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CHAPTER 4.

MARSHALL ISLANDS MARINE RESOURCES AUTHORITY

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An Act to establish a Marshall Islands Marine Resources Authority and to provide for exploration, exploitation, regulation, corporation and management of marine resources and for matters connected therewith or incidental thereto.

Commencement: March 28, 1988
Source: P.L. 1988-12
P.L. 1988-14
P.L. 1989-56

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TITLE 33. MARINE RESOURCES

PART I - PRELIMINARY

§ 1. Short title.

This Act may be cited as the "Marshall Islands Marine Resources Authority Act 1988".
[P.L. 1988-12, § 1.]

§ 2. Interpretation.

In this Act:

- (a) "atoll" means a circular or oval coral reef forming a geographic and ecologic unit crowned by at least one island;
- (b) "authorized observer" means any person approved by the Authority to act as an observer on foreign fishing vessels, including any regional observer, as may be authorized by the Authority in accordance with this Act;
- (c) "authorized officer" means any officer authorized to enforce the provisions of this Act, including Exclusive Economic Zone management authorities, nationals of other Pacific Island States and regional Pacific surveillance and enforcement officers as may be authorized in accordance with this Act;
- (d) "Director" means the Director of the Marshall Islands Marine Resources Authority;
- (e) "fish" includes shellfish, crustaceans, marine animals and the eggs, span, spat, and juvenile stages of fish, shellfish, crustaceans, and marine animals;
- (f) "fish aggregating device" means any man-made or partly man-made floating device, whether anchored or not, intended for the purpose of aggregating fish, and includes any natural floating object on which a device has been placed to facilitate its location;
- (g) "fishery waters" means the waters of the territorial sea of the Republic and of the Exclusive Economic Zone and internal waters, including lagoons, as defined in the Marine Zones (Declaration) Act 1984, and any other waters, over which the Government of the Republic has jurisdiction;
- (h) "fishing" means:
 - (i) the searching for, catching, taking or harvesting of fish or other aquatic organism;
 - (ii) the attempted searching for, catching, taking, or harvesting of fish or other aquatic organism;
 - (iii) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking, or harvesting of fish or other aquatic organism;
 - (iv) placing, searching for or recovering fish aggregating devices or associated equipment such as radio beacons;
 - (v) any operations at sea in support of, or in preparation for, any activity described in this Paragraph;
 - (vi) aircraft use relating to any activity described in this Paragraph;
- (i) "fishing gear" means any equipment, implement or other thing that can be used in the act of fishing, including any fishing net, rope, line, float, trap, hook, winch, boat or helicopter;
- (j) "fishing vessel" or "vessel" means any vessel, boat, ship or other craft which is used for, equipped to be used for, or of a type that is normally used for the purpose of fishing or related activities;

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- (k) "foreign fishing agreement" means a bilateral or multilateral agreement providing for fishing rights to foreign fishing vessels in accordance with the requirements of this Act;
- (l) "foreign fishing vessel" means any fishing vessel other than a local fishing vessel;
- (m) "Fund" means the Marshall Islands Marine Resources Authority Fund established in accordance with this Act;
- (n) "license" means a license issued in accordance with this Act;
- (o) "living resource" includes any finfish, mollusk, crustacean, coral, holothurian (beche-de-mer) or other echinoder, and turtle and their young and eggs and all other forms of marine animal and plant life other than marine birds;
- (p) "local fishing vessel" means a fishing vessel:
 - (i) registered in the Republic of the Marshall Islands; and
 - (ii) wholly owned and controlled, or chartered by:
 - (A) the Government of the Republic of the Marshall Islands;
 - (B) a public corporation established under the laws of the Republic of the Marshall Islands; or
 - (C) any citizen of or person permanently domiciled in the Republic of the Marshall Islands;
- (q) "locally based foreign fishing vessel" means any foreign fishing vessel based in the Republic and certified as a locally based foreign fishing vessel by the Authority;
- (r) "Minister" means the Minister of Resources and Development;
- (s) "operator" means any person who is in charge of, directs or controls a vessel, including the owner, charterer or master;
- (t) "region" means an area of the Pacific that is approved in writing by the Minister of Foreign Affairs as a Region for the purposes of this Act, and "regional" has a corresponding meaning;
- (u) "regional organization" and "competent regional agency" mean an organization or agency to which the Republic is a party;
- (v) "related activities" in relation to fishing means:
 - (i) transshipping fish or other aquatic organisms to or from any vessel;
 - (ii) storing, processing or transporting fish or other aquatic organisms taken from fishery waters;
 - (iii) refueling or supplying fishing vessels or performing other activities in support of fishing operations; or
 - (iv) attempting or preparing to do any of the above;
- (w) "test fishing operations" means any fishing operations undertaken over a limited period of time as may be authorized by the Director for the purpose of testing the feasibility of commercial fishing operations with a view to the establishment of fishery operations based in the Republic or in the region;
- (x) "the Authority" means the Marshall Islands Marine Resources Authority established in accordance with this Act. [*P.L. 1988-12, § 2.*]

**PART II - MARSHALL ISLANDS
MARINE RESOURCES AUTHORITY**

§ 3. Marshall Islands Marine Resources Authority.

(1) There is hereby established a Marshall Islands Marine Resources Authority, hereinafter the "Authority".

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(2) The Authority shall be a body corporate with perpetual succession and a common seal, and may sue and be sued in its own name.

(3) Article VII of the Constitution shall not apply to or in relation to the Authority. [P.L. 1988-12, § 3.]

§ 4. Management of the Authority.

The powers and functions of the Authority shall be vested in and exercised by a Board of Directors, hereinafter the "Board", which shall consist of five members. [P.L. 1988-12, § 4.]

§ 5. Board of Directors.

(1) The Board shall consist of the following members:

(a) three (3) members *ex officio* consisting of the Minister of Resources and Development, the Minister of Foreign Affairs and the Minister of the Interior and Outer Islands Affairs; and

(b) two (2) other members appointed by the President.

(2) The Minister of Resources and Development shall function as Chairman of the Board. The Authority may delegate any or all of its powers and duties to the Chairman.

(3) The term of office of the members appointed under Subsection 1(b) of this Section shall be two (2) years.

(4) The Board may act notwithstanding any vacancy in membership, provided that there is a quorum in accordance with this Act.

(5) Notwithstanding the provisions of Subsection (3) of this Section, the President may, with the concurrence of the Cabinet, remove any member appointed under Subsection 1(b) of this Section. [P.L. 1988-12, § 5.]

§ 6. Cabinet's directions to the Board.

The Cabinet may give to the Board in writing general or special directions with respect to policy matters, and the Board shall give effect