Examined and certified by:

Clerk of the Parliament

In the name and on behalf of His Majesty King Charles III, I hereby assent to this Act this 25th day of June, 2026

King's Representative

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An Act to—

(a) **provide for the protection, conservation, and management of the environment in a sustainable manner; and**

(b) **replace the Environment Act 2003.**

The Parliament of the Cook Islands enacts as follows—

Part 1
Preliminary matters

1. Title

This Act is the Environment Act 2026.

2. Commencement

This Act comes into force on a date or dates to be set by Order in Executive Council, and different orders may bring different provisions into force on different dates.

3. Interpretation

(1) In this Act, unless the context otherwise requires,—

air space means the air space above any island of the Cook Islands or Cook Islands waters

alien species means a species or lower taxon—

(a) introduced or spread outside its natural past or present distribution, and includes any part of gametes, seeds, eggs, or

propagules of the species that might survive and subsequently reproduce; and

(b) is designated as an alien species under section 36

animal means any species, alive or dead, of the animal kingdom other than human beings, and includes—

(a) any part of an animal's life cycle, such as eggs or parts of eggs:

(b) any part of an animal, such as skin, feathers, horn, shell, or other part of an animal:

(c) animal products

Aronga Mana means those traditional leaders vested with a title in accordance with native custom and usage of the islands of the Cook Islands

biodiversity means the variability among living organisms from all sources, including terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are part, and this includes diversity within species, between species, and of ecosystems

biological resources means genetic resources, including marine genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity, for example, through pharmaceutical, agricultural, cosmetic, or other applications

bioprospecting means the systematic search for chemical compounds or biochemical or genetic information from biological resources for the purpose of developing commercially valuable products used or valued by humanity, for example, through pharmaceutical, agricultural, cosmetic, or other applications

bioprospecting permit means a permit granted in writing under Part 15

climate change means a change of climate, attributed directly or indirectly to human activity, that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods and including associated climate hazards and impacts

climate change impacts means impacts on the environment caused by climate change and includes any of the following:

(a) increased frequency and intensity of rainfall and tropical storms:

(b) increased risk of coastal erosion and flooding as a result of rising and extreme sea levels and changing wind patterns:

(c) loss of water resources from hotter, drier weather:

(d) contamination of groundwater due to saltwater intrusion:

(e) reduced productivity of food crops and associated impacts on food security due to climate variability, soil degradation, or increased salinity:

(f) loss of biodiversity caused by habitat changes, climate variability, extreme events, rising sea levels, ocean acidification, and ocean warming

climate variability means fluctuations in climate that take place over a short term (whether months, seasons, or years) and indicate a departure from long-term averages or trends

continental shelf means the continental shelf of the Cook Islands as defined by section 12 of the Maritime Zones Act 2018

Cook Islands waters means any or all of the following:

(a) internal waters:

(b) the territorial sea:

(c) the exclusive economic zone:

(d) the continental shelf:

(e) the airspace above all of those things

coral means any species or subspecies of coral, including hard and soft coral, and any rock or sample that consists of or includes coral

Court means the High Court of the Cook Islands

customary use means the indigenous practices where traditional knowledge and cultural methods are applied to manage local environmental resources

Director means the Director of the Service

discharge includes, but is not limited to, throw, deposit, spill, leak, pump, pour, emit, empty, or dump

dwelling house means a building that is used or intended to be used principally as a residence

ecosystem services means the essential, life-sustaining benefits that humans receive from properly functioning natural ecosystems, including provisioning resources such as clean food and water, regulating processes such as climate and flood control, and cultural resources that are part of the landscape and seascape

environment (and **environmental** has a corresponding meaning)—

(a) means the ecosystems and the quality of those ecosystems, as well as the physical, biological, cultural, spiritual, social, and historic processes and resources in those ecosystems; and

(b) includes—

  (i) land, water, air, animals, plants, biodiversity, and other features of the human habitat; and

  (ii) the natural, physical, cultural, demographic, and social qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes

Environment Officer means an Island Environment Officer or a National Environment Officer

Environment Protection Fund means the fund that may be established under section 101

environmental approval means an approval granted in writing by the Director relating to a Tier 1 activity under Part 12

environmental consent means a consent granted in writing by a permitting authority relating to a Tier 2 activity under Part 12

environmental impact means any change to the environment planned or unplanned, that—

(a) arises from human actions or naturally occurring events including climate change; and

(b) is measured by the identification of matters or effects which show how the change interacts with the environment

environmental impact assessment means an assessment that must be undertaken for a proposed Tier 3 activity and is documented in an environmental impact statement under section 73

environmental impact statement means a report that is prepared under section 73 based on the results of an environmental impact assessment

environmental information means information held by a public organisation on any of the following:

(a) the state of the environment, or otherwise relating to species, habitats, and biodiversity:

(b) factors, such as substances, energy, noise, radiation, waste, emissions, discharges, and other releases into the environment, affecting or likely to affect elements of the environment:

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, including management plans, and activities, affecting or likely to affect elements of the environment, as well as measures or activities designed to protect those elements

environmental management and monitoring plan means the plan required under sections 72 and 73, which takes account of a prior environmental impact assessment and environmental impact statement, and documents, methods, and procedures to be implemented in order to monitor, manage, and mitigate impacts, effects, and risks of a project on the environment

environmental permit means a permit granted in writing by a permitting authority relating to a Tier 3 activity under Part 12

environmental protection notice means a notice that may be served by an environment officer under Part 18

exclusive economic zone means the exclusive economic zone of the Cook Islands as defined by section 11 of the Maritime Zones Act 2018

financial year means a period of 12 months ending on 30 June each year

foreshore means,—

(a) in relation to Rarotonga,—

(i) all the area between the mean high-water mark and a line connecting those points landward and measured at right angles to a distance 50 metres from the mean high-water mark or to the edge of the vegetation, whichever is the greater distance; and

(ii) every estuary, stream, or river together with the bed of any stream or river and includes that area extending landward and measured at right angles from the mean high-water mark in that estuary to a distance 10 metres landward from the edge of the vegetation:

(b) in relation to any island other than Rarotonga,—

(i) all the area between the mean high-water mark and a line connecting those points landward and measured at right angles to a distance 30 metres from the mean high-water mark or to the edge of the vegetation, whichever is the greater distance; or

(ii) any other area specified to be foreshore by the Island Environment Authority for the island concerned and confirmed for this purpose by Order in Executive Council

Gazette means the Cook Islands Gazette published by the Parliament of the Cook Islands

genetic resource means genetic material that is any material of plant, animal, microbial, or other origin, containing functional units of heredity and that is of actual or potential value

hazardous substance means any substance that is likely to be a health or environmental hazard if released into the environment and includes substances—

(a) within the definition of any of the following:

(i) hazardous wastes for the purposes of—

(A) the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; or

(B) the Waigani Convention to Ban the Importation Into Island Countries of Hazardous and Radioactive Wastes Within the South Pacific Region:

(ii) severely restricted chemicals or severely hazardous pesticide formulations for the purposes of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade:

(b) listed as persistent organic pollutants in Annexes A and B to the Stockholm Convention on Persistent Organic Pollutants:

(c) any other substance reasonably included on the register maintained by the Service under section 40

indigenous biological resources includes any biological resources that originate naturally in the Cook Islands, or any other organism altered with any genetic or chemical compound found in such a species, or any other types of resources that may be prescribed by regulations

inland waters includes the waters, bed, and banks of any stream, river, waterway, pond, wetlands, or lake occurring on land (and for the purposes of this definition "bank" includes all of the area of land extending away from the water to a distance of 5 metres beyond the bank) and groundwater

instant penalty notice means the notice established under section 115

internal waters means the internal waters of the Cook Islands as defined by section 7 of the Maritime Zones Act 2018, and includes the seabed and subsoil

introduced in relation to alien species, invasive alien species, or invasive species means brought into the Cook Islands contrary to a designation under section 36 (*also see* the definition of spread)

invasive alien species means an alien species that—

(a) the introduction or spread of which would threaten biological diversity; and

(b) is designated as an invasive species under section 36

invasive species means any species, including an alien species that—

(a) is not known to exist on an island in the Cook Islands; and

(b) in terms of the biological diversity of that island,—

(i) is harmful; or

(ii) is potentially harmful; or

(iii) would be potentially harmful if introduced or spread to it; and

(c) is designated as an invasive species under section 36

island means any of the islands of the Cook Islands comprising its land, its inland waters, and the airspace above both of those

Island Environment Authority means an Island Environment Authority established under Part 4

Island Environment Officer means an Island Environment Officer appointed under section 104(1), and includes a person deemed to be an Island Environment Officer under section 104(8) or under the Seabed Minerals Act 2019

Island Government means an Island Government constituted under the Island Government Act 2012-2013

management plan means a management plan prepared by the Service under Part 9

marine genetic resources means any material of marine plant, animal, microbial, or other origin containing functional units of heredity of actual or potential value

marine protected area means an area designated as a protected area under section 51 by an Island Environment Authority or the Council

mean high-water mark means the line of medium-high tide between the spring and neap tides

Minister means the Minister for the Environment or another Minister of the Crown charged by the Prime Minister with responsibility for the administration of this Act

National Environment Council or **Council** means a council convened by the Director from time to time under section 28

National Environment Officer means a National Environment Officer appointed under section 104(2), and includes any person deemed to be

a National Environment Officer under section 104(8) or under the Seabed Minerals Act 2019

National Environment Policy means the National Environment Policy issued by the Service

nature reserve is a type of protected area, and means a natural or near-natural land area set aside to protect and conserve biodiversity and, where applicable, heritage, cultural, and spiritual values where consistent with this primary objective, a nature reserve may provide for ecologically sustainable use of the natural resources of the reserve

nuisance is something that is offensive, unsanitary, or likely to be a health or environmental hazard, for example, arising from—

(a) accumulations or deposits:

(b) keeping of animals:

(c) the presence of carcases or parts of carcases:

(d) cesspools, pools, ditches, or similar hollows in the ground:

(e) the blockage or obstruction of eaves, gutters, down-pipes, vent-pipes, drains, watercourses, or other things through which water or air normally flows:

(f) the presence of rats, flies, other vermin, or things that may be breeding-places or resting-places for those vermin:

(g) smells or leakages from a drain or toilet

occupier, in relation to any premises,—

(a) means any lessee, licensee, or other occupant of the premises:

(b) includes the owner of the premises or an agent of the owner:

(c) includes any person in charge of the premises

permitting authority means the permitting authority or authorities described in section 10

person includes any natural person, legal entity, corporate person, or public authority

plant means any member of the plant or fungus kingdom and includes, seeds, culture, germplasm, and any part of, or item made from, a plant or fungi

pollution (and **pollute** and **polluting** have corresponding meanings) means the introduction, either directly or indirectly, of substances or energy into the environment that results in 1 or more of the following:

(a) deleterious effects that are harmful to living resources or marine life:

(b) environmental hazards to human health:

(c) a hindrance to marine activities including fishing and other legitimate uses of the sea:

(d) the impairment of quality for use of water, air or soil:

(e) the reduction of environmental amenities associated with public and private lands or properties and waters:

(f) the creation of a nuisance:

(g) the depletion of the ozone layer:

(h) a contribution to climate change (beyond de minimis personal contributions) or to increasing the Cook Islands' vulnerability to climate change impacts

precautionary principle means the exercise of caution in relation to any activities by any person or organisation that may cause harm based on both scientific and traditional knowledge

premises includes the following:

(a) any vessel, aircraft, vehicle, or other means of transportation:

(b) any building or other structure:

(c) any land:

(d) any body of water

protected area means an area designated as a protected area under section 51 by an Island Environment Authority or the Council (and *see* definition of marine protected area)

protected species means a native species that is 1 or more of the following that is designated as a protected species under section 33:

(a) likely to be extinct:

(b) extinct in the wild species:

(c) a critically endangered species:

(d) an endangered species:

(e) a vulnerable species:

(f) a threatened species:

(g) a near threatened species

public organisation means any ministry, department, office, agency, or instrument of any kind of the legislative, executive, or judicial branches of the Government, including any office, corporation, or other body declared by the Minister to be a public organisation for the purposes of this Act

recognised environmental organisation means an organisation named on the list maintained by the Service in accordance with section 87

rā'ui means the traditional custom of imposing a restriction on certain activities in a certain area for a certain time and purpose as determined by a traditional leader or leaders and which may include rā'ui mutukore, also known as rā'ui motukore, which is the traditional custom of imposing permanent restrictions on the use of the resources of any land, reef, or lagoon

regulations means regulations made under this Act

seabed mineral activities has the meaning given in section 6(1) of the Seabed Minerals Act 2019

Service means the National Environment Service or Tu'anga Taporoporo and—

(a) means the body corporate continued under section 11; and

(b) includes any of its divisions or offices

shared resource management agreement means an agreement referred to in section 53

significant environmental impact means an impact that is important, notable, or of consequence for natural, biophysical, social, cultural, or economic aspects of the environment and that is likely to have an adverse impact, and when determining if a project is likely to have an adverse impact, the following factors must be considered:

(a) the sensitivity, value, and quality of the environment that may be impacted (including adjoining areas that are outside the development site); and

(b) the probability, intensity, duration, frequency, reversibility, magnitude, and extent of the environmental impacts, including geographic location

sites of local significance means places that are recognised for their cultural, spiritual, historical, ecological, geological, or social importance to a specific community or island, including, but not limited to, historic places, historic areas, archaeological sites, and traditional sites under the Cultural Historic Places Act 1994-95, even if the sites do not meet national criteria for heritage or conservation

species means a group of organisms capable of inter-breeding freely with each other, but (usually) not with a member of another species, and includes any recognisable sub-species or other taxon below a subspecies, any recognisable variant of a subspecies or taxon, and any tissues or cultures of a species or subspecies

spread, in relation to alien species, invasive alien species, or invasive species, means spread into a specified location within the Cook Islands contrary to a designation under section 36 (*also see* the definition of introduced)

stakeholders means persons or organisations identified, which may be by self-identification, as specifically interested in, holding knowledge relevant to, or potentially affected by an issue and includes recognised environmental organisations

strategic environmental assessment or **SEA** means an evaluation conducted under Part 11

strategic environmental monitoring plan means a strategic environmental monitoring plan prepared under Part 11

technical expert means an expert on the register established under section 20

territorial sea means the territorial sea of the Cook Islands as defined by section 8 of the Maritime Zones Act 2018

threatened species means a native species that is 1 or more of the following:

(a) likely to be extinct:

(b) extinct in the wild species:

(c) a critically endangered species:

(d) an endangered species:

(e) a vulnerable species

traditional knowledge has the meaning given by section 4(1) of the Traditional Knowledge Act 2013

vessel means any type of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water

wetlands—

(a) means areas of marsh, swamp, or inland water, whether—

(i) natural or artificial; or

(ii) permanent, seasonally flooded, or temporary; or

(iii) with water that is static or flowing, or fresh, brackish, or salty; and

(b) includes water storage reservoirs, taro swamps, and fish ponds

working day means a day that is not a Saturday, Sunday, or public holiday as defined in the Public Holidays Act 1999.

(2) In this Act, a reference to any other Act includes any future Act that replaces it to substantially the same effect.

(3) This Act must be interpreted, and all persons performing or exercising functions or powers under this Act must do so, in a manner consistent with all of the following:

(a) the objectives contained in section 6:

(b) the principles contained in section 7 and in the National Environment Policy:

(c) the principles and purposes of the Marae Moana Act 2017:

(d) the Cook Islands' international and regional obligations relating to—

(i) environmental conservation, protection, and management; and

(ii) adaptation to climate change:

(e) for actions by the Service, also as provided in section 18(4).

(4) The following are each accountable for compliance with subsection (3) and the provisions referred to in it and, for the Service, also section 18(4):

(a) in the case of the Minister, to the Prime Minister only:

(b) in the case of the Service, to the Minister only:

(c) in the case of the Director, to the Minister only:

(d) in the case of an Island Environment Authority, to the Director only:

(e) in the case of the Council, to the Director only:

(f) in the case of individual employees (including if engaged on secondment or temporary assignment) or contractors working for any of the above, to the employer or the person or body with whom they have a contract for services only.

4. Application of Act

This Act applies to the whole of the Cook Islands including all islands and Cook Islands waters.

5. Act binds the Crown

This Act binds the Crown.

Part 2
Objectives, principles, and persons and bodies with authority under Act

6. Objectives

The objectives of this Act are to protect, conserve, and manage the natural environment of the Cook Islands, including by—

(a) protecting, conserving, restoring, enhancing, or managing the environment, including its biodiversity and habitats, ecosystems, and ecosystem services that support biodiversity:

(b) preventing, minimising, or mitigating the environmental impacts of pollution, waste, hazardous substances, and human activities, whether on land or at sea, and including transboundary harm:

(c) safeguarding the quality of the air, soil, and water resources, and, where relevant, their resilience against external impacts:

(d) minimising the risks to the environment from the introduction of potentially harmful materials or organisms:

(e) protecting native species and preventing the extinction (and promoting the recovery) of protected species:

(f) promoting environmental sustainability, which includes mitigating and adapting to climate change impacts and developing nature-based solutions to disaster risk management and other evolving issues:

(g) integrating traditional knowledge with customary uses and practices of protecting and conserving the environment, culture, and biodiversity:

(h) meeting commitments made under any regional or international agreement, convention, treaty, protocol, or agenda relating to the environment, to which the Cook Islands is, or intends to, become party:

(i) promoting strong, effective, and transparent environmental governance:

(j) capturing the benefits of bioprospecting for the Cook Islands.

