended in the manner set out in that Schedule.

**129. Act binds the Crown.**

This Act binds the Crown.

**130. Repeals.**

- (1) The Fisheries Resources (Jurisdiction and Conservation) Act, 1977 (*Ch. 244*) is repealed.
- (2) The Agriculture and Fisheries Act, 1963 (*Ch. 242*) and any Subsidiary Legislation made thereunder are repealed.
- (3) The Seal Fisheries (Crown Colonies and Protectorates) Order in Council, 1913 and the Whaling Industry (Regulation) Act (Newfoundland, Colonies, Protectorates and Mandated Territories) Order, 1936 are repealed.

## FIRST SCHEDULE

(section 14)

### CONSTITUTION AND PROCEDURE OF THE COUNCIL

#### 1. Composition.

- (1) The Fisheries Advisory Council shall consists of twenty-one persons appointed by the Minister as follows —
  - (a) the Director, *ex officio*;
  - (b) the Chairperson of the Fisheries Stakeholder Forum and three other representatives of the fishing industry, including a representative from the processing sector, nominated by the Director;
  - (c) two representatives of non-governmental organizations with an interest in fisheries, nominated by relevant non-governmental organizations;
  - (d) a representative of the marine scientific research sector with expertise in fisheries science or conservation, nominated by institutions in the marine scientific research sector;
  - (e) a biologist with knowledge of fisheries and conservation;
  - (f) a representative of the Ministry of Agriculture and Marine Resources;
  - (g) a representative of the Office of the Attorney-General;
  - (h) a representative of the Ministry responsible for the Environment;
  - (i) a representative of the Ministry responsible for Foreign Affairs;
  - (j) a representative of the Ministry of Finance;
  - (k) a representative of the Ministry responsible for Tourism;
  - (l) a representative of the Ministry responsible for Transport;
  - (m) a representative of the Ministry responsible for Immigration;
  - (n) Commodore of the Royal Bahamas Defence Force or a representative;
  - (o) Commissioner of the Royal Bahamas Police Force or a representative;
  - (p) Executive Director of The Bahamas National Trust or a representative; and
  - (q) Comptroller of Customs or a representative.

- (2) The Minister may appoint a Chairperson and a Deputy Chairperson from among the members of the Council.
- 2. Tenure of office.**
- (1) A member of the Council other than the Director *ex officio* shall hold office for a term not exceeding three years and shall be eligible for reappointment.
- (2) Notwithstanding subparagraph (1), no member of the Council shall hold office for more than six years.
- 3. Temporary membership.**
- (1) Where membership of the Council is by virtue of an office and the holder of the office is absent or unable to act, then, the person acting in the office shall be a member of the Council for as long as he so acts.
- (2) If any member by reason of illness or other incapacity or absence from The Bahamas, is unable at any time to perform the duties of his position, or if the position of a member is at any time vacant, the Minister shall appoint a person to act in place of that member for the remainder of the term, however, such appointment shall be made in the same manner and from the same category of persons, if any, as the member replaced.
- 4. Resignation.**
- (1) A member of the Council, other than the Chairperson, may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the Chairperson, and from the date of receipt by the Minister of such instrument such member shall cease to be a member.
- (2) The Chairperson may at any time resign his office by instrument in writing addressed to the Minister, and such resignation shall take effect from the date of receipt by the Minister of such instrument.
- 5. Revocation.**
- (1) The Minister may, by instrument in writing, revoke the appointment of a member of the Council upon being satisfied that the member —
- is an undischarged bankrupt;
  - is incapacitated by physical or mental illness;
  - has been absent, without leave of the Council, from three or more consecutive meetings of the Council;
  - has been convicted of an indictable offence; or
  - is otherwise unable or unfit to discharge the functions of a member of the Council.

- (2) The Minister shall, prior to the revocation of the appointment of a member appointed under paragraph 1, consult the relevant ministry, organization or sector.

**6. Publication.**

The names of all members of the Council as first constituted and every change in the membership shall be published in the *Gazette*.

**7. Meetings.**

- (1) The Council shall meet quarterly or at such times as may be necessary for the transaction of its business, and such meetings shall be held at such places and times as the Council may determine.
- (2) The Chairperson may at any time call a special meeting of the Council within seven days of the receipt of a written request for that purpose addressed to the Chairperson by any two members of the Council.
- (3) The Chairperson shall preside at all meetings of the Council, and the Deputy Chairperson shall preside in the Chairperson's absence.
- (4) If the Chairperson and the Deputy Chairperson are absent from a meeting, the members present and constituting a quorum shall elect one of their number to preside at that meeting.
- (5) The quorum of the Council shall consist of eleven of its members.
- (6) The decision of the Council shall be by a majority of votes, and in addition to an original vote, the Chairperson or other person presiding at a meeting shall have a casting vote in any case in which the voting is equal.
- (7) Minutes in proper form of each meeting of the Council shall be kept by the secretary and shall be confirmed by the Council at the next meeting.
- (8) The validity of the proceedings of the Council shall not be affected by any vacancy.
- (9) Subject to the provisions of this Schedule the Council may regulate its own proceedings.

**8. Committees.**

- (1) The Council may —
  - (a) establish such committees and subcommittees as it considers appropriate in the discharge of its functions; and
  - (b) delegate to the committees and subcommittees the power and authority to carry out on its behalf such duties as the Council may determine.
- (2) The terms of reference, membership and procedure for the committees and subcommittees shall be determined by the Council.

**9. Remuneration.**

There shall be paid to the Chairperson and other members of the Council such remuneration whether by way of honorarium, fees or allowances as the Minister may determine.