7. Principles

(1) The principles of this Act are any principles adopted in the National Environment Policy and the following principles:

(a) respect for traditional knowledge and practices:

(b) early prevention of pollution and environmental harm:

(c) the polluter pays principle:

(d) consideration of cumulative impacts:

(e) prevention of transboundary environmental harm:

(f) science-based decision-making:

(g) the precautionary principle:

(h) sustainability and intergenerational equity:

(i) adaptability to meet emerging and evolving challenges:

(j) the impacts of climate change:

(k) good governance, accountability, and transparency:

(l) collective stewardship across all persons and agencies of the Cook Islands:

(m) empowerment of the people of the Cook Islands through education:

(n) an ecosystem-based management approach.

(2) *Also see* the principle in section 18(4) relating to the Service's exercise of powers.

8. Authority of the Minister

(1) The Minister is responsible for giving effect to the objectives of this Act.

(2) The Minister's functions under this Act are the following:

(a) subject to subsection (3), determine environmental policy and give general policy guidance and direction on environmental matters; and

(b) subject to subsection (3), approve policies, strategies, and standards; and

(c) perform and exercise, or, where appropriate, delegate (*see* subsection (4)), functions and powers given to the Minister (except this power of delegation); and

(d) lay before Parliament a copy of the Services annual report provided under section 12; and

(e) table the state of the environment report prepared under Part 6 as an agenda item before Parliament; and

(f) recommend regulations, in accordance with section 124; and

(g) other functions given under this Act.

(3) Policies with national implications must be approved by the Cabinet, including the National Environment Policy.

(4) The Minister may, by notice in writing, delegate to the Director or any officer or employee of the Service, any of the Minister's functions under this Act, except this power of delegation.

(5) A power or function that is delegated must be exercised or performed by the delegate in accordance with the instrument of delegation.

(6) A delegation under this section is revocable at will, in writing, and does not prevent the exercise or performance by the Minister of the power or function.

(7) In performing functions or exercising powers under this Act, the Cabinet, the Minister, and any delegate must comply with section 3(3) and take into account to the extent that the following are relevant:

(a) the views of the Service, Island Environment Authorities, and the Council; and

(b) the results of any stakeholder or public consultation under this Act.

9. Service is responsible agency

(1) Subject to any specific function or power allocated to another public organisation or a permitting authority by this Act, the Service is the agency primarily responsible for implementing this Act.

(2) Nothing in this Act applies to any of the following:

(a) the Ministry for Marine Resource's statutory responsibility for the conservation and management of marine resources in Cook Islands waters:

(b) the Ministry for Transport's statutory responsibility to prevent pollution of Cook Islands waters:

(c) the Ministry of Agriculture's jurisdiction relating to forestry, crops, livestock, and farmed animals under the Agriculture Act 2021:

(d) functions given to the Ministries of Health and Infrastructure Cook Islands under the Solid and Hazardous Waste Act 2025:

(e) the Seabed Mineral Authority's statutory responsibility for issuing and managing permits, licences, and titles related to seabed mineral activities under the Seabed Minerals Act 2019.

(3) However, the Service must consult those other public organisations before performing functions or exercising powers that may impact on the responsibilities of those organisations.

10. Permitting authority

(1) Subject to subsection (2), in this Act, the permitting authority is—

(a) each Island Environment Authority, for its area described in section 25; and

(b) the Council, for the functions listed in section 29.

(2) If an activity is proposed to or will take place in an area that overlaps the areas of more than 1 Island Environment Authority, or of the Council and 1 or more Island Environment Authorities, the permitting authority is the Council. However, when considering any action in relation to that activity, the Council must consult with the relevant Island Environment Authority or Authorities.

(3) The operational procedures of permitting authorities may be prescribed by regulations.

Part 3
National Environment Service or Tu'anga Taporoporo

11. Continuation of National Environment Service

(1) There continues to be a statutory body called the National Environment Service or Tu'anga Taporoporo.

(2) The Service—

(a) is a statutory agency of the Government; and

(b) is a body corporate with perpetual succession and a common seal; and

(c) is capable of holding real and personal property and of suing and being sued; and

(d) is capable of doing any other acts that corporations may lawfully do.

(3) The head office of the Service must be based in Rarotonga with representation of the Service to be established on each other island that has an Island Government and may be established on any other island as considered appropriate by the Director.

(4) When performing its functions and exercising its powers, the Service must comply with section 3(3).

12. Service to report annually

(1) The Service must, within 3 months of the end of each financial year,—

(a) make a report to the Minister on—

(i) the work of the Service during the financial year; and

(ii) any other matters that the Service considers necessary or desirable, or are prescribed as an annual reporting requirements by regulations; and

(b) send the chairperson of each Island Environment Authority a copy of the report.

(2) The Service must, as soon as practicable after making a report under subsection (1), make a copy of the report available to the public in accordance with section 85.

(3) The Minister must lay a copy of the report before Parliament as an agenda item, during Parliament's next sitting.

13. Director of Service

(1) A Director must be appointed as head of the Service in accordance with the Public Service Act 2009 that governs the appointment and employment of heads of departments.

(2) The Director is responsible to the Minister for the efficient and proper administration and management of the Service.

(3) The Director must ensure that each Island Environment Authority is given an opportunity to participate in preparing the work programme and annual report of the Service (*see* section 26(1)(f)).

(4) The Director must comply with section 3(3) when performing functions and exercising powers under this Act.

14. Authentication of documents

(1) The seal of the Service must be kept in the safe custody of the Director and may not be used except with the authority of the Director.

(2) Every document to which the seal of the Service is applied must be witnessed by the Director.

(3) Any contract entered into by the Service must be in writing and executed under the seal of the Service.

(4) In this section, a reference to the seal of the Service includes authentication by an electronic means approved by the Director.

15. Power of appointment

(1) The Director is an employer for the purposes of the Public Service Act 2009 and, subject to this Act and the Public Service Act 2009, may appoint (on such terms and conditions as the Director may determine in writing) other officers and employees of the Service for the purposes of administering and enforcing this Act.

(2) The Director may contract external experts outside of the Service to perform services necessary to assist the Service in the effective performance and exercise of its functions and powers under this Act.

(3) The Director may engage (by secondment or other temporary arrangement) officers and employees of other Cook Islands public organisations where necessary for the effective performance and exercise of the functions and powers of the Service under this Act.

16. Delegation of powers

(1) The Director may, by notice in writing, delegate to any officer or employee of the Service any of the Director's powers and functions under this Act, except this power of delegation.

(2) A power or function that is delegated must be exercised or performed by the delegate in accordance with the instrument of delegation.

(3) A delegation under this section is revocable at will, in writing, and does not prevent the exercise or performance by the Director of the power or function.

17. Functions of Service

(1) The functions of the Service include to—

(a) carry out all activities, services, and other tasks that are required to ensure the implementation of this Act and the fulfilment of the objectives set out in section 6:

(b) monitor and manage activities that may have an environmental impact on any part of the Cook Islands, including Cook Islands waters:

(c) manage, monitor, regulate, and set measures for matters relating to land mining, sand mining, seabed minerals activities, or tree harvesting or cutting:

(d) set environmental targets for the Cook Islands and monitor and report against those targets:

(e) administer and enforce the Marae Moana Act 2017 and its regulations:

(f) if approved by the Cabinet, oversee the governance and management of the Climate Change Office:

(g) enforce this Act and any regulations:

(h) receive and respond to relevant enquiries and complaints from members of the public:

(i) provide secretarial and administrative services and technical advice to the Council and each Island Environment Authority:

(j) investigate, research, and monitor the state of the environment and periodically prepare a state of the environment report for the Cook Islands:

(k) develop and implement measures, guidelines, standards, or plans designed to maintain, improve, or restore the state of the environment of the Cook Islands:

(l) recommend regulations to be made and advise the Government in relation to the making of regulations under this Act:

(m) regulate activities in relation to bioprospecting, including benefit sharing:

(n) co-ordinate with other public organisations on matters of joint interest affecting the environment, including in matters relating to agriculture, climate change, fisheries and marine resources, maritime transport, seabed mineral activities, tourism, waste management, water resources, biosecurity, and disaster risk management:

(o) make recommendations and provide advice to the Government in relation to any regional or international agreement, convention, treaty, protocol, or agenda relating to the environment, to which the Cook Islands is, or intends to become, party:

(p) plan, develop, negotiate, co-ordinate, represent government, and implement any projects provided under any regional or international agreements, conventions, treaties, protocols, or agendas relating to the environment, to which the Cook Islands is party:

(q) provide training in the skills associated with performing any of the Service's functions:

(r) do anything incidental to the performance of any of the above functions.

(2) In performing its functions, the Service must—

(a) comply with Government policies conveyed to it in writing by the Minister; and

(b) take into account any relevant submissions received from stakeholder consultation.

18. General powers of Service

(1) The Service has the power to do all things that are necessary to be done for or in connection with the performance of its functions, including power to,—

(a) enter into contracts:

(b) erect buildings and structures and carry out works in the public interest:

(c) accept gifts, devises, and bequests and act as trustee of money or other property vested in the Service upon trust:

(d) conduct promotional or regulatory activities to further the objectives of this Act:

(e) for the purpose of enforcing this Act or any regulations, take enforcement action against, prosecute, or sue any person, body corporate, or group of persons.

(2) The Service may at its discretion, when needed, establish mechanisms such as committees, task forces, or technical bodies to inform the implementation of this Act, including aspects that require national co-ordination across different public organisations and stakeholders.

(3) The Service may perform any of its functions in collaboration with a public organisation, or a recognised environmental organisation. However, it must not in substance or effect delegate any of its functions.

(4) Except in the circumstances set out in subsection (5), in the performance of its functions or exercise of its powers the Service must have regard to the principle that it may better serve the community by consultation, negotiation, and education.

(5) That principle does not apply—

(a) if the circumstances require the immediate exercise of any power to protect the environment; or

(b) when taking enforcement action.

19. Emergency provisions

(1) If the Service is of the view that there is an imminent danger of loss of life or property due to environmental degradation, or imminent risk of any unpermitted significant environmental impact, it may do 1 or more of the following:

(a) immediately take necessary and reasonable action to remove what it reasonably believes to be the cause of the environmental degradation or unpermitted significant environmental impact:

(b) direct any other relevant agency to assist the Service or take such action themselves:

(c) recover the cost of any action taken under paragraph (a) or (b) from the person who it reasonably believes is responsible for causing that environmental degradation or unpermitted significant environmental impact as a debt due to the Service.

(2) In taking action under subsection (1), the Service may exercise such powers that are reasonable and proportionate in the circumstances, including accessing land or business premises without prior consent from, or notification to, the occupier or owner if the urgency of the situation reasonably justifies this.

(3) The Service may prepare and issue standards, guidelines, or procedures for emergency or disaster prevention, management, or response relevant to the environment.

(4) In this section, an **imminent danger** or **imminent risk** include where the danger or risk has eventuated and whether or not the danger or risk continues to exist.

20. Technical Experts Register

(1) The Service may retain a register of technical experts, upon whom the Service may call for advisory and other technical services, where the relevant expertise or knowledge is not available within the Service.

(2) The register must comprise experts selected according to objective criteria, through open and fair recruitment processes and in line with any national procurement guidelines or rules.

(3) The names of the technical experts included on the register must be made publicly accessible on the Service's internet site.

21. Funds of the Service

The funds of the Service consist of—

(a) all moneys received by the Service out of money appropriated by Parliament for the purpose; and

(b) all moneys received by way of grants, donations, and subsidies; and

(c) all accumulations of moneys belonging to the Service.

22. Accounts

(1) The Service must keep full and correct accounts of money received and expended in accordance with the Ministry of Finance and Economic Management Act 1995-96.

(2) The accounts, financial statements and records of the Service must be audited in accordance with the Public Expenditure Review Committee and Audit Act 1995-96.

23. Financial and fiscal responsibility

The Director is responsible for ensuring that all activities of the Service are undertaken in a manner that is consistent with the Ministry of Finance and Economic Management Act 1995- 1996.

24. Exemption from taxation

The Service is exempt from the payment of any tax, duties, or levies due in the performance of its functions or the exercise of its powers.

Part 4
Island Environment Authorities

25. Island Environment Authorities

(1) The Service must establish an Island Environment Authority for Rarotonga and each island that has an Island Government—

(a) in consultation with the relevant Island Government; and

(b) in accordance with procedures prescribed by regulations, including for the types, and terms of appointment, of members.

(2) An Island Environment Authority must perform its functions and exercise its powers in accordance with section 3(3).

(3) Except as provided in subsection (5), an Island Environment Authority has jurisdiction over the following:

(a) its entire island:

(b) the ocean area up to and within 12 nautical miles from the mean high-water mark:

(c) any uninhabited island in that ocean area:

(d) the airspace above the things in paragraphs (a) to (c).

(4) In addition,—

(a) the Island Environment Authority for Aitutaki also has jurisdiction over all the things listed in subsection (3) for the island of Manuae:

(b) the Island Environment Authority for Atiu also has jurisdiction over all the things listed in subsection (3) for the island of Takutea:

(c) to avoid doubt, the Service has jurisdiction over all the things listed in subsection (3) for the island of Suwarrow.

(5) *See*—

(a) section 10(2), for activities that overlap the ocean area of more than 1 Island Environment Authority or of the Council and 1 or more Island Environment Authorities:

(b) section 29 for functions of the Council for all areas in the Cook Islands.

(6) In this Act, the things listed in subsection (2) are together the **area** of an Island Environment Authority.

26. Functions of Island Environment Authority

(1) The functions of each Island Environment Authority for its area are the following:

(a) to act as the permitting authority in relation to environmental consents, environmental permits, management plans, and other authorisations that it must consider under this Act or the regulations:

(b) to promote conservation awareness and advocacy:

(c) to identify priority areas of environmental concern and advise the Service about policies and programmes for dealing with those areas that are approved by the Island Environment Authority for implementation:

(d) to recommend to the Service additions or amendments to the list of animals and plants to be protected, taking into account the endemic, native, threatened, endangered, or migratory nature of relevant species, in accordance with section 33(1)(b):

(e) to request and approve management plans in accordance with Part 9, including those designating protected areas and marine protected areas, in accordance with Part 10:

(f) to participate in preparing the work programme of the Service for each financial year, and the Service's annual report, in connection with—

(i) the work of the Service and the Island Environment Authority in relation to the Authority's area; and

(ii) any other matter concerning the Authority's area:

(g) to formulate and publish guidelines on specific issues of environmental protection and management in relation to the island:

(h) to recommend to the Minister regulations to be made:

(i) to carry out any other function conferred on it by this Act or the regulations.

(2) In performing its functions and exercising its powers an Island Environment Authority must—

(a) comply with Government policies relating to the environment conveyed to it in writing by the Minister; and

(b) take into account all of the following:

(i) any recommendations of the Council:

(ii) advice from the Service:

(iii) any relevant submissions received from stakeholder consultation:

(iv) relevant traditional resource management customs, practices, and standards on the island:

(v) any advice obtained from technical experts (*see* section 20).

(3) An Island Environment Authority may invite officials, technical experts, and other persons to advise the Island Environment Authority in relation to any subject matter under consideration.

(4) An Island Environment Authority may appoint subcommittees consisting of officials, technical experts, and other persons to facilitate the Island Environment Authority's work on specific areas of concern and to advise the Island Environment Authority in the performance of its functions.

27. Remuneration of Island Environment Authority members

(1) Subject to subsection (2), every appointed member of an Island Environment Authority must be paid the remuneration, expenses, and allowances that are permitted by the Minister.

(2) The remuneration, expenses, and allowances must be paid from money appropriated by the Government for the Service.

(3) A person who is a member of Parliament or an employee of a public organisation is not entitled to receive remuneration as a member of an Island Environment Authority.

Part 5
National Environment Council

28. National Environment Council

(1) The Director may, from time to time, after having first consulted with the Minister, convene a body to be called the National Environment Council to consider and determine any matter relating to 1 or more of the functions under section 29.

(2) The Director must select members of the Council on the basis of their technical expertise relevant to the matter to be considered and determined by the Council.

(3) The Council must perform its functions and exercise its powers in accordance with section 3(3).

(4) As soon as reasonably practicable after the Council has considered and determined the matter for which the Council was convened, the Director may, after convening a final Council meeting to approve the minutes of the last meeting relating to that matter, disband the Council.

29. Functions of Council

(1) The Council's functions are the following:

(a) for all areas in the Cook Islands (islands and Cook Islands waters), to make recommendations on strategic environmental assessments under Part 11:

(b) to act as the permitting authority for the following:

(i) matters of national significance determined as such by the Cabinet:

(ii) applications for an environmental consent, environmental permit, or management plan for activity in the Cook Islands waters beyond 12 nautical miles from any island under the jurisdiction of an Island Environment Authority:

(iii) applications for an environmental consent, environmental permit, or management plan for activity in overlapping areas (*see* section 10(2)):

(iv) for all areas in the Cook Islands (islands and Cook Islands waters), applications for a bioprospecting permit under Part 15:

(c) to recommend to the Service additions or amendments to the list of animals and plants to be protected, taking into account the endemic, native, threatened, endangered, or migratory nature of the relevant species:

(d) to designate a marine protected area in any area of the Cook Islands' exclusive economic zone or continental shelf in accordance with section 51:

(e) to carry out other functions, consistent with this Act, that the Minister may determine.

(2) In performing its functions and exercising its powers, the Council must—

(a) comply with Government policies in relation to the environment conveyed to it in writing by the Minister; and

(b) take into account all of the following:

(i) advice from the Service:

(ii) any relevant comments received from an Island Environment Authority (for example, under section 10(2)) or submissions received from stakeholder consultation:

(iii) relevant traditional resource management practices and standards:

(iv) advice from technical experts (*see* section 20); and

(c) seek expert advice, if the advice is reasonably available.

30. Remuneration of Council members

(1) Subject to subsection (2), a member of the Council must be paid the remuneration, expenses, and allowances that are permitted by the Minister.

(2) The remuneration, expenses, and allowances must be paid from money appropriated by the Government for the Service.

(3) A person who is a member of Parliament or an employee of a public organisation, is not entitled to receive remuneration as a member of the Council.

Part 6
State of environment monitoring and reporting

31. Monitoring by Service

(1) The Service must undertake environmental monitoring activities, in areas of the Cook Islands that it considers necessary or appropriate to implement this Act, or as prescribed by regulations.

(2) When conducting environmental monitoring activities, the Service must, where relevant, collaborate with other agencies.

32. Periodic report on the state of Environment

(1) The Service is responsible to produce periodically a report on the state of the environment of the Cook Islands that provides an overview of the health of the environment of the Cook Islands.

(2) The state of the environment report must be—

(a) based on monitoring data that has been collected according to monitoring programmes and procedures, including those set by the Service; and

(b) based on data (including that referred to in paragraph (a)) that has been independently reviewed for accuracy and robustness; and

(c) developed in consultation with other public organisations and stakeholders, including, but not limited to, those who are sources of relevant data or information; and

(d) made available and published as required by section 85, together with the underlying data, in an accessible format; and

(e) tabled by the Minister as an agenda item before Parliament.

(3) The state of the environment report must report on all of the following:

(a) environmental indicators and targets in line with the Cook Islands, national, and international commitments:

(b) descriptions of biodiversity in the Cook Islands, including rare, threatened, endangered, or endemic species and habitats, and significant biodiversity areas:

(c) analyses of invasive species in the Cook Islands, and plans for combatting their adverse impacts on the environment:

(d) baseline data and scientific gaps and uncertainties relating to the environment of the Cook Islands, including data derived from seabed mineral activities:

(e) descriptions of areas subject to environmental protection or management plans:

(f) climate change impacts:

(g) the efficiency and effectiveness of the implementation of this Act, including any policies, regulations, or procedures developed, and the performance or exercise of any functions or powers, in accordance with this Act:

(h) recommended priority areas for future monitoring and data collection:

(i) recommended priority areas for implementation of the objectives of this Act.

(4) The Service must explore opportunities to collaborate and integrate the reporting requirements under this section with the outlook report requirements under the Marae Moana Act 2017.

(5) The Service must produce a report under this section at least once every 5 years, but may do so more frequently if resources and funding allow or if it would be desirable to produce a more limited report on 1 or more of the matters listed in subsection (3).

(6) If monitoring programmes and procedures set by the Service, or recommendations included in the state of the environment report, require action, or co-operation, of another public organisation, the Service must notify that public organisation and both agencies must agree on steps to ensure the relevant monitoring and data collection take place.

(7) Officers of public organisations must co-operate with the Service in its implementation of this Part.

(8) Private organisations may provide data or information for the periodic report at the Service's request.

Part 7
Protected species, alien species, invasive alien species, and invasive species

Protected species

33. Protected species

(1) The Service may, by notice in the Gazette, designate certain animal and plant species as being protected species. The notice must specify whether the designation relates to all of the Cook Islands or is restricted to a particular location or locations. When considering making a designation, the Service must take into account of all of the following:

(a) commitments to protect certain animals and plants that may arise under a regional or international convention, treaty, protocol, agenda, or other mechanism applicable to the Cook Islands:

(b) any relevant recommendation of an Island Environment Authority:

(c) the results of any relevant stakeholder consultation.

(2) Before designating a species as a protected species, the Service may organise stakeholder consultation, including consulting persons with expertise or an interest in the living organisms, habitats, or other components of biodiversity that are of principal importance in the Cook Islands.

(3) The Gazette notice must specify which category (*see* the definition of protected species in section 3) the species is in.

34. Prohibitions relating to protected species

(1) Subject to subsection (5) and section 35, any person who intentionally or recklessly does any of the following to an animal that is a protected species commits an offence:

(a) hunts it:

(b) removes it:

(c) kills it:

(d) injures or harasses it:

(e) catches or possesses it:

(f) during the period of breeding, incubation, hibernation, aestivation or migration, disturbs its habitat:

(g) sells or exports it, or possesses it, offers or exposes it for sale, or transports it for the purposes of sale or export.

(2) Subject to subsection (5) and section 35, any person who intentionally or recklessly does any of the following to a plant that is a protected species commits an offence:

(a) attempts or does pick, collect, cut, uproot, or take it by any method:

(b) possesses it:

(c) damages or destroys the habitat of it:

(d) sells it, offers or exposes it for sale, exports or possesses it, or transports it for the purposes of sale or export.

(3) To avoid doubt, for each plant or animal affected under subsections (1) or (2), a person constitutes a separate offence.

(4) Any person committing an offence under this section is liable upon conviction,—

(a) in the case of a body corporate, to a fine not exceeding $500,000:

(b) in the case of an individual, to a fine not exceeding $250,000 or imprisonment for a term not exceeding 2 years, or both.

(5) A person is not guilty of an offence—

(a) if the person proves that the act constituting the offence was an incidental result of a lawful operation and could not reasonably have been avoided; or

(b) if the person proves that the act constituting the offence was intended to alleviate unnecessary suffering of the protected species.

(6) The Service must regularly identify, monitor the presence of, and take actions, where practicable, for the conservation, protection, or other management measures for all protected species, co-ordinating with other public organisations, Island Environment Authorities, and Island Governments as appropriate.

35. Permissions relating to protected species

(1) Subject to subsections (2) and (3), the following may authorise a person to do an act that would otherwise constitute an offence under this Part:

(a) the Director, by issuing an environmental approval:

(b) a permitting authority, by issuing an environmental consent or environmental permit:

(c) another public authority, by issuing a permission or an authorisation relating to the animal or plant species under another enactment.

(2) An approval, consent, or permit may be granted under this section only if the act relating to protected species that will be authorised will be done for any of the following purposes:

(a) scientific, research, or educational purposes; or

(b) recreational or commercial purposes, subject to subsection (4); or

(c) the purpose of preserving public health or public safety, including preventing the spread of disease; or

(d) the purpose of conserving biodiversity and other forms of conservation; or

(e) the purpose of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber, aquaculture, fisheries, or other forms of property, whether movable or immovable.

(3) However, the Director or permitting authority, taking into account any scientific advice that they consider necessary, may not grant an approval, consent, or permit for any of those purposes unless satisfied of all the following:

(a) there is no other satisfactory solution for the purpose:

(b) anything authorised by the approval, consent, or permit will not be detrimental to the survival of any protected species:

(c) the grant of the approval, consent, or permit is in the public interest.

(4) An approval, consent, or permit may be granted under this section for recreational or commercial purposes only if—

(a) there is an overriding public interest in permitting the activity, taking into account the impact of the activity on biodiversity in the Cook Islands; and

(b) any reasonably practicable alternative means of carrying out the activity have been considered; and

(c) the applicant has adopted a plan that the Director or permitting authority is satisfied will ensure that the activity is carried out with the minimal practicable impact on biodiversity and with the greatest practicable protections for any affected protected species; and

(d) the Director or permitting authority is satisfied that the applicant has the technical and other capacity to carry out the plan referred to in paragraph (c).

(5) An approval, consent, permit, permission, or authorisation that authorises any person to do any of the activities listed in section 34 in relation to a protected species must specify—

(a) the protected species that may be affected; and

(b) the area within which the activities may occur and the methods that are authorised (if relevant) for the activity.

Alien species, invasive alien species, and invasive species

36. Prohibition of introduction or spread of designated alien species, invasive alien species, or invasive species

(1) The Service may, by notice in the Gazette, designate certain animal or plant species as being alien species, invasive alien species, or invasive species. If a designation relates to a particular location or locations in the Cook Islands, this must be specified in the notice.

(2) Subject to subsection (3), a person who intentionally imports, introduces, or spreads an alien species, invasive alien species, or invasive species into, or into a specified location in, the Cook Islands commits an offence and is liable upon conviction,—

(a) in the case of a body corporate, to a fine not exceeding $500,000:

(b) in the case of an individual, to a fine not exceeding $250,000 or imprisonment for a term not exceeding 2 years, or both.

(3) Subsection (2) does not apply to a person acting with the authority of, and in accordance with,—

(a) an environmental approval, environmental consent, or environmental permit obtained under this Act; or

(b) another permission or authorisation related to the animal or plant species issued by a public authority under any other enactment.

(4) The Service must regularly identify, monitor the presence of, and take actions, where practicable, for the prevention, control, or eradication of alien species, invasive alien species, or invasive species, co-ordinating with other public organisations, Island Environment Authorities, and Island Governments as appropriate.

37. Permissions relating to alien species, invasive alien species, and invasive species

(1) Subject to subsections (2) and (3), the following may authorise a person to do an act that would otherwise constitute an offence under this Part:

(a) the Director, by issuing an environmental approval:

(b) a permitting authority, by issuing an environmental consent or environmental permit:

(c) another public authority, by issuing a permission or an authorisation relating to the animal or plant species under another enactment.

(2) An approval, consent, or permit may be granted under this section only if the act relating to the alien species, invasive alien species, or invasive species that will be authorised will be done for any of the following purposes:

(a) scientific, research, or educational purposes:

(b) recreational or commercial purposes, subject to subsection (4):

(c) the purpose of preserving public health or public safety, including preventing the spread of disease:

(d) the purpose of conserving biodiversity and other forms of conservation:

(e) the purpose of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber, aquaculture, fisheries, or other forms of property, whether movable or immovable.

(3) However, the Director or permitting authority, taking into account scientific advice that they consider necessary, may not grant an approval, consent, or permit for any of those purposes unless satisfied of all the following:

(a) there is no other satisfactory solution for the purpose:

(b) anything authorised by the approval, consent, or permit will not be detrimental to the survival of any protected species:

(c) the grant of the approval, consent, or permit is in the public interest.

(4) An approval, consent, or permit may be granted under this section for recreational or commercial purposes only if—

(a) there is an overriding public interest in permitting the activity, taking into account the impact of the activity on biodiversity in the Cook Islands; and

(b) any reasonably practicable alternative means of carrying out the activity have been considered; and

(c) the applicant has adopted a plan that the Director or permitting authority is satisfied will ensure that the activity is carried out with the minimal practicable impact on biodiversity and with the greatest practicable protections for any affected protected species; and

(d) the Director or permitting authority is satisfied that the applicant has the technical and other capacity to carry out the plan referred to in paragraph (c).

(5) An approval, consent, permit, permission, or authorisation which authorises any person to do any activities listed in section 36(2) in relation to an alien species, invasive alien species, or invasive species must specify—

(a) the alien species, invasive alien species, or invasive species to which it relates; and

(b) the area within which the activities may occur and the methods that are authorised (if relevant) for the activity.

Registers

38. Registers of protected species, threatened species, alien species, invasive alien species, and invasive species

(1) The Service must maintain registers of all species designated as protected species, alien species, invasive alien species, and invasive species.

(2) For protected species, the register must specify which category (*see* the definition of protected species in section 3) the species is in.

(3) The registers must be made available to the public to view at the Service's offices during ordinary business hours and, if there is a public internet site maintained by or on behalf of the Service, on that internet site.

Part 8
Pollution and hazardous substances

39. Application of this Part

This Part does not apply to—

(a) matters covered by the Prevention of Marine Pollution Act 1998, including waste, pollution, or hazardous substances on or discharged from a vessel or platform in the territorial sea or exclusive economic zone:

(b) the contamination of fishery waters, to the extent that they are covered by the Marine Resources Act 2005:

(c) discharges related to seabed mineral activities, to the extent that they have been permitted under this Act or the Seabed Minerals Act 2019:

(d) matters covered by the Solid and Hazardous Waste Act 2025:

(e) matters covered by the Public Health Act 2024.

40. Register of hazardous substances

The Service may compile a register of hazardous substances, which must be made available to the public to view at the Service's offices during ordinary business hours and if there is a public internet site maintained by or on behalf of the Service, on that internet site.

41. Offence relating to activities with potential to pollute or do pollute

(1) A person who intentionally or recklessly does any of the things listed in subsection (2) commits an offence and is liable on conviction—

(a) in the case of a body corporate, to a fine not exceeding $500,000:

(b) in the case of an individual, to a fine not exceeding $250,000 or imprisonment for a term not exceeding 2 years, or both.

(2) The things are the following:

(a) imports, handles, stores, processes, produces, generates, controls, or discharges into the environment any hazardous substance:

(b) pollutes Cook Islands waters or environment:

(c) deposits material of any type in any place where it is likely to be washed into Cook Islands waters or environment and likely therefore to cause—

(i) pollution; or

(ii) harm to another person or to another person's property.

(3) It is a defence under this section if a person proves that—

(a) they were acting under an authorisation under this Act or another enactment; and

(b) they were acting in accordance with the authorisation and any conditions of it.

(4) If a person convicted under subsection (1) fails to respond to a requirement to desist or remediate by the permitting authority under section 44(1)(a), the Court may impose a fine not exceeding $500 for each day, from the date the requirement was given, that the person refuses or fails to desist or remediate.

(5) Nothing in subsection (1) applies to—

(a) a disposal of hazardous waste authorised under the Solid and Hazardous Waste Act 2025; or

(b) a discharge into Cook Islands waters necessary, and reasonable, for the purpose of securing the safety of a vessel or saving life at sea, provided all reasonable precautions are taken after the that discharge for the purpose of preventing or minimising pollution.

42. Designated pollutants

Regulations made under section 124 may designate as a pollutant any substance, thing, or man-made phenomenon that, in a specified quantity, concentration, or condition, is likely to cause pollution; and may prescribe processes or offences relating to the use or disposal of such a pollutant.

43. Pollution fee

(1) Regulations may be made to impose a pollution fee on any business or person—

(a) using or allowing others to use fresh water and degrade its quality; or

(b) entering ports in the Cook Islands; or

(c) for the authorised release of any designated pollutant into the environment.

(2) Regulations may set different fees or provide a means of calculating different fees, for example, relating to the extent of pollution that the Service reasonably believes can be attributed to the things referred to in subsection (1).

(3) Any fees collected under regulations are to be deposited into the Environment Protection Fund.

44. Permitting authority may require or take remedial action

(1) If a permitting authority reasonably considers that a person has acted in contravention of this Part,—

(a) the permitting authority may require that person to—

(i) desist from so acting; and

(ii) take remedial action, at that person's own expense, that the permitting authority reasonably determines is needed; and

(b) if that person refuses or fails to desist or take remedial action as required by the permitting authority, the Service, at the request of the permitting authority and in consultation with any other public organisations with relevant mandates that is reasonable in the circumstances, may take remedial action that is necessary in the circumstances, and recover the cost of so doing from that person as a debt due to the Service.

(2) Subsection (1) applies despite any penalty or other order that may be imposed for an offence committed under this Part.

45. Accidental discharge

(1) The Service may require any person who owns or controls premises on which a designated pollutant or hazardous substance is stored, used, or transported, to prepare a pollution emergency plan to deal with any accidental discharge of that pollutant or hazardous substance, which must—

(a) set out counter-measures to be adopted in the event of an accidental discharge; and

(b) set out steps to be taken after an accidental discharge to clean up any substance, remedy any damage, or otherwise restore the area as near as possible to a satisfactory environmentally sound state; and

(c) be submitted to the Service for approval, with or without amendments.

(2) If any accidental discharge of a designated pollutant or hazardous substance occurs,—

(a) the person who owns, controls, or uses the premises on which the discharge takes place must—

(i) immediately notify the Service of the incident; and

(ii) immediately implement the approved pollution emergency plan; and

(iii) follow instructions that are received from the Service or, in the absence of any instructions from the Service, take measures that are necessary or expedient to minimise any threat to human health or the environment:

(b) the Service may—

(i) investigate the incident:

(ii) either itself, or by co-ordinating with or commissioning others who are competent, undertake emergency response measures that it considers necessary or expedient:

(iii) recover the costs of so doing from the person who owns or controls the premises as a debt due to the Service.

(3) A person who fails to comply with a requirement to prepare a pollution emergency plan under this section or to take any of the steps listed in subsection (2)(a) commits an offence and is liable on conviction, in the case of a body corporate, to a fine not exceeding $100,000, or, in the case of an individual, to a fine not exceeding $50,000 or imprisonment for a term not exceeding 6 months, or both.

Part 9
Management plans

46. Management plans

At the request of a permitting authority, the Service must prepare a draft management plan, or amend an existing management plan, for 1 or more of the objectives listed in section 6 or where required for the purposes of protected areas, marine protected areas, or rā'ui under Part 10 (the **areas**).

47. Preparation and approval of management plans

(1) A draft management plan (the **draft plan**) must—

(a) be prepared by the Service in consultation with the following:

(i) stakeholders, in particular, any landowners, occupiers, or users of the area covered by the draft plan who are reasonably known by the Service to be, or likely to be, affected by it; and

(ii) the relevant Island Environment Authority (if relevant); and

(iii) the relevant Aronga Mana; and

(iv) any other public bodies who may be affected by the draft plan or have a specific interest in or responsibility for its implementation; and

(b) identify the members of the proposed advisory committee (established under section 48) including representatives of those landowners, occupiers, or users, where relevant.

(2) Subsection (1) also applies to a draft amendment of a management plan, however, subsection (1)(b) does not apply unless the amendment relates to a change in the membership of the committee.

(3) The Director must give public notice—

(a) stating that the draft plan has been prepared and specifying the areas affected by the draft plan; and

(b) specifying the place or places where the draft plan is displayed and may be inspected by interested persons; and

(c) inviting interested persons, including the relevant Aronga Mana, who may be affected, to make comments in connection with the draft plan by a specified date, no less than 1 month after the publication of the notice; and

(d) specifying an address to which comments must be sent.

(4) The Service must give due consideration to any comments made by the date specified in the notice, and may alter, amend, or vary the draft plan accordingly.

(5) After completing the steps taken under subsections (3) and (4), the Director must submit the draft plan, together with any comments that were made by the specified date, to the permitting authority.

(6) The permitting authority may—

(a) approve or decline to approve the draft plan as submitted; or

(b) refer it to the Service, together with its suggestions for further consideration or amendment.