**10. Disclosure of interest.**

- (1) A member of the Council or a committee established by the Council who has a direct or indirect pecuniary interest in a matter under consideration by the Council or committee shall disclose the nature of that member's interest at the next meeting of the Council or committee and that member shall not participate in the consideration of, or vote on, any question relating to that matter.
- (2) For the purposes of this paragraph, a person has an interest in a matter if the person —
  - (a) may derive a financial or other benefit from the matter;
  - (b) is the spouse, child or parent of a person who may derive a financial benefit from the matter;
  - (c) may have a financial interest in a person to whom the matter relates;
  - (d) may have a fiduciary relationship with a person to whom the matter relates; or
  - (e) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates.

**11. Power of Council to invite persons to attend meetings.**

The Council may invite any person who, in the opinion of the Council, has expert knowledge in the areas for discussions to specific meetings of the Council as observers, but that person is not qualified to vote.

**12. Protection of members.**

No action, prosecution or other proceedings shall be brought or instituted personally against the Chairperson or any member of the Council or committee in respect of any act done in good faith in pursuance or execution or intended execution of this Act.

## SECOND SCHEDULE

### (section 16)

#### CONSTITUTION AND PROCEDURE OF THE FORUM

##### 1. **Composition.**

- (1) The National Fisheries Stakeholder Forum shall consist of fifteen members, of whom —
  - (a) six shall be representatives from the Family Islands;
  - (b) one shall be a representative from Grand Bahama;
  - (c) three shall be representatives from New Providence;
  - (d) two shall be nominated from recognised fishing associations or cooperatives in The Bahamas;
  - (e) two shall be nominated by non-governmental organizations with an interest in fisheries;
  - (f) one shall be a biologist with knowledge of fisheries and conservation.
- (2) The members referred to under subparagraph (1) may be appointed from the fishing sector or sub-sector, including —
  - (a) commercial fishing;
  - (b) recreational fishing;
  - (c) sportsfishing;
  - (d) subsistence fishing;
  - (e) aquaculture; and
  - (f) fishing related services, such as fish processors or fish buyers.
- (3) The chairperson, deputy chairperson and secretary shall be elected by the members from the membership of the Forum.

##### 2. **Tenure.**

A member of the Forum shall hold office for a term not exceeding two years and shall be eligible for reappointment, but shall not hold office for more than four years.

##### 3. **Rules of procedure.**

The Forum shall adopt its rules of procedure by a majority of two-thirds of the members present and voting.

##### 4. **Removal of member.**

The Director may, after consultation with the Forum, remove any member, if that member —

- (a) is incapable of performing the duties of a member, whether arising from infirmity of body or mind;
- (b) has engaged in misconduct; or
- (c) has been convicted of an indictable offence.

**5. Resignation.**

A member of the Forum may at any time resign his office by letter addressed to the Director, and from the date of receipt by the Director of the letter, that member shall cease to be a member.

**6. Disclosure of interest.**

A member of the Forum who has a direct or indirect pecuniary interest in a matter under consideration by the Forum shall disclose the nature of that member's interest at the next meeting of the Forum and that member shall not participate in the consideration of, or vote on, any question relating to that matter.



### THIRD SCHEDULE

(section 128)

#### CONSEQUENTIAL AMENDMENTS

Acts	Amendments
Defence Act (Ch. 211)	In section 5 – insert a new subsection (3) as follows: “(3) A member of the Defence Force, shall, while on duty, have, exercise and enjoy, all the powers and authorities, of an authorised officer under the Fisheries Act. and shall be deemed to be a fisheries officer.”.
Environmental Planning and Protection Act, 2019 (No. 40 of 2019)	(a) In section 24, insert the words “excluding the marine areas” immediately after the words “environmentally sensitive area”; (b) In section 41(3), insert after the words “the Director shall”, the words “, after consultation with the Director of Marine Resources.”.
Wildlife Conservation and Trade Act (Ch. 250A)	(a) In section 2: (i) in the definition of “Scientific Authority”, delete the words “the Department of Fisheries” and substitute the words “Department of Marine Resources”, (ii) in the definition of “officer”, delete the words “an Agricultural and” after the words “customs officer,”; (b) In section 4A, insert after the words “the Minister may”, the words “after consultation with the Minister responsible for Marine Resources”.

# IMMIGRATION (AMENDMENT) ACT, 2020

## Arrangement of Sections

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No. 41 of 2020

# IMMIGRATION (AMENDMENT) ACT, 2020

## AN ACT TO AMEND THE IMMIGRATION ACT

[Date of Assent - 31<sup>st</sup> December, 2020]

**Enacted by the Parliament of The Bahamas**

### **1. Short title and commencement.**

- (1) This Act, which amends the Immigration Act (*Ch. 191*), may be cited as the Immigration (Amendment) Act, 2020.
- (2) This Act shall come into force on such date as the Minister may appoint by Notice, published in the *Gazette*.

### **2. Amends section 2 of the principal Act.**

Section 2 of the principal Act is amended, in the definition of the expression and term “engage in gainful occupation”, by inserting, immediately after the words “subject to any exceptions which may be prescribed”, the words “or to the Fisheries Act or any other law to the contrary”.

### **3. Inserts new section 32A into the principal Act.**

The principal Act is amended by inserting, immediately after section 32, the following as a new section 32A—

**“ 32A. Supplementary to the provisions of this Act.**

The right to engage in gainful occupation or gainful employment granted by any permit issued under this Act—

- (a) does not include a right to engage in commercial fishing; and
- (b) shall be, in every case, subject to the Fisheries Act or any other law to the contrary.”.