(7) If subsection (6)(b) applies, the Director may, after the Service has considered any suggestions and made any amendments, resubmit the draft plan to the permitting authority under subsection (5).

(8) A management plan comes into effect once it has been approved in accordance with subsection (6)(a).

48. Advisory committee for management plan

The Director may establish an advisory committee for a draft plan or approved management plan to provide advice to the management committee, with terms of reference as the Director may determine.

49. Implementation of management plan

The Service is responsible, working with the management committee and any other relevant persons and organisations named in the management plan, for its implementation, which includes raising awareness of the plan, monitoring and evaluating it, enforcing compliance with it, and reporting on its implementation and progress towards its objectives.

50. Failure to comply with management plan

A person who, without reasonable excuse or lawful justification, fails to comply with or acts in contravention of a management plan commits an offence, and is liable upon conviction, in the case of a body corporate, to a fine of $500,000, or, in the case of an individual, to a fine not exceeding $250,000 or imprisonment for a term not exceeding 2 years, or both.

Part 10
Protected areas, marine protected areas, and rā'ui

51. Designation of protected areas or marine protected areas

(1) An Island Environment Authority may designate an area within its jurisdiction as a protected area or marine protected area in accordance with the procedure set out in sections 53 or 54, if the Island Environment Authority considers that—

(a) the designation meets the primary purpose of achieving the long-term conservation of nature and associated ecosystem services and cultural values; and

(b) the designation is necessary or expedient, taking into account 1 or more of the reasons set out in section 52.

(2) The Council may designate an area of Cook Islands waters that is outside the jurisdiction of an individual Island Environment Authority as a marine protected area, in accordance with the procedure set out in section 54, if the Council considers,—

(a) the designation meets the primary purpose of achieving the long-term conservation of nature and associated ecosystem services and cultural values; and

(b) the designation is necessary or expedient, taking into account 1 or more of the reasons set out in section 52.

52. Reasons for designation of a protected area or marine protected area

Reasons for which a protected area or marine protected area may be designated, subsidiary to the primary purpose contained in section 51(1)(a) or 51(2)(a), include the following:

(a) to protect and preserve the environment, with special consideration of endemic, native, rare, protected, or migratory species, or their habitats, or rare or fragile ecosystems:

(b) to allow for the recovery or restoration of wildlife in areas where those types of species have been depleted:

(c) to provide for ecologically sustainable management of the natural resources of the area, where appropriate in the site and consistent with the objectives of that area:

(d) to promote scientific study and research for that area:

(e) to act as a tool for climate change or natural disasters preparedness, resilience, or response:

(f) to conserve biodiversity, including by ensuring that protected areas and marine protected areas are effectively and equitably managed, ecologically representative, and well-connected, consistent with the Cook Islands' obligations under the Convention on Biological Diversity or any global biodiversity framework:

(g) to cover a site that is also designated as protected or similar under another enactment, in consultation with the responsible agency or ministry for that other enactment.

53. Procedure for designation of protected area

(1) If a protected area designation under section 51(1) is proposed, the Island Environment Authority must—

(a) draft a management plan to give effect to the proposed designation using the procedure under section 47; and

(b) obtain the prior agreement of the relevant Aronga Mana, including to the draft management plan and shared resource management agreement; and

(c) obtain and take into account any advice from the Service; and

(d) ensure that a shared resource management agreement under subsection (3) has been concluded between the Service and any owners or other persons with legal interest in any of the land concerned.

(2) A draft management plan must include all of the following:

(a) a description of the area to be protected and its boundaries:

(b) the name and category of the protected area, whether a national park or not:

(c) clear objectives for the area and the rationale for protection:

(d) a statement of the area's values and significance for nature and biodiversity conservation, and any associated ecosystem services and cultural values:

(e) the proposed management objectives for, and any proposed use of, the area:

(f) arrangements for management and governance:

(g) the terms and conditions of the protected area, including any specified activities or specified impacts that are permitted or prohibited, which may include zones within the area in which specified activities are prohibited or, if permitted, are managed, including—

(i) agriculture, tree cutting, or related activities:

(ii) research, including taking, sampling, or destroying flora or fauna:

(iii) mining, dredging, or extracting coral, sand, gravel, rocks, or other material:

(iv) discharging waste, sediment, sand, rock, or any other polluting matter:

(v) constructing or erecting any buildings, platforms, or other structures:

(vi) access for tourism or recreational activities:

(vii) other activities that may disturb, alter, or destroy the environment.

(3) A shared resource management agreement concluded under this section must—

(a) describe the role of members of the Aronga Mana in respect of any native land (as defined in the Cook Islands Act 1915); and

(b) describe how the Land (Facilitation of Dealings) Act 1970, the Cook Islands Act 1915, and any court orders issued under those Acts apply (if relevant); and

(c) describe any obligations upon the parties; and

(d) provide a procedure for amendment or replacement of the management plan once approved and in effect.

54. Procedure for designation of marine protected area

(1) If a marine protected area designation under section 51 is proposed, the permitting authority must draft a management plan to give effect to the proposed designation using the procedure contained in section 47.

(2) A draft management plan for the purposes of this section must include all of the following:

(a) a description of the marine area to be protected, with co-ordinates or a map delineating its boundaries:

(b) clear objectives for the area and the rationale for protection:

(c) a statement of the area's values and significance for nature and biodiversity conservation, and any associated ecosystem services and cultural values:

(d) the proposed management objectives, intent for, and any proposed use of, the area:

(e) the terms and conditions of that marine protected area, including any specific activities or impacts that are to be permitted or prohibited, which may include zones within the area within which certain activities may be prohibited or, if permitted, managed, including—

(i) fishing, aquaculture, or related activities:

(ii) research and taking, sampling, or destroying flora or fauna:

(iii) mining, dredging, or extracting coral, sand, gravel, nodules, or other material:

(iv) discharging waste, sediment, sand, rocks or any other polluting matter:

(v) constructing or erecting any buildings, platforms, or other structures:

(vi) access for tourism or recreational activities:

(vii) in any other way disturbing, altering, or destroying the environment:

(f) arrangements for management and governance.

(3) A management plan for a marine protected area may implement, and must take into account, the terms of any marine spatial plan that relates to any of the same area developed under the Marae Moana Act 2017.

(4) No marine protected area may be designated if the designation would conflict with or undermine the implementation of the Marae Moana Act 2017.

(5) If an activity is planned within a marine protected area by any public organisation under any other enactment, the entity under whose

management that activity is planned must obtain the prior written consent of the Minister.

55. Bringing into effect of protected areas or marine protected areas

(1) Subject to subsection (3), the designation of a protected area or marine protected area is brought into effect when the management plan for that area is formally approved by the permitting authority under section 47.

(2) The Director must as soon as practicable publish a notice of the designation in the Gazette.

(3) If an approved management plan relates to a marine protected area, that designation must be confirmed by Order in Executive Council.

(4) The Service must take reasonable steps to notify relevant persons of the management plan for any protected area or marine protected area and to continue to maintain public awareness of the terms of that plan while it remains in effect.

56. Inspection of protected areas or marine protected areas

Without limiting the powers conferred by sections 105 to 107, an Environment Officer may undertake reasonable inspection activities, including entering premises—

(a) to determine whether the terms of a management plan relating to a protected area or marine protected area are being complied with; and

(b) to monitor the attainment of the objectives of that management plan.

57. Protected area and marine protected area register

(1) Following the publication of a notice of the designation of a protected area in the Gazette or the confirmation of the designation of a marine protected area by Order in Executive Council, the Director must make an application to the Registrar of the Court for the registration in the Register of Titles of—

(a) that designation; and

(b) the relevant management plan; and

(c) (if relevant) the relevant shared resource management agreement.

(2) The Service must maintain an up-to-date register of all protected areas, marine protected areas, rā'ui, and sites protected under any other enactment (of which the Service is reasonably aware).

(3) The register must be made available to the public to view at the offices of the Service in ordinary business hours and, if there is a public internet site maintained by or on behalf of the Service, on that internet site.

58. Revocation of protected area or marine protected area designation

Protected areas

(1) An Island Environment Authority may revoke a designation of a protected area established by it after consultation with the Service, owners and occupiers (if any) of any affected land, and the relevant Aronga Mana, by—

(a) publishing a notice in the Gazette revoking the designation; and

(b) giving notice to the owner or occupier of the land affected (if any).

(2) On and from the date of the Gazette notice, the designation ceases to have effect, and on that date any shared resource management agreement or management plan relating to the protected area is to be treated as having been cancelled.

Marine protected areas

(3) An Island Environment Authority or the Council may revoke the designation of a marine protected area established by it after consultation with the Service and the relevant Aronga Mana.

(4) The revocation of the designation of a marine protected area must be published in the Gazette but that revocation must be confirmed by Order in Executive Council.

(5) The designation ceases to have effect on the date the order is made and as at that date any shared resource management agreement or management plan relating to the marine protected area is to be treated as having been cancelled.

Registration

(6) A copy of a revocation notice for a protected area or the order confirming the revocation of a marine protected area must be filed with the Registrar of the Court as soon as practicable. The Registrar must cause the notice to be noted against the earlier registration.

Protected areas established under Marae Moana Act 2017

(7) This section does not apply to a marine protected area established under the Marae Moana Act 2017, which can only be disestablished, repealed, or cancelled under that Act.

59. Rā'ui

If requested by the relevant Aronga Mana, and working in consultation with them and the relevant local communities, a permitting authority may consider adopting a management plan, or otherwise designating a rā'ui in regulations, in order to formalise a rā'ui.

Part 11
Strategic environmental assessment

60. Interpretation of this Part

In this Part, unless otherwise stated,—

Policy refers to any policy, plan, or programme relating to the environment, including a modification to such a policy, plan, or programme that is—

(a) subject to preparation or adoption by a public organisation; or

(b) prepared by a public organisation for adoption, through a legislative procedure

responsible authority, in relation to a Policy, means the public organisation by which, or on whose behalf, it is prepared.

61. Strategic environmental assessment of Policy

(1) Subject to subsections (2) and (3), a responsible authority must carry out, or secure the carrying out by a technical expert of, an SEA during the preparation or modification of any Policy—

(a) that relates to resources, land or ocean use, development, or industry in any location in the Cook Islands; and

(b) the implementation of which may have a significant environmental impact.

(2) Before determining whether a Policy may have a significant environmental impact, the responsible authority must—

(a) take into account the criteria in the definition of significant environmental impact in section 3 and subsections (5) and (6) and any relevant regulations; and

(b) obtain and take into account the view of the Service; and

(c) consult other persons that the responsible authority or the Council thinks fit; and

(d) take into account reasonably practicable alternative options to the proposed Policy.

(3) Nothing in subsection (1) requires the carrying out of an SEA—

(a) for a Policy, the sole purpose of which is to be used for national defence or during a state of disaster or state of emergency; or

(b) for a financial or budget Policy; or

(c) that, in the opinion of the Director, is not feasible or necessary, for example, because the matter has been adequately addressed by a previous SEA; or

(d) for a minor modification to a Policy.

(4) Nothing in this Part affects the requirement under Part 12 for an environmental approval, environmental consent, or environmental permit for activities that may be carried out under a Policy adopted under this Part.

(5) If information is not available on the criteria in the definition of significant environmental impact in section 3, the precautionary principle must be applied.

(6) For the purposes of this section and sections 62, 63, and 67, additional criteria for determining likely significant environmental impact:

(a) include the following:

(i) the location, nature, size, operating conditions, and resources to be allocated to activities envisaged under the Policy or the project:

(ii) the geographical area or size of population likely to be affected:

(iii) the likelihood of impact upon, including consideration of indirect or cumulative effects,—

(A) any area that has been designated a protected area or marine protected area, or any site protected under any other enactment of the Cook Islands; and

(B) areas outside of the Cook Islands; and

(C) common resources; and

(D) any protected species designated under this Act; and

(E) water supply, catchment or quality; and

(F) ecosystem services:

(iv) whether the implementation of the Policy or project has the potential to contravene the objectives of a management plan in effect in accordance with Part 9, or have material impact on a protected area:

(v) whether the likely environmental impacts may be exacerbated by, or may themselves exacerbate, climate change impacts:

(b) may be further specified by the Minister, or prescribed in regulations, but only to strengthen environmental protections provided in this Act and not weaken these.

62. Determination that strategic environmental assessment is not required

If the responsible authority determines that an SEA is not required because the implementation of the Policy is unlikely to have any significant environmental impact, or any of the criteria in section 61(3) apply, the responsible authority must—

(a) provide the Director with a copy of that determination, and

(b) make available and publish its decision and reasoning as required by section 85.

63. Strategic environmental assessment report

(1) If an SEA is required, the responsible authority must prepare, or secure the preparation, by a technical expert, of, a SEA report in accordance with subsections (2) and (3), and any relevant regulations or guidelines issued by the Service.

(2) The SEA report must identify, describe, and evaluate the likely effects on the environment of—

(a) implementing the Policy; and

(b) methods to mitigate those effects; and

(c) reasonable alternatives to the Policy, taking into account the objectives and the geographical scope of it.

(3) The SEA report must have a scope and level of detail, and include any information, that may be prescribed or that the responsible authority reasonably considers may be needed to assess a possible significant environmental impact, taking account of—

(a) the scale, nature, and extent of likely environmental impacts of the Policy, taking into account cumulative effects and climate change; and

(b) the current knowledge and methods of assessment; and

(c) the contents and level of detail in the Policy; and

(d) the stage of the Policy in the decision-making process; and

(e) the alignment of the Policy with other relevant national legislation, plans, and policies, including those relating to the environment, sustainable development, waste management, sanitation, and water resource management; and

(f) the extent to which certain matters are more appropriately addressed by a different public organisation.

(4) The SEA report must propose a strategic environmental monitoring plan designed to enable evaluation and adaptation as the Policy is implemented.

64. Consultation on strategic environmental assessment

(1) As soon as practicable after the preparation of a SEA report, the responsible authority must—

(a) make available the relevant documents to, and request comments from,—

(i) the Service; and

(ii) any Island Environment Authorities affected; and

(iii) any other public organisation that has expressed an interest in, or in the responsible authority's opinion, has an interest in, the Policy:

(b) make available and publish copies of the relevant documents as required by section 85 and otherwise take the steps that it considers appropriate to bring the relevant documents to the attention of stakeholders (including persons who, in the responsible authority's opinion, are likely to be affected by, or have an interest in, the decisions involved in the assessment and adoption of the Policy, including relevant non-governmental organisations) and request comments from those persons:

(c) establish a process lasting at least 30 working days to receive comments from the persons mentioned in paragraphs (a) and (b), which may involve holding a meeting or meetings.

(2) The responsible authority may specify a date by which comments must be provided.

(3) The responsible authority must provide to the Council a report on the consultation held under this section, including a summary of—

(a) how the environmental considerations have been integrated into the Policy; and

(b) how the comments received by the specified date have been taken into account; and

(c) the reasons for proposing to adopt this Policy, in the light of the reasonable alternatives considered.

(4) In this section, **relevant documents** means any of the following:

(a) the draft Policy or information about it (if drafting has not yet commenced):

(b) the SEA report:

(c) any other documents the responsible authority considers should be brought to the attention of the public for the purposes of a SEA.

65. Recommendations by Council after strategic environmental assessment

(1) The Council must review the SEA report and may make recommendations to the responsible authority in line with the objectives of this Act, which may relate to the content of the Policy, the strategic environmental monitoring plan, actions taken under it over time, and other recommendations in relation to the Policy's implementation.

(2) The responsible authority must consider any recommendations by the Council and record any responses to those recommendations in writing.

66. Adoption of Policy following a strategic environmental assessment

(1) The responsible authority must be satisfied that all of the following have been taken into account by it before adopting a Policy:

(a) the conclusions of the SEA report:

(b) measures to prevent, reduce, or mitigate the adverse effects identified in the SEA report:

(c) comments received through the consultation process under section 64:

(d) any recommendations made by the Council and any responses by the responsible authority under section 65.

(2) The responsible authority must implement the strategic environmental monitoring plan in its implementation of the Policy.

(3) The responsible authority must make available and publish its report, the Council's recommendations under section 65 (if any), and any responses by it to those recommendations, as required by section 85.

Part 12
Environmental approvals, environmental consents, and environmental permits

67. Tier 1 to 3 activities

(1) For the purposes of this Part—

(a) a Tier 1 activity is an activity that has only a minimal environmental impact:

(b) a Tier 2 activity is an activity that may have an environmental impact but not a significant environmental impact:

(c) a Tier 3 activity is an activity that has or may have a significant environmental impact.

Making application for Tier 1, 2, or 3 activity

(2) At any time, a person planning an activity may seek the advice of the Service as to which tier an activity belongs to, and the Service may also refer the request to a permitting authority for a screening opinion on whether the activity is a Tier 1, Tier 2, or Tier 3 activity.

(3) If the Director, Service, or permitting authority considers there is insufficient information to be satisfied about which tier the activity belongs to, the precautionary principle must be applied.

(4) The Service may issue standards and guidelines to assist applicants to complete their applications, including for assessing which tier an activity belongs to.

(5) An application for an environmental approval for a Tier 1 activity, environmental consent for a Tier 2 activity, or environmental permit for a Tier 3 activity must be in the approved form and comply with any prescribed requirements or procedures and be accompanied by any prescribed fee.

(6) The Service must check each application for completeness, including that any fee has been paid, before progressing it.

Applications for approval for Tier 1 activities

(7) The Director must review an application for an approval for a Tier 1 activity in accordance with this Act, including section 3(3), and any prescribed criteria and may—

(a) grant an approval; or

(b) decline to grant an approval.

(8) The Director may require further information from an applicant that they reasonably consider is needed to consider the application, and the applicant must provide that information.

(9) The Director may obtain information from other sources that they reasonably consider is needed to consider the application.

(10) An approval may be granted subject to conditions.

(11) The Service must provide the applicant with a written statement of the decision of the Director with reasons.

(12) The applicant may apply under section 80 for a review of a decision of the Director.

Environmental approval, environmental consent, or environmental permit non-transferable

(13) An approval, consent, or permit belongs only to the named holder and is non-transferrable unless prior written consent to the transfer has been given by the Director (in the case of an approval) or the permitting authority (in the case of a consent or permit).

68. Requirement for environmental approval, environmental consent, or environmental permit, proof of ownership, etc, and consideration of social and economic circumstances of applicant who is natural person and needs of local communities

(1) No person may undertake a Tier 1 activity in the Cook Islands, including Cook Islands waters except in accordance with a prior written environmental approval granted by the Director under section 67.

(2) No person may undertake a Tier 2 activity in the Cook Islands, including Cook Islands waters except in accordance with a prior written environmental consent granted by a permitting authority under section 70.

(3) No person may undertake a Tier 3 activity in the Cook Islands, including Cook Islands waters except in accordance with a prior written environmental permit granted by a permitting authority under section 75.

(4) An applicant for an approval, consent, or permit must show evidence of legal ownership, occupation rights, or other relevant permission relating to the access and use of the proposed project site.

(5) In considering any request under this Part for an approval, consent, or permit made by a natural person for the development of that person's private land or premises, the permitting authority may take into account the social and economic circumstances of that person and the needs of local communities.

Applications for consent for Tier 2 activities

69. Application for environmental consent for a Tier 2 activity

(1) A person who proposes to undertake a Tier 2 activity must apply to the permitting authority for an environmental consent for the activity.

(2) The permitting authority must review the application in accordance with this Act, including section 3(3), any prescribed criteria, and advice from the Service.

(3) In conducting its review of the application, the permitting authority must also have regard to possible—

(a) impacts from the activity on a site designated as a protected area under this Act or any other enactment of the Cook Islands; and

(b) transboundary environmental harm; and

(c) cumulative impacts that may arise from more than 1 individual project occurring simultaneously, or that may build up over time.

(4) The permitting authority may require further information from an applicant that it reasonably considers is needed to consider the application, and the applicant must provide that information.

(5) The permitting authority may obtain information from other sources that it reasonably considers is needed to consider the application, including advice from the Service, relevant public organisations, or technical experts.

70. Environmental consent decision

(1) On the basis of the information reviewed, the permitting authority may—

(a) grant an environmental consent to a Tier 2 activity subject to 1 or more of the following:

(i) any requirements or procedures prescribed by regulations:

(ii) any specific duration for the consent, decided by the permitting authority:

(iii) any conditions that the permitting authority considers necessary or reasonable to safeguard the environment; or

(b) upon review, identify the activity as a Tier 3 activity, and require Tier 3 application procedures to be followed; or

(c) decline to grant a consent and state the reasons for declining it.

(2) The Service must provide the applicant with a written statement of the decision of the permitting authority with reasons.

(3) The applicant may apply under section 80 for a review of a decision of the permitting authority.

Applications for permit for Tier 3 activities

71. Environmental permits subject to Infrastructure Act

The provisions of this Part relating to applications for, and the granting of, environmental permits for Tier 3 activities are subject to section 33(4) of the Infrastructure Act 2019.

72. Application for environmental permit for a Tier 3 activity

(1) A person who proposes to undertake a Tier 3 activity must apply to the permitting authority for an environmental permit for the activity.

(2) The permitting authority must review the application in accordance with this Act, including section 3(3), any prescribed criteria, the documents referred to in subsection (3), any consultation feedback, advice from the Service, and any other relevant information.

(3) An application for an environmental permit for a Tier 3 activity must—

(a) include an environmental impact statement and an environmental management and monitoring plan in accordance with any requirements prescribed by regulations and the requirements of section 73; and

(b) be accompanied by any other information that the permitting authority may reasonably require, or that may be prescribed by regulations.

(4) The permitting authority may require further information from an applicant that it reasonably considers is needed to consider the application, and the applicant must provide that information.

(5) The permitting authority may obtain information from other sources that it reasonably considers is needed to consider the application, including advice from the Service, relevant public organisations, or technical experts.

73. Environmental impact assessment and environmental impact statement

(1) Before undertaking an environmental impact assessment, an applicant must, taking account of any applicable regulations, standards, or guidelines,—

(a) identify and systematically study the baseline of existing environmental conditions of the area that the proposed activity may affect; and

(b) conduct a scoping exercise, including an environmental risk assessment; and

(c) identify, predict, and evaluate the potential environmental, social, and cultural effects and risks of the proposed activity; and

(d) identify and evaluate measures to mitigate the effects and risks; and

(e) prepare a draft scoping report; and

(f) undertake stakeholder consultation on the draft scoping report in accordance with section 88; and

(g) consider whether any changes need to be made to the draft scoping report taking into account stakeholder consultation; and

(h) submit the scoping report and results of stakeholder consultation to the Service for its review and comments.

(2) The Service may require further information that it reasonably considers is needed for the environmental impact assessment from the applicant, and the applicant must provide that information.

(3) The Service may obtain information from other sources that it reasonably considers is needed for the environmental impact assessment, including advice from relevant public organisations or technical experts.

(4) An environmental impact assessment must—

(a) be based on the scoping report and any comments on the report provided by the Service under subsection (1)(h); and

(b) be conducted in accordance with any applicable regulations, standards, and guidelines, and using best available scientific information, best environmental practices, and best available technology and techniques; and

(c) be documented in an environmental impact statement.

(5) An environmental impact statement must include a non-technical summary, and must also set out comprehensive details of—

(a) the proposed project; and

(b) the proposed project site and the existing environmental conditions; and

(c) the impact of the project on the environment and, in particular,—

(i) how the existing environmental conditions may be affected by the proposed project, in the form of an evidence-based prediction; and

(ii) pollution that may occur; and

(iii) a justification for the use or commitment of resources that can be depleted, or non-renewable resources (if any), to the project; and

(iv) the likelihood of any impacts affecting—

(A) any area that has been designated a protected area under this Act, or any other enactment of the Cook Islands: or

(B) any area outside the Cook Islands; or

(C) common resources; or

(D) water supply, catchment, or quality; or

(E) ecosystem services; and

(v) the extent to which climate change considerations may affect those predicted impacts; and

(d) confidence levels in the information provided, highlighting any data gaps and uncertainties; and

(e) the proposed action to mitigate adverse environmental impacts and the proposed environmental management and monitoring plan, setting out the steps and indicators that will be taken to monitor and manage environmental impacts arising out of the project; and

(f) the applicant's environmental management system, which will be used for implementation of the project; and

(g) possible alternatives to the proposed project, how they were evaluated, and an explanation for why the proposed project was preferred; and

(h) how stakeholders were identified and reached; and

(i) stakeholder consultations conducted, comments received, and how those comments have informed the application.

(6) An environmental impact statement must be peer reviewed by technical experts selected from the Technical Experts Register, with the results of that peer review provided in full as an annexure to the application. The application must also give details of the relevant experts engaged and explain how the report was amended as a result of the peer review or, if it was not amended, the reasons why not.

74. Consultation for purpose of Tier 3 permit

(1) Before the permitting authority makes a decision under section 75, the Service must, on behalf of the permitting authority,—

(a) undertake consultation with, and invite comments on the application from, the following:

(i) the public; and

(ii) stakeholders in accordance with section 88; and

(b) invite comments on the application from any public organisations, Island Environment Authority, and Island Government affected by or having expertise relevant to the proposed project or its environmental impact and the relevant Aronga Mana (all being an **affected organisation**).

(2) The Service may specify a date by which comments must be provided and need not consider comments received after that date.

(3) If the permitting authority is the Council, *see* section 10(2) (requirement for Council when acting as a permitting authority to consult relevant Island Environment Authorities in certain circumstances).

(4) For the purposes of subsection (1)—

(a) copies of the environmental impact statement and environmental management and monitoring plan must be made available for public review and comment for a period appropriate to the volume

and complexity of the information, and for a minimum of 30 working days from the date of publication; and

(b) the Service may—

(i) organise a meeting or meetings; or

(ii) require that the applicant for the permit organise a meeting or meetings, at the applicant's expense, in locations, via media, and at times that will enable interested parties to attend.

(5) The Service must document and make available and publish all comments received by the specified date as required by section 85.

75. Environmental permit decision

(1) After the permitting authority has reviewed and assessed the application for an environmental permit, and all relevant information, it must, subject to any requirements or procedures prescribed by regulations,—

(a) grant a permit for the proposed project, state the reasons for granting it, and specify its duration and the conditions which the permit is subject to (*see* section 76); or

(b) request the applicant to submit more information about or modifications to the proposed project before the decision is made (and may also direct further stakeholder consultation under section 88 where the modifications are significant); or

(c) decline to grant a permit for the proposed project and state the reasons for declining it.

(2) The permitting authority must decline to grant a permit, if—

(a) the activity would contravene the objectives of any management plan or have material impact upon any protected area or marine protected area designated under this Act or any other enactment of the Cook Islands; or

(b) it reasonably considers that it does not have adequate information to make a determination on the application; or

(c) environmental impacts predicted in the application, including transboundary or cumulative impacts, despite mitigation and management measures, are considered unacceptable by the permitting authority in line with relevant guidelines, standards, and regulations.

(3) The Service must provide the following with a written statement of the decision of the permitting authority with reasons:

(a) the applicant; and

(b) any member of the public or stakeholder who made a comment on the application (under section 74(1)(a)); and

(c) affected organisations (who made comments on the application under section 74(1)(b)).

(4) The Service must also make the decision available and publish it as required by section 85.

(5) Any of the persons or organisations referred to in subsection (3) may apply for a review of a decision of the permitting authority under section 80 including of any conditions imposed on the permit.

(6) If a permit is approved, it does not have effect until—

(a) the expiry of the time to apply for a review of the decision under section 80; or

(b) if a review is applied for, after the decision on the review.

76. Environmental permit conditions

(1) Every environmental permit must be subject to a condition of adherence to an environmental management and monitoring plan that is agreed with the permitting authority, which must include closure obligations.

(2) Other conditions the permitting authority may impose on an environmental permit may include 1 or more of the following:

(a) the duration of the permit:

(b) environmental performance outcomes, including specifying a measurable environmental outcome that must be achieved or met or not exceeded:

(c) prescriptive conditions requiring the holder to comply with specified actions or procedures, including—

(i) the provision of an environmental bond calculated in accordance with any applicable regulations or guidelines, designed to secure performance of the environmental management and monitoring plan, or to cover the costs of clean-up or restoration for any unpermitted damage to the environment:

(ii) ongoing monitoring and reporting to the Service on the performance and environmental impacts of the activity that is the subject of the permit:

(iii) maintaining data and records related to the activity and making those available for audit or verification by the Service.

(3) The permitting authority may review and revise the conditions of an environmental permit if a periodic review is specified in the permit, or if the permitting authority otherwise reasonably considers it necessary to do so to achieve the objectives of this Act.

Changes to environmental approvals, environmental consents, environmental permits, and activities

77. Expiry and renewal or extension of environmental approval, environmental consent, or environmental permit

Expiry

(1) An environmental approval, environmental consent, or environmental permit expires when—

(a) it is revoked by the Director or permitting authority in accordance with this Act; or

(b) an end date or milestone specified as a condition of the approval, consent, or permit is reached; or

(c) the specific activity to which the approval, consent, or permit relates ends, including any closure activities.

(2) A person who held an approval, consent, or permit that has expired must continue to comply with the requirements of this Act and any conditions of that approval, consent, or permit that continue to apply.

Renewal or extension

(3) A holder of an approval, consent, or permit that is in force may apply to renew or extend its duration by applying in writing to the Director or permitting authority at least 30 working days before its expiry stating the reasons for the request and in compliance with any prescribed procedures and requirements.

(4) If an application is made in accordance with subsection (3), the approval, consent, or permit continues in force beyond the expiry date until a decision is made on the application.

(5) The Service must give notice of an application for a renewal or an extension of a permit for a Tier 3 activity to the following within 5 working days of receiving it:

(a) any member of the public or stakeholder who made comments on the application (under section 74(1)(a)); and

(b) any affected organisation (who made comments on the application under section 74(1)(b)).

(6) The Director or permitting authority may require further information from a holder that they reasonably consider is needed to consider the application, and the holder must provide that information.

(7) The Director or permitting authority may obtain information or advice from other sources that it reasonably considers is needed to consider the application, including from the Service, relevant public organisations, technical experts, or the persons or organisations referred to in subsection (5).

(8) The Director or permitting authority may renew or extend the duration of an approval, consent, or permit only if they consider it reasonable to do so and if there has been no change in circumstances relevant to the basis for granting it other than a change or changes that the Director or permitting authority considers minor.

(9) The Service must provide the following with a statement of the written decision of the Director or permitting authority with reasons:

(a) the applicant; and

(b) if the decision relates to a permit for a Tier 3 activity, to the persons and organisations referred to in subsection (5).

(10) If the decision relates to a permit for a Tier 3 activity, the Service must also make the decision available and publish it as required by section 85.

(11) The persons and organisations referred to in subsection (9) may apply under section 80 for a review of a decision of the Director or permitting authority.

(12) If a permit for a Tier 3 activity is renewed or extended, that renewal or extension does not have effect until—

(a) the expiry of the time to apply for a review of the decision under section 80; or

(b) if a review is applied for, after the decision on the review.

78. Variation, revocation, or suspension of environmental approval, environmental consent, or environmental permit

(1) The Director or a permitting authority may vary (including on application by the holder), revoke, or suspend an environmental approval, environmental consent, or environmental permit if—

(a) the circumstances have changed in a way that affects the basis on which the original approval, consent, or permit was granted, other than a change or changes that the permitting authority considers minor; or

(b) the holder is in material or persistent breach of conditions on the approval, consent, or permit or of this Act; or

(c) the holder requests or consents to the variation, suspension, or revocation; or

(d) there are other compelling reasons in the public interest to do so.

(2) If the holder applies to vary a permit for a Tier 3 activity, or the Service otherwise proposes to vary such a permit, the Service must give notice to the following:

(a) any member of the public or stakeholder who made comments on the application (under section 74(1)(a)); and

(b) any affected organisation (who made comments on the application under section 74(1)(b)).

(3) The notice under subsection (2) must be given—

(a) if the holder has applied to vary the permit, within 5 working days after the Service receives the application; or

(b) if the Service otherwise proposes to vary the permit, within 5 working days of the date of the decision by the Service to do so.

(4) The Director or permitting authority may require further information from a holder that they reasonably consider is needed to consider the application and the holder must provide that information.

(5) The Director or permitting authority may obtain information or advice from other sources that it reasonably considers is needed to consider the application including from the Service, relevant public organisations, technical experts, or the persons or organisations referred to in subsection (2).

(6) The Service must provide the following with the written statement of the decision of the Director or permitting authority with reasons:

(a) the applicant; and

(b) if the decision relates to a permit for a Tier 3 activity, the persons and organisations referred to in subsection (2).

(7) If the decision relates to the variation of a permit for a Tier 3 activity, the Service must also make the decision available and publish it as required by section 85.

(8) The persons and organisations referred to in subsection (6) may apply under section 80 for a review of a decision of the Director or permitting authority.

(9) If a permit for a Tier 3 activity is varied, that variation does not have effect until either—

(a) the expiry of the time to apply for a review of the decision under section 80; or

(b) if a review is applied for, until after the decision on the review.

79. Duty of environmental consent or environmental permit holder to inform Service of change in activity

(1) A holder of an environmental consent or environmental permit must inform the Service of any proposed changes in the nature, intensity, or scale of the activity to which the consent or permit relates, or of any request to change the conditions contained in the consent or permit.

(2) If the Service considers that the proposed change is minor, it may authorise that change in writing without referring the change to the permitting authority for a decision but must inform the permitting authority within a reasonable period of time after approving such change.

(3) If the Service considers that the proposed change is more than minor, the Service must require the holder of the consent or permit to make a new application to the permitting authority for a consent or permit based on updated information.

(4) The Service's assessment under subsections (2) or (3) must take into account any criteria prescribed by regulations.

Review of decisions

80. Review of permitting authority's decisions

Decisions relating to Tier 1 and Tier 2 activities

(1) Regulations may prescribe a review process for decisions on approvals for Tier 1 activities and consents for Tier 2 activities.

Decisions relating to Tier 3 activities

(2) Within 30 working days of receiving notice of a decision under section 75, 77, or 78 relating to a permit for a Tier 3 activity, any of the persons and organisations referred to in section 75(3) may apply for a review of the decision—

(a) if the permitting authority is an Island Environment Authority, to the Council:

(b) if the permitting authority is the Council, to the Minister.

(3) The Service must give notice of the application under subsection (2) to all the other persons or organisations referred to in section 75(3) within 5 working days of receiving the application.

(4) The Council or Minister must review the decision and all relevant information and must within 3 months of receipt of the application give

all the persons or organisations referred to in section 75(3) a statement in writing of the decision on review to—

(a) confirm or revoke the permitting authority's decision (including, if confirming the decision, to modify it or add conditions to it); and

(b) if the decision on review amounts to a refusal to give a permit for a proposed project, direct the Service to request that the applicant submit specified further information or modifications to the Service regarding the proposed project for reconsideration by the permitting authority.

(5) If the Minister is required to review a decision in a case where they are the applicant for the permit, or are otherwise directly or indirectly interested in the permit application (otherwise than as the reviewing authority), the Minister must,—

(a) with the agreement of the permitting authority, convene an independent panel to review the permitting authority's decision and submit a recommendation to the Minister; and

(b) follow the panel's recommendation.

(6) Decisions by the Council or Minister and recommendations by a panel under this section relating to a permit for a Tier 3 activity must be made available and published as required by section 85.

(7) No further review of a permitting authority's decision may be conducted except on the order of the court.

Decisions about bioprospecting permits

(8) This section also applies to the review of decisions under sections 93 and 98, with the review to be undertaken by the Minister and with any necessary modifications.

Offence

81. Offence relating to an environmental approval, environmental consent, or environmental permit

(1) A person commits an offence who, without reasonable excuse or lawful justification,—

(a) fails or refuses to comply with section 68; or

(b) fails to comply with a condition of an environmental approval, environmental consent, or environmental permit; or

(c) causes a significant environmental impact of a nature or extent that is not permitted under an environmental approval, environmental consent, or environmental permit.

(2) A person who commits an offence under subsection (1) is liable on conviction,—

(a) in the case of a Tier 1 activity, in the case of a body corporate to a fine not exceeding $10,000 or in the case of an individual, to a fine not exceeding $5,000:

(b) in the case of a Tier 2 activity, in the case of a body corporate to a fine not exceeding $100,000 or in the case of an individual, to a fine not exceeding $50,000:

(c) in the case of a Tier 3 activity, in the case of a body corporate to a fine not exceeding $2,000,000 or in the case of an individual, to a fine not exceeding $250,000 or up to 2 years' imprisonment, or both.

(3) Subsection (1) does not apply to an activity conducted under the management or authority of a Ministry or public authority for the purpose of national defence or protecting the public against a disaster or emergency.

(4) If the Service reasonably believes that an offence is being committed under with this section, it must consider issuing an environmental protection notice under Part 18, including suspending the activity that is the cause of concern, pending further investigation.

Part 13
Foreshore, sloping land, wetlands

82. Determination of foreshore, sloping land, and wetlands

The Service may determine whether a site falls within the definition of foreshore or wetlands (*see* definitions in section 3) or is sloping land by reference to relevant guidelines and scientific criteria.

83. Permission for development of foreshore, sloping land, and wetlands

(1) A person commits an offence who, without an environmental approval, environmental consent, or environmental permit obtained under Part 13, does any of the things listed in subsection (2) and is liable on conviction to a fine not exceeding $100,000.

(2) The things are the following:

(a) removes any sloping land, wetlands, silt, sand, cobble, gravel, boulder, coral, vegetation, or tree from the foreshore:

(b) places any fill or material of any type, or erects or alters any building or structure within the foreshore, sloping land, or wetlands:

(c) undertakes any excavation, dredging, clearing, paving, grading, ploughing, dumping, burning, reclamation, or removal of vegetation or trees on the foreshore, sloping land, or wetlands:

(d) carries out any activity that may result in the alteration of the natural configuration of the foreshore, sloping land, or wetlands:

(e) undertakes excavation on sloping land of any kind, or erects or alters any building or structure, on any land having a natural gradient in excess of 1:10.

(3) Nothing in this section applies to an activity that, in the opinion of the Service, in light of its nature, extent, and location will have a negligible impact on the environment.

84. Moratorium on development

The Minister may, by notice in the Gazette, declare a moratorium on development activities of any type in relation to wetlands, sloping land,

or foreshore areas, where it is considered necessary or expedient to do so in order to—

(a) protect, conserve, or restore animal or plant habitat or biodiversity; or

(b) meet the obligations of the Cook Islands under a regional or international convention, treaty, protocol, or agenda.

Part 14
Access to environmental information and public participation

85. Publication of reports, minutes, etc.

(1) This section applies to all of the following:

(a) an Island Environment Authority, for minutes of meetings:

(b) the Council, for minutes of meetings:

(c) the advisory committee for the Environment Protection Fund, for minutes of meetings produced under section 103(3):

(d) the Director, for any consultation report produced under section 88:

(e) any other body or person, for any document they are required to notify or publish under this Act.

(2) The body or person must do all of the following:

(a) maintain copies of the document in a reasonable form:

(b) make copies of the document available for inspection by the public during ordinary business hours at the offices of that body or person:

(c) make copies of the document available to the public on request and on an internet site maintained by or on behalf of that body or person (if any).

(3) A person or body must not publish information under this section if it is protected under other legislation that protects privacy or restricts the dissemination of information.

86. Dissemination of environmental information

Subject to the Official Information Act 2008 and other legislation that protects privacy or restricts dissemination of information, a public organisation must engage in the active and systematic and timely release to the public of environmental information that it holds, including all of the following:

(a) texts of international conventions or agreements, and of national or local legislation, on the environment or relating to it:

(b) policies, plans, and programmes relating to the environment:

(c) progress reports on the implementation of the items referred to in paragraphs (a) and (b) when prepared or held in electronic form by public authorities:

(d) reports on the state of the environment:

(e) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment:

(f) authorisations or similar things given under any enactment that may have a significant impact on the environment and environmental agreements, or a reference to the place where such information can be requested or found:

(g) environmental impact studies, environmental reports and risk assessments, or a reference to the place where the information can be requested or found:

(h) facts and analyses of facts, which the public authority considers relevant and important in framing major environmental policy proposals.

87. Recognised environmental organisations

(1) Any organisation or association in the Cook Islands that meets both of the following criteria may notify the Service of its interest in the membership or benefits described in paragraph (b):

(a) it has expertise, or an advisory or representation role, in relation to environmental matters:

(b) it wishes to be considered for membership of an Island Environment Authority or the Council, or to obtain other benefits offered to recognised environmental organisations under this Act.

(2) A notification must be on the approved form and regulations may prescribe the procedure for notification under this section.

(3) The Service must maintain a list of organisations notified to the Service under this section and must make it available and publish it as required by section 85.

88. Stakeholder consultations

(1) If in this Act reference is made to a stakeholder consultation, the person or body responsible for the consultation must do all of the following:

(a) provide stakeholder access to up-to-date and comprehensive information in accessible terminology and format, including electronic and machine-readable format where practicable (unless the dissemination of the information is restricted by an enactment):

(b) give all stakeholders, including all recognised environmental organisations, the opportunity to participate in the consultation:

(c) provide a reasonable opportunity for those consulted to raise enquiries and to make known their views (which may be time limited and require comments be made by a specified date):

(d) record in written form all responses to the consultation received by the specified date, however received:

(e) take those responses into account in making decisions related to the matter subject to consultation:

(f) produce a report of the consultation, including—

(i) a summary of the responses received to the consultation; and

(ii) a statement explaining how the responses have or have not been taken into account:

(g) continue or repeat these processes, as appropriate, if the subject matter of a prior consultation substantially alters:

(h) provide a copy of the report referred to in paragraph (f) to the Director, for publication in accordance with section 85.

(2) The Service must provide assistance to a permitting authority in conducting a public consultation.

(3) *See* section 3 for the definition of stakeholders.

89. Public enquiries

The Service must make itself reasonably accessible to receive inquiries or complaints from members of the public, and must endeavour to:

(a) respond to such inquiries or complaints in a full and timely manner; and

(b) where appropriate, and with the consent of the person making the inquiry or complaint, publish the inquiry or complaint and the response as required by section 85.

Part 15
Bioprospecting, access, and benefit sharing

90. Cook Islands' sovereign rights over indigenous biological resources

(1) This Act recognises the Cook Islands' sovereign rights over indigenous biological resources, and the Crown's right to regulate third party access to them.

(2) Nothing in this Part may be interpreted or acted upon if that would—

(a) undermine or amend the implementation of the Traditional Knowledge Act 2013; or

(b) restrict the customary use or exchange of indigenous biological resources by and between local communities of the Cook Islands; or

(c) undermine or amend the spirit of partnership and mutual respect set out in the United Nations Declaration on the Rights of Indigenous Peoples; or

(d) limit the collecting, obtaining, or exporting of indigenous biological resources to which the International Treaty on Plant Genetic Resources for Food and Agriculture adopted at the Conference of the Food and Agriculture Organization of the United Nations on 3 November 2001 applies; or

(e) restrict the uses of any indigenous biological materials that may be prescribed.

91. Bioprospecting permit required

(1) A person may collect, obtain, or export indigenous biological resources for bioprospecting, only within the terms of a bioprospecting permit granted by the Council.

(2) A person who acts in contravention of subsection (1) commits an offence and is liable on conviction to a fine not exceeding $250,000.

(3) The Council is the permitting authority for a bioprospecting permit under this Part.

(4) Regulations may prescribe thresholds and procedures for bioprospecting permits.

92. Application for bioprospecting permit

(1) An applicant for a bioprospecting permit must be in the approved form (if any) and must disclose to the Council all relevant information concerning the proposed bioprospecting, in accordance with any applicable regulations, including all of the following:

(a) the name of the applicant and, if they are a legal entity, their contact person, including an address and contact details to be used for the purposes of the application:

(b) the type, form, and quantity of indigenous biological resources to which access is sought and the means by which the resources will be collected, obtained, or exported (the **activity**):

(c) the starting date and duration of the proposed activity:

(d) the geographical area in which the proposed activity will take place:

(e) the name of the person or persons providing or giving access for the proposed activity, including an address and contact details:

(f) an evaluation of how the proposed activity may impact on conservation and sustainable use of biodiversity:

(g) the intended use of the indigenous biological resources and the arrangements for the retention, record-keeping, and sample storage for the indigenous biological resources:

(h) details about where and how any research and development will take place, including land and sea locations and voyage routes, research facilities, and development facilities:

(i) identification of local bodies for possible collaboration in research and development, including the legal entity and affiliation of each possible collaborator:

(j) details of collaborator and third-party involvement, including the legal entity and affiliation of each possible collaborator and third party:

(k) details of possible capacity-building initiatives:

(l) the purpose of the bioprospecting, research, and expected results, including the objectives and methods and any environmental impacts:

(m) the types of benefits that could come from the bioprospecting, including benefits from progeny, derivatives, and products arising from the utilisation of those resources:

(n) an indication of benefit-sharing arrangements, taking into account any relevant regulations, protocols, or guidelines:

(o) the budget for the proposed bioprospecting:

(p) an indication of confidentiality of information to be provided and generated from the bioprospecting:

(q) a list of any other applications or permits related to the proposed activity or otherwise associated with the application:

(r) the identification of any traditional uses or knowledge associated with the indigenous biological resources that are proposed to be collected, provided, or exported for bioprospecting:

(s) if the indigenous biological resources are to be exported,—

(i) the quantity of indigenous biological resources that are to be exported; and

(ii) particulars of the legal entity and affiliation of the person or persons receiving the exported indigenous biological resources; and

(iii) evidence that the person or persons receiving the exported indigenous biological resources have also agreed to a material transfer agreement consistent with the bioprospecting permit, the benefit-sharing agreement, and the material transfer agreement; and

(iv) the arrangements for the retention, record-keeping, sample storage and access to the exported indigenous biological resources; and

(v) the arrangements for the repatriation of indigenous biological resources samples and their derivates and associated data and information:

(t) proposed repository for the duplicates of any indigenous biological resources accessed:

(u) details about—

(i) the prior free and informed written consent of the Island Government to the proposed bioprospecting; and

(ii) the prior free and informed written consent of the indigenous communities of the Island or village concerned (including stakeholders connected to the resources) to the proposed bioprospecting; and

(iii) the material transfer agreement approved by the Minister; and

(iv) any benefit-sharing agreements approved by the Minister; and

(v) any data and information management plans:

(v) a signed declaration about compliance with the laws and regulations, proper consents, and the truthfulness of the information in the application:

(w) any other information relevant to enable the Council to determine the relative costs and benefits of granting the bioprospecting permit:

(x) any other matters that may be prescribed.

(2) The Council may require further information from an applicant that it reasonably considers is needed to consider the application, and the applicant must provide that information.

(3) The Council may obtain information from other sources that it reasonably considers is needed to consider the application, including advice from the Service, relevant public organisations, or technical experts.

93. Grant of bioprospecting permit

Review of application and consultation

(1) The Council must review the information provided under section 92 including in accordance with section 3(3) and with the objective of protecting the interests that both of the following may have in the proposed bioprospecting project,—

(a) any person, including any public or community body, providing or giving access to the indigenous biological resources to which the application relates:

(b) any indigenous community whose traditional use or knowledge of the indigenous biological resources to which the application relates have initiated or will contribute to or form part of the proposed bioprospecting or use by the applicant of the resources.

(2) The Council must also—

(a) undertake consultation with and invite comments on the application from the following:

(i) the public; and

(ii) stakeholders (including those identified in subsection (1)) in accordance with section 88; and

(b) invite comments on the application from any public organisations, Island Environment Authority, and Island Government affected by or having expertise relevant to the proposed project or its environmental impact and the relevant Aronga Mana.

(3) The Council may specify a date by which comments must be provided and need not consider comments received after that date but must consider comments received before to that date.

(4) *See also* section 10(2) (requirement for Council to consult relevant Island Environment Authorities in certain circumstances).

(5) The Council may seek further information from the applicant that it reasonably considers is necessary to consider the application. The applicant must provide that information.

(6) The Council may obtain information or advice from other sources that it reasonably considers is needed to consider the application including from the Service, relevant public organisations, technical experts, or the persons or organisations referred to in subsection (2).

Decision and content of bioprospecting permit

(7) The Council may, subject to subsections (8) and (9),—

(a) grant a bioprospecting permit; or

(b) decline to grant a bioprospecting permit.

(8) If the Council identifies the existence of a stakeholder with an interest as set out in subsection (1)(a), the Council may grant a bioprospecting permit only if—

(a) the Council is satisfied that the applicant has disclosed all material information relating to the bioprospecting to the stakeholder and on the basis of that disclosure has obtained the free, prior, and informed consent of the stakeholder for the provision of, or access to, such resources; and

(b) the applicant and the stakeholder have, under this Part, entered into a mutually agreed—

(i) material transfer agreement that regulates the provision of or access to such resources; and

(ii) benefit-sharing agreement that provides for sharing by the stakeholder in any future benefits that may be derived from the bioprospecting; and

(c) the Minister has approved the benefit-sharing agreement under section 94(2) and the material transfer agreement under section 95(2).

(9) If a stakeholder has an interest as set out in subsection (1)(b), the Council may grant a bioprospecting permit only if—

(a) the applicant has disclosed all material information relating to the bioprospecting to the stakeholder and on the basis of that disclosure has obtained the free, prior, and informed consent of the stakeholder to use any of the stakeholder's knowledge of, or discoveries about, the indigenous biological resources for the proposed bioprospecting; and

(b) the applicant and the stakeholder have entered into a benefit-sharing agreement that provides for sharing by the stakeholder in any future benefits that may be derived from the bioprospecting; and

(c) the Minister has approved the benefit-sharing agreement under section 94(2).

(10) A bioprospecting permit may specify—

(a) the type, form, and quantity of indigenous biological resources that may be accessed:

(b) limitations on the possible use of the indigenous biological resources:

(c) recognition of the sovereign rights of the Cook Islands:

(d) local capacity-building requirements:

(e) restrictions on transfer of the indigenous biological resources to collaborators and third parties:

(f) measures designed to ensure due respect and protection of knowledge and practices of indigenous communities:

(g) treatment of data, information and confidential information:

(h) details of the person(s) from whom free, prior and informed consent has been obtained:

(i) requirement to comply with benefit-sharing and material transfer agreements, and confirmation that they have been mutually agreed:

(j) a duty to minimise environmental impacts of activities carried out in the Cook Islands:

(k) the date of grant and duration of the permit:

(l) a schedule for regular review and reporting requirements:

(m) where to find a translation into Cook Island Māori:

(n) a unique identifier as a marker of the permit as an Internationally Recognised Certificate of Compliance:

(o) details about the Competent National Authority and checkpoints for any reporting and other monitoring and compliance activities:

(p) requirements to contact the Competent National Authority about any breaches in permitted bioprospecting activities and any breaches of the material transfer agreement or the benefit-sharing agreement:

(q) the termination date of the permit:

(r) any other conditions.

(11) The Service must provide the following with a written statement of the Council's decision with reasons and, if the permit is granted, information about any of the things that will apply to the permit under subsection (10):

(a) the applicant; and

(b) any member of the public or stakeholder who made comments on the application (under subsection (2)(a)); and

(c) any of the organisations (who made comments on the application under subsection (2)(b)).

Review and publication

(12) Any person or organisation referred to in subsection (11) may apply for a review of the Council's decision under section 80, including of any conditions imposed on the permit.

(13) A bioprospecting permit that is granted must be made available and published in accordance with section 85.

(14) If a bioprospecting permit is approved, it does not have effect until—

(a) the expiry of the time to apply for a review of the decision under section 80; or

(b) if a review is applied for, after the decision on the review.

94. Benefit-sharing agreements

(1) A benefit-sharing agreement for the purposes of this Part must—

(a) be in the approved form; and

(b) be translated into Cook Island Māori; and

(c) specify—

(i) the type and form of indigenous biological resources to which the bioprospecting relates; and

(ii) the geographical location or source from which the indigenous biological resources are to be collected or obtained; and

(iii) the quantity of indigenous biological resources that will be collected or obtained; and

(iv) any traditional uses or knowledge of an indigenous community related to the bioprospecting and present and future potential uses of the indigenous biological resources; and

(d) name the parties to the benefit-sharing agreement; and

(e) detail, regarding the items listed in paragraph (c),—

(i) any intellectual property rights that apply; and

(ii) any restrictions or limitations on traditional uses or knowledge of an indigenous community that apply:

(iii) how these will be held between the parties; and

(f) set out the manner in which, and the extent to which, the indigenous biological resources are to be utilised or exploited for the bioprospecting; and

(g) set out the manner in which and the extent to which the stakeholder will share in any monetary or non-monetary benefits that may arise from the bioprospecting; and

(h) specify any agreed access fee, upfront payments, milestone payments, royalties, licence fees in the event of commercialisation, and other forms of monetary amounts; and

(i) describe any joint ventures, research funding, payment to the Environmental Protection Fund, project participation, capacity-building, training, education, research dissemination, technology transfer, or other local investment or development initiatives, and other forms of monetary and non-monetary arrangements; and

(j) provide for a regular review of the agreement by the parties as the bioprospecting progresses; and

(k) comply with any other matters that may be prescribed.

(2) A benefit-sharing agreement or any amendment to an agreement—

(a) must be submitted to the Minister for approval; and

(b) does not take effect unless approved by the Minister.

95. Material transfer agreements

(1) A material transfer agreement must—

(a) be in the approved form; and

(b) be translated into Cook Island Māori; and

(c) specify—

(i) particulars of the person providing or giving access to the indigenous biological resources, and of the applicant for the bioprospecting permit for collecting or obtaining the resources; and

(ii) the type and form of indigenous biological resources to be collected or obtained and the arrangements for the retention, record-keeping, sample storage and access to the indigenous biological resources; and

(iii) the geographical location or source from which the indigenous biological resources are to be collected or obtained; and

(iv) the quantity of indigenous biological resources that will be collected or obtained; and

(v) if the indigenous biological resources are to be exported,—

(A) the quantity of indigenous biological resources that will be exported; and

(B) particulars of the legal entity and affiliation of the person or persons receiving the exported indigenous biological resources; and

(C) evidence that the person or persons receiving the exported indigenous biological resources has or have also agreed to a material transfer agreement consistent with the bioprospecting permit, the benefit-sharing agreement and the material transfer agreement; and

(D) the arrangements for the retention, record-keeping, sample storage and access to the exported indigenous biological resources; and

(E) the arrangements for the repatriation of indigenous biological resources samples and their derivates and associated data and information; and

(F) the purpose for which the indigenous biological resources are to be exported, and any applicable limitations; and

(vi) the present and future potential uses of the indigenous biological resources; and

(vii) agreed data retention, record-keeping, and sample storage and access arrangements; and

(viii) how intellectual property rights must apply to creations, products or processes associated with and derived from the indigenous biological resources; and

(ix) how the Cook Islands may be recognised as the country of origin of the indigenous biological resources, in any future use; and

(x) conditions under which the recipient may provide any such indigenous biological resources or their progeny or derivatives, to a third party; and

(xi) agreement that the indigenous biological resources must be used only for the purposes and in accordance with the terms and conditions set out in the agreement; and

(xii) that any change in use or purposes would require an amendment to the agreement, and new free, prior, and informed consent from the relevant stakeholders; and

(xiii) circumstances in which the agreement can or must be renegotiated; and

(xiv) clauses regarding the assignment or transfer rights; and

(xv) dispute resolution arrangements; and

(xvi) any such other matter that may be prescribed.

(2) A material transfer agreement or any amendment to such an agreement—

(a) must be submitted to the Minister for approval; and

(b) does not take effect unless approved by the Minister.

96. Benefit-sharing: assistance from Service

The Service, in collaboration with other authorities relevant to indigenous rights in the Cook Islands,—

(a) may assist the applicant and stakeholder in defining the terms and conditions of a benefit-sharing or material transfer agreement:

(b) may facilitate negotiations between the applicant and stakeholder and ensure that those negotiations are conducted on an equal footing:

(c) on request by the Minister, must provide its opinion on whether any benefit-sharing arrangement agreed upon between the applicant and stakeholder is fair and equitable:

(d) must take action to monitor and enforce the terms, permits, or agreements entered into under this Part:

(e) may make recommendations to the Minister:

(f) must perform any other functions that may be prescribed.

97. Expiry of bioprospecting permit

A bioprospecting permit granted under this Part expires when—

(a) it is revoked by the Council; or

(b) an end date specified in the permit is reached; or

(c) the bioprospecting act or activity is ended, including any clean-up activities.

98. Extension or variation of bioprospecting permit

(1) The Council may vary a bioprospecting permit or a bioprospecting permit holder may apply for an extension or variation of the permit,—

(a) to extend a permit that is still in force under this Part by applying in writing to the Council at least 30 working days before the permit's expiry, and stating the reasons for the request; or

(b) to vary a permit that is still in force under this Part, by applying in writing to the Council and stating the reasons for the request.

(2) An application must be in the approved form, in compliance with any prescribed procedures and requirements, and contain the information

that the Council reasonably considers is needed to consider the application.

(3) If a permit holder applies to vary a permit or the Council proposes to vary a permit, the Council must give notice to the persons or organisations referred to in section 93(11) who were involved with the original application.

(4) The Council may require further information from an applicant that it reasonably considers is needed to consider the application, and the applicant must provide that information.

(5) The Council may obtain information from other sources it reasonably considers is needed to consider the application, including from the Service, relevant public organisations, technical experts, or the persons or organisations referred to in section 93(11) who were involved with the original application.

(6) The Council may extend or vary a bioprospecting permit after consultation with relevant stakeholders and indigenous communities, if satisfied that—

(a) there is free, prior, and informed consent; and

(b) there is an agreed benefit-sharing agreement and material transfer agreement; and

(c) any environmental impacts are addressed in accordance with this Act.

(7) A permit extension or variation—

(a) must be submitted to the Minister for approval; and

(b) does not take effect unless approved by the Minister; and

(c) may include conditions.

(8) Section 93(11) to (14) apply to the extension or variation of a bioprospecting permit.

99. Environmental impact assessment for bioprospecting

Nothing in this Part—

(a) affects the requirement for an environmental approval, environmental consent, or environmental permit for activities under Part 12 for activities that are also bioprospecting activities; and

(b) limits a bioprospecting permit applicant from requiring an environmental impact assessment and a separate environmental permit where a bioprospecting project causes or is likely to cause a significant environmental impact.

100. Indigenous biological resources benefit-sharing fund

(1) The Minister, in co-operation with the Minister of Finance, may establish a trust fund into which all moneys arising from benefit-sharing agreements under this Part, and due to stakeholders, can be paid, and from which all payments to or for the benefit of stakeholders can be made.

(2) The Service must maintain, make available, and publish a record of all moneys arising from benefit-sharing agreements under this Part as required by section 85.

Part 16
Environment Protection Fund

101. Environment Protection Fund

(1) The Minister must establish an Environment Protection Fund for the objectives of this Act.

(2) The sources of funding for the Environment Protection Fund are all of the following from the date the Fund is established:

(a) fees charged under this Act or regulations:

(b) damages, costs, and compensation granted by a court to the Government for an action under this Act or regulations:

(c) sums of money received from instant penalty paid under this Act:

(d) proceeds of the sale of forfeited items collected, imposed or received by or under this Act:

(e) funds raised through levies and taxes imposed by other enactments, or by appropriations, the proceeds of which are identified for deposit in the Environment Protection Fund:

(f) such other sources of money that may be prescribed in regulations.

102. Use of the Environment Protection Fund

Monies held in the Environment Protection Fund must be spent to achieve the objectives of this Act, subject to any limitations imposed by other Acts, and at times and in the manner, and otherwise administered,—

(a) as prescribed by regulations; or

(b) in the absence of regulations, as Cabinet may approve.

103. Advisory committee for Environment Protection Fund

(1) The Minister must establish an advisory committee that includes the Director who must act as Secretary.

(2) The committee must, for the purpose of the management and administration of the Environment Protection Fund,—

(a) formulate policies to generate money for the Environment Protection Fund (in addition to the things listed in section 101(2)); and

(b) determine allocations to be made from the Environment Protection Fund.

(3) The Director must make minutes of any meeting of the committee available to the public in accordance with section 85.

Part 17
Environment officers

104. Island Environment Officers and National Environment Officers

(1) The Director must appoint at least 1 Island Environment Officer for Rarotonga and each island that has an Island Government.

(2) The Director may appoint any number of National Environment Officers that they reasonably believe are needed.

(3) Environment Officers must be employed by the Service as public service employees

(4) The Director must, upon appointment, issue to an Environment Officer an identity card, which must be returned to the Director at the end of the appointment.

(5) Subject to subsection (6), an Island Environment Officer must perform their functions and exercise their powers—

(a) on or in relation to the island to which the officer was appointed; and

(b) under the general direction of the Director and in consultation with the Island Environment Authority for that island.

(6) The Director may at any time, following consultation with the relevant Island Environment Authority and the Environment Officer concerned, redeploy that officer to work on or in relation to any other part of the Cook Islands under the general direction of the Director.

(7) A National Environment Officer must perform the functions and exercise their powers—

(a) on or in relation to any part of the Cook Islands to which this Act applies; and

(b) under the general direction of the Director.

(8) The following persons are deemed to be a National Environment Officer:

(a) the Director:

(b) any serving Police officer authorised in writing by the Director:

(c) any serving Police officer assisting or accompanying an Environment Officer in the performance or exercise of functions or powers under this Act.

(9) An Environment Officer is deemed to be an inspector for the purposes of the Seabed Minerals Act 2019.

105. Powers of Environment Officers

(1) If an Environment Officer suspects that an offence against this Act is being or has been committed, they may,—

(a) subject to subsections (2) and (3), enter at any reasonable time, and inspect and search, any premises to investigate the suspected offence; and

(b) take samples of any material relevant to the offence for testing or evidentiary purposes; and

(c) order any person suspected of the offence to do either or both of the following—

(i) disclose their full name and usual place of residence:

(ii) produce any environmental approval, environmental consent, or environmental permit, or other evidence of a document authorising the act or omission that would otherwise constitute the offence; and

(d) by environmental protection notice under Part 18, order any person to cease any specified activity that the Environment Officer has reasonable grounds to believe is an offence against this Act.

(2) An Environment Officer entering any premises under subsection (1) must, if requested by an occupier of the premises, produce that officer's identity card.

(3) No Environment Officer may enter a dwelling house for the purposes of this section except—

(a) with the consent of an occupier of the dwelling house; or

(b) in accordance with a warrant issued under section 107.

(4) A person commits an offence against this Act who, without reasonable excuse or lawful justification fails or refuses to comply with an order made under subsection (1)(c), and is liable upon conviction to a fine not exceeding $5,000 (*see* section 108 for obstruction of an Environment Officer.)

(5) An Environment Officer may undertake reasonable inspection activities, including conducting a site visit, if the Service or a permitting authority consider this necessary or expedient—

(a) to verify information submitted in an application for an environmental approval, environmental consent, or environmental permit; or

(b) to monitor impacts or verify reports relating to an activity that has been approved, consented, or permitted under this Act, or that the Service believes may require an environmental approval, environmental consent, or environmental permit; or

(c) to monitor compliance with an environmental protection notice issued under this Act or any other requirement of this Act.

106. Additional powers of Environment Officers with Police or warrant

(1) If there are reasonable grounds to believe that an offence under this Act is being or has been committed, an Environment Officer may exercise a power specified in subsection (2) if the officer—

(a) is a serving Police officer; or

(b) is assisted or accompanied by a serving Police officer; or

(c) is acting in accordance with a warrant issued under section 107.

(2) Those powers are the following:

(a) seize any animal, plant, article, or property (not including land) that could constitute evidence of the commission of the offence:

(b) take or cause to be taken such steps as appear to the Environment Officer to be necessary either to ensure compliance with the requirements of an environmental protection notice served under Part 18, or to remedy the consequences of a failure to so comply:

(c) arrest a person who is believed to be committing, or have committed, the offence.

107. Warrants to inspect dwelling house, seize property, or arrest persons

(1) A Justice of the Peace or Judge may, on the written application of an Environment Officer made on oath, issue a warrant to the Environment Officer, unconditionally or subject to conditions, authorising that officer to do 1 or more of the following:

(a) enter and inspect a specified dwelling house for the purposes of section 106:

(b) seize any item for the purposes of section 106(2)(a):

(c) arrest a named person for the purposes of section 106(2)(c).

(2) A warrant is valid for 14 working days from the date of issue.

(3) No warrant may be issued under subsection (1) unless the Justice of the Peace or Judge concerned is satisfied that there are reasonable grounds for believing 1 or more of the following:

(a) in the case of a warrant issued under subsection (1)(a), that an offence against this Act is being or has been committed in or from the dwelling house concerned:

(b) in the case of a warrant issued under subsection (1)(b), that the item concerned could constitute evidence of the commission of an offence against this Act:

(c) in the case of a warrant issued under subsection (1)(c), that the person concerned is committing or has committed an offence against this Act.

108. False statements, obstructing or impersonating an Environment Officer

A person who does any of the following commits an offence and is liable upon conviction to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 3 months, or both:

(a) making a statement that is false or misleading in any material particular in any application or in any other information given to an Environment Officer, the Service, or a permitting authority under this Act; or

(b) falsifying or altering any document that is granted, served, or issued by a permitting authority or Environment Officer under this Act or providing to a permitting authority or Environment Officer a document that has been falsified or altered by the person or that the person knows to have been falsified or altered; or

(c) intentionally or recklessly delaying, hindering, obstructing, assaulting, or threatening an Environment Officer acting in the performance or exercise of functions or powers under this Act, or

allowing an animal under their control to do so, or inducing or inciting another person to do so; or

(d) by words or conduct falsely represents that they are an Environment Officer or otherwise impersonates an Environment Officer.

109. Forfeiture of property

(1) Upon the conviction of any person for an offence against this Act, the Court may, in addition to imposing any penalty by way of fine or imprisonment, order the forfeiture to the Service of any property (not including land) or article used or otherwise involved in the commission of the offence.

(2) Any property or article forfeited under subsection (1), may be sold or otherwise disposed of as the Court thinks fit, and the proceeds of any such sale must be paid into the Environment Protection Fund where established.

Part 18
Environmental protection notices

110. Environmental protection notices

(1) An Environment Officer may serve an environmental protection notice on a person if it is reasonable and in accordance with any relevant standards or guidelines, in order—

(a) to secure compliance with this Act or regulations; or

(b) to otherwise secure necessary action to protect the environment.

(2) Any person who, without reasonable excuse or lawful justification, fails to comply with an environmental protection notice or a written warning or warnings from the Service relating to that notice, or who obstructs another person from complying with a notice or any warning, commits an offence and is liable upon conviction to a fine not exceeding $50,000 or imprisonment for a term not exceeding 6 months, or both.

(3) The Service may recover all reasonable costs of exercising powers in relation to an environmental protection notice from the person on whom the notice was served as a debt due to the Service.

111. Content of environmental protection notices

(1) An environmental protection notice must—

(a) be in writing; and

(b) describe the premises or person to which it relates; and

(c) specify the purpose of the notice, including the environmental concern or harm that is the subject of the notice; and

(d) specify, to the extent necessary,—

(i) any operations that must be carried out on the premises by the person named, or other actions that must be taken by them, for the purpose of preventing, controlling, mitigating, or eradicating the environmental concern or harm; and

(ii) the manner in which those operations or actions are to be carried out; and

(iii) the person or persons who are to carry out those operations or actions; and

(iv) the time-frame within which those operations or actions are to be carried out; and

(e) direct the recipient to stop work or the activity; and

(f) specify any operations or actions that must not be carried out on the premises or by the person named; and

(g) specify the date on which the notice comes into effect and the period for which it has effect; and

(h) not impose unreasonable burden on the recipient of the notice in the circumstances; and

(i) be countersigned by the Director.

(2) An environmental protection notice may provide for payments to be made by the owner or occupier of the premises to which the notice relates to any person for the reasonable costs incurred by a person carrying out an operation or action under the notice.

112. Appeals against environmental protection notices

(1) A person served with an environmental protection notice or subject to conditions of an environmental protection notice may, within the period of 28 working days of the date of service of the notice, appeal against the notice to the Court.

(2) On an appeal the Court may modify or cancel the notice if satisfied that—

(a) the service of the notice, or any requirement contained in it, is not reasonable in all the circumstances; or

(b) there is a material defect in the notice.

(3) In any other case the Court must dismiss the appeal.

113. Coming into effect of notices

Unless a notice specifies a later date,—

(a) an environmental protection notice that is specified as an emergency environmental protection notice comes into effect at the time it is served; and

(b) any other notice comes into effect—

(i) upon the expiry of the time limit for appealing against the decision to serve the notice; or

(ii) where such an appeal is made, on the date of withdrawal of the appeal or on the date of its final determination, subject to any directions the Court may make.

114. Information as to compliance with environmental protection notices

(1) A person on whom a notice has been served must, if required by an Environment Officer, inform the officer whether and how the requirements of the notice have been complied with.

(2) Any person who, without reasonable excuse or lawful justification, fails to comply with a requirement under subsection (1) commits an offence and is liable upon conviction to a fine not exceeding $5,000.

Part 19
Instant penalties

115. Establishment of instant penalty

The Director may serve an instant penalty notice on a person if the Director has reasonable cause to believe that—

(a) an offence against this Act that carries a penalty of a fine not exceeding $100,000 may have been committed by any person; and

(b) an information or charge has not been laid in respect of the alleged offence; and

(c) the nature of the individual's act or omission that has caused the offence is deemed to be of a minor nature; and

(d) the person involved has no previous record of offending against this Act; and

(e) in all the circumstances it would be appropriate to impose a penalty under this section rather than pursue a prosecution.

116. Form of instant penalty

An instant penalty notice served under this Act must be in writing and contain all of the following:

(a) the date and nature of the alleged offence:

(b) a full summary of the facts on which the allegation is based:

(c) any other matters that the Director considers relevant to the imposition of a penalty:

(d) a statement setting out the options under section 117:

(e) a statement inviting written submissions within 28 working days from date of service on the matters the person may wish the Director to take into account in determining any penalty.

117. Procedure for instant penalty

Any person on whom an instant penalty notice is served may, within 28 working days of service, give written notice on the Director,—

(a) admitting the offence and making submissions on the matters the person wishes the Director to take into account in determining any penalty; or

(b) not admitting the offence and requiring that it be dealt with before a court, in which case, except for the relevant court proceedings,

no further action may be taken by the Director in relation to the same matter.

118. Imposition of instant penalty

(1) If, following service of an instant penalty notice, a person admits to the offence, the Director, after taking into account any submissions made by the person under section 117(1)(a), must impose on that person by written notice a monetary penalty, payable to the Service within 28 working days of the notice (unless objected to under a process set by regulations), for an amount not exceeding one-fifth of the maximum fine to which the person would be liable if the person were convicted of the offence by a court.

(2) The imposition of a monetary penalty on a person under subsection (1)—

(a) does not affect any powers to suspend, withdraw, or modify any environmental approval, environmental consent, or environmental permit or any other authority that may be held by that person under this Act or any other enactment; and

(b) does prevent any further information or charge being laid against the person in respect of the admitted offence.

(3) A process for objecting to the amount of a monetary penalty may be set by regulations.

Part 20
Offences, jurisdiction, and liability

119. General penalty for offences

Any person who is convicted of an offence against this Act for which a penalty is not specified is liable upon conviction—

(a) in the case of a body corporate, to a fine not exceeding $500,000 and, if the offence is a continuing one, to a further fine not exceeding $2,000 for each day or part of a day that the offence continues:

(b) in the case of an individual, to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 1 year, or to both, and, if the offence is a continuing one, to a further fine not exceeding $1,000 for each day or part of a day that the offence continues.

120. Restoration after an offence

In addition to or instead of any fine and imprisonment for an offence against this Act, the Court may order a convicted person to do 1 or more of the following:

(a) under the supervision and to the satisfaction of a person nominated by the court, clean up any harmful substance or remedy any damage caused to the environment as a consequence of the offence within such period and upon such conditions that may be specified in the order, with the intent that any damaged area be restored as near as practicable to a satisfactory, environmentally sound state:

(b) to remove any structure, fill, or other material placed in contravention of this Act:

(c) to pay such amount as the Court may assess for the expenses and costs that have been or are likely to be incurred clearing up harmful substances, remedying damage, removing material, or otherwise restoring the environment to its state immediately before the offence.

121. Strict liability

(1) It is not necessary for the prosecution to prove that a defendant intended to commit an offence for any offence against this Act, except where the provision describing the offence specifies that such proof is required.

(2) It is a defence to an offence under this Act if the defendant proves that the defendant took all reasonable steps to ensure that a required action was taken, or that a prohibited action was not taken.

122. Liability of principals and agents

(1) If an offence against this Act is committed by an agent or employee of another person, that person is, without prejudice to the liability of the agent or employee, guilty of the same offence if it is proved—

(a) that the act or omission that constituted the offence took place with the authority, permission, or consent of that person; or

(b) that person—

(i) knew or should reasonably have known that the offence was to be or was being committed; and

(ii) failed to take reasonable steps to prevent or stop it.

(2) If a body corporate is convicted of an offence against this Act, every director or person similarly concerned in the management of the body corporate is guilty of the same offence if it is proved—

(a) that the act or omission that constituted the offence took place with their authority, permission, or consent; or

(b) that they—

(i) knew or should reasonably have known that the offence was to be or was being committed; and

(ii) failed to take reasonable steps to prevent or stop it.

Part 21
General and miscellaneous provisions

123. Protection of officials

No Environment Officer or member of an Island Environment Authority or the Council is liable to be prosecuted, or to pay damages, for—

(a) anything done or omitted to be done in the performance or exercise, or intended performance or exercise, in good faith, of their functions, duties, or powers under this Act; or

(b) anything said while giving evidence in proceedings in their official capacity, except for the offence of perjury in relation to that evidence.

124. Regulations

(1) The King's Representative may by Order in Executive Council make such regulations as are contemplated by this Act or are necessary for giving full effect to this Act.

(2) Without limiting the generality of subsection (1), regulations may be made for any of the following purposes, and relating to individual islands, or the Cook Islands generally,—

(a) providing for the protection, conservation, and management of biodiversity, protected species, or other plants or animals:

(b) setting criteria, procedures, and evidentiary requirements for assessing whether a species is a protected, alien, invasive alien, or invasive species, and the person or body to make the assessment:

(c) implementing at the national level, the obligations of international or regional agreements to which the Cook Islands is or intends to become a party:

(d) imposing further reporting obligations on the Service:

(e) establishing rules for the composition or operation of the Technical Experts Register of the Service:

(f) establishing priority areas for environmental monitoring and reporting by the Service, detailing required monitoring programmes, or setting environmental targets:

(g) detailing measures or plans designed to improve the state of the environment of the Cook Islands:

(h) regulating or prohibiting trade and commerce or other activities relating to plants and animals, including protected species

(i) prescribing rules for matters relating to land mining, sand mining, seabed mining, tree harvesting, or cutting:

(j) prescribing rules or conditions for the grant of environmental approvals, environmental consents, or environmental permits for activities relating to protected, alien, invasive alien, or invasive species:

(k) regulating or prohibiting the pollution of air, water, or land, and the discharge or management of pollution, plastics, waste, chemicals or any substance of a dangerous, noxious, or offensive nature:

(l) regulating or prohibiting the supply, exportation, importation, or transport of hazardous wastes, or wildlife, into or out of the Cook Islands:

(m) designating pollutants, and procedures for the management of their use, including the application of a pollution levy:

(n) regulating or promoting activities related to recycling:

(o) controlling soil erosion and siltation, and regulating or prohibiting the taking of gravel, sand, soil, rock, coral, or similar material:

(p) prescribing rules for mitigating the environmental impact on public infrastructure of activities on land:

(q) prescribing procedures for the preparation of, and giving effect to, management plans:

(r) establishing protected areas, marine protected areas, and nature reserves, setting fees for entrance or activities within such areas, and managing, regulating, or prohibiting activities within those areas:

(s) further criteria for defining significant environmental impact for the purposes of this Act, and categorising or establishing procedures for determining whether a proposed activity is Tier 1, Tier 2, or Tier 3:

(t) regulating the undertaking of Tier 1, Tier 2, and Tier 3 activities:

(u) allowing for the following in relation to applications for environmental approvals for Tier 1 activities, environmental consents for Tier 2 activities, environmental permits for Tier 3 activities, or bioprospecting permits, in all those cases, in a wider range of circumstances than provided for in this Act:

(i) notification to other persons or organisations before deciding the application:

(ii) consultation with other persons or organisations before deciding the application:

(iii) publication of decisions under section 85 and other documents relating to decision-making for approvals, consents, or permits:

(iv) the right for other persons or organisations to apply for a review of decisions under section 80:

(v) prescribing the content or format, or processes for the preparation of, environmental impact statements, environmental management and monitoring plans, strategic environmental assessments or reports, or strategic environmental management plans required under this Act:

(w) prescribing thresholds or procedures for environmental approvals, environmental consents, or environmental permits under this Act:

(x) prescribing rules for requiring an environmental bond as a condition of an environmental permit:

(y) prescribing thresholds and procedures for bioprospecting:

(z) relating to recognised environmental organisations:

(aa) with the consent of the Minister responsible for finance, determining sources of money for the Environment Protection Fund, and rules and procedures for its management and operation:

(bb) prescribing procedures for entry, inspection, or search of premises, arrest of a person, seizure or forfeiture of property, and the taking and testing of samples, in the exercise of powers conferred by this Act:

(cc) prescribing rules for implementing emergency measures under section 19:

(dd) prescribing rules for the environmental protection of the island of Suwarrow:

(ee) prescribing offences and penalties,—

(i) in the case of a body corporate, not exceeding $500,000 and, in the case of continuing offences, a fine not exceeding $2,000 for every day on which the offence continues:

(ii) in the case of an individual, not exceeding $100,000 and, in the case of continuing offences, a fine not exceeding $1,000 for every day on which the offence continues:

(ff) prescribing forms, fees, or other procedures or functions to be used for the purposes of this Act:

(gg) prescribing rules of procedure for Island Environment Authorities and the Council:

(hh) providing for any matter incidental to or connected with any of the foregoing.

125. Regulation for transition from Environment Act 2003 to Environment Act 2026

(1) The King's Representative may by Order in Executive Council make such regulations that are necessary or desirable for the orderly implementation of this Act and are consistent with the purposes of this Act.

(2) This section expires on the third anniversary of the date on which this Act comes into force.

126. Repeal

The Environment Act 2003 is repealed.

127. Transitional provision concerning Suwarrow National Park

(1) The Suwarrow National Park Declaration of 1978 and any rules relating to the management of the Suwarrow National Park made under the Environment Act 2003 are declared to have effect, and to have always had effect, and are to be treated as if they were regulations made under section 124.

(2) Subsection (1) applies until such time that the national park is fully protected as a protected area or marine protected area under this Act or by similar means under another enactment.

128. Transitional provision concerning regulations made under Environment Act 2003

All regulations lawfully made under the Environment Act 2003 continue to have effect as if they were regulations made under section 124, unless and until such time that they are repealed or replaced by new regulations made under this Act.

129. Transitional provisions for Island Environment Authorities

An Island Environment Authority established under the Environment Act 2003 is to be treated as an Island Environment Authority under this

Act for all purposes subject to any regulations that may be made under this Act.

130. Transitional provision for Environment Officers

A person who was an Environment Officer immediately before the coming into force of this Act is deemed to be an Environment Officer under this Act, subject to any contract of employment applying to the person immediately before the coming into force of this Act.

131. Amendments to legislation

(1) Make the substantive amendments to legislation set out in Schedule 1.

(2) Make the consequential amendments to legislation set out in Schedule 2.

s 131(1)

Schedule 1
Substantive amendments to legislation

Part 1—Amendments to Acts

Disaster Risk Management Act 2007
Replace section 9(2)with:
"(2) The Council consists of 9 members being—
"(a) the Prime Minister, or their delegate, who must act as the Chair:
"(b) the Financial Secretary:
"(c) the Police Commissioner:
"(d) the Director:
"(e) the Public Service Commissioner:
"(f) the Chief Executive Officer of Office of the Minister of Island Administration:
"(g) the Secretary of Infrastructure Cook Islands:
"(h) the Director of the Metrological Services:
"(i) the Director of the National Environment Service."

Marae Moana Act 2017
In section 4, insert in its appropriate alphabetical order:
"**biodiversity** has the meaning given in section 3 of the Environment Act 2026".

Marine Resources Act 2005
In section 4(c)(iii)(C), replace "marine resources." with "marine resources:"
In section 4, insert as paragraph (d):
"(d) the views and technical inputs of the National Environment Service in any matter relevant to the environment."

Prevention of Marine Pollution Act 1998
In section 3(2), delete paragraph (b) in both places.
In section 3(3)(c), after the words "approved by the Secretary", insert the words "in consultation with the Director of the National Environment Service".
In section 7, insert as subsection (3):
"(3) The Secretary must immediately share any report received under this section with the Director of the National Environment Service."
After section 15(2), insert as subsection (2A):
"(2A) The Secretary must consult with the Director of the National Environment Service before issuing a permit under this section."
In section 19, insert as subsection (7):
"(7) The Secretary must consult with the Director of the National Environment Service before issuing an instruction or taking a measure under this section."

Seabed Minerals Act 2019
Replace section 21(4) with:

"(4) The following are deemed to be inspectors for the purposes of this Act:

"(a) the Commissioner:

"(b) any constable assisting or accompanying the Commissioner or another inspector while the Commissioner or inspector is performing functions or exercising powers conferred under this Act:

"(c) any Environment Officer appointed in accordance with the Environment Act 2026."

Replace section 84 with:

"**84 When project permit required**

"A seabed minerals activity that is a Tier 3 activity under section 67(1)(c) of the Environment Act 2026 requires an environmental permit and environmental impact assessment under sections 72 and 73 of the Environment Act 2026."

Solid and Hazardous Waste Act 2025

Replace section 22(8) with:

"(8) A designation or approval of a waste disposal area requires an environmental impact assessment under section 73 of the Environment Act 2026."

Part 2—Amendments to subsidiary legislation

Environment (Atiu and Takutea) Regulations 2008

In the heading to regulation 15, replace "**protected areas**" with "**sites of local significance**".

In regulation 15(1), (5), and (8), replace "protected areas" with "sites of local significance".

In regulation 15(2) to (4), (6), and (7), replace "protected area" with "site of local significance".

In regulation 16(1), replace "protected area" with "site of local significance".

Environment (Mitiaro) Regulations 2008

In the heading to regulation 14, replace "**protected areas**" with "**sites of local significance**".

In regulation 14(1) and (9), replace "protected areas" with "sites of local significance".

In regulation 14(2) to (4) and (6) to (8), replace "protected area" with "site of local significance".

In regulation 14(5), replace "protected areas" with "site of local significance".

In regulation 15(1), replace "protected area" with "site of local significance".

Environment (Seabed Minerals Activities) Regulations 2023

In regulation 4(1), insert in their appropriate alphabetical order:

"**environmental approval** has the meaning given in section 3 of the Environment Act 2026"

"**environmental impact** has the meaning given in section 3 of the Environment Act 2026"

In regulation 4(1), replace the definition of **permitted activity** with:

"**permitted activity** means a Tier 1 activity that requires an environmental approval by the Director of the National Environmental Service under the Environment Act 2026"

Replace regulation 10(1) with:

"(1) An activity described in Schedule 2 is categorised as a Tier 1 activity for the purposes of section 67(1)(a) of the Environment Act 2026."

Seabed Minerals (Exploration) Regulations 2020

In regulation 3(1), replace the definition of **environmental approval** with:

"**environmental approval** means an environmental approval, environmental consent, or an environmental permit issued under the Environment Act 2026".

Replace regulation 18(3)(a) and (b) with:

"(a) the requirements of the Environment Act 2026, including the requirements for an environmental approval, environmental consent, or an environmental permit (whichever is required) under Part 12 of that Act in respect of the proposed activities under a work plan, and the timing of its issue:

"(b) the requirement for any specific conditions in the environmental approval, environmental consent, or environmental permit relating to the protection of the marine environment:"

Seabed Minerals (Minerals Harvesting and Other Mining) Regulations 2024

In regulation 3(1), replace the definition of **environmental approval** with:

"**environmental approval** means an environmental approval, environmental consent, or an environmental permit issued under the Environment Act 2026".

s 131(2)

Schedule 2
Consequential amendments to and repeals in legislation

1. Replace "Environment Act 2003" with "Environment Act 2026 in the following provisions and definitions in Acts:

Infrastructure Act 2019
Section 31(a)
Section 54(1)(d)(ii)

Island Government Act 2012-13
Section 69(3)

Seabed Minerals Act 2019
Section 6(1), in the following definitions:
environmental impact assessment
National Environment Service
serious harm
Section 8(2)(a)(i)
Section 87(1)(a)
Section 90 in the heading
Section 90(2) and (4)
Section 91(2)(b)
Section 116(1)(a)(iv)

Solid and Hazardous Waste Act 2025
Section 21(2)
Section 22(9)
Section 24(4)
Section 45

2. Replace "Environment Act 2003" with "Environment Act 2026 in the following provisions and definitions in subsidiary legislation:

Environment (Application to Manihiki) Order 2012
Regulation 3

Environment (Application to Mauke) Order 2007
Regulation 2

Environment (Application to Mitiaro) Order 2004
Regulation 2

Environment (Atiu and Takutea) Regulations 2008
Regulation 3, definition of **Act**

Environment (Mitiaro) Regulations 2008
Regulation 3, definition of **Act**

Environment (Montreal Protocol) Regulations 2021
Regulation 3, definition of **Act**

Environment (Seabed Minerals Activities) Regulations 2023
Regulation 4(1), definition of **Act**

Environment (Takuvaine Water Catchment Management Plan) Regulations 2006
Regulation 3, definition of **Act**

Marine Resources (Aitutaki and Manuae Bonefish Fishery) Regulations 2010
Schedule Aitutaki and Manuae Bonefish Fishery Management Plan 2010, clause 8(b)

Public Health (Sewage and Wastewater Treatment and Disposal) Regulations 2014
Regulation 3(1), definition of **Environment Officer**

Seabed Minerals (Exploration) Regulations 2020
Regulation 4
Regulation 28(1)(h)
Schedule 1, clause 4
Schedule 3, clause 1(b)
Schedule 8, clause 5.1.11 in each place

Seabed Minerals (Exploration Fees) Regulations 2020
Regulation 13

Seabed Minerals (Minerals Harvesting and Other Mining) Regulations 2024
Regulation 10(3)
Regulation 28(1)(e)
Regulation 39(1)
Regulation 81(2)(c)
Schedule 10, heading to clause 5.1.10
Schedule 10, clause 5.1.10

3. Replace references to specific sections in Environment Act 2003 in the following provisions and definitions in Acts:

Seabed Minerals Act 2019
Section 6(1), definition of **environment**, replace "section 2 of the Environment Act 2003" with "section 3 of the Environment Act 2026"

Solid and Hazardous Waste Act 2025
Section 4, in the following definitions replace "section 2 of the Environment Act 2003" with "section 3 of the Environment Act 2026":
bank
foreshore

inland waters

To Tatou Vai Act 2021
Section 5, definition of **mean high water mark**, replace "section 2 of the Environment Act 2003" with "section 3 of the Environment Act 2026"

4. Replace references to specific sections in Environment Act 2003 in the following provisions and definitions in subsidiary legislation:

Environment (Seabed Minerals Activities) Regulations 2023
Schedule 5, replace "section 36AA(2) of the Environment Act 2003" with "section 67(1)(b) of the Environment Act 2026"
Schedule 6, replace "section 36(5)(a) of the Environment Act 2003" with "section 75 of the Environment Act 2026"

Seabed Minerals (Minerals Harvesting and Other Mining) Regulations 2024
Regulation 3(1), definition of **project permit**, replace "permit granted under section 36 of the Environment Act 2003 and associated regulations" with "permit referred to in section 72 of the Environment Act 2026"
Regulation 14(3)(a), replace "section 36A of the Environment Act 2003" with "section 74 of the Environment Act 2026"

5. Repeals:

Solid and Hazardous Waste Act 2025
In section 4 repeal the following definitions:
Rarotonga
water

This Act is administered by the National Environment Service.
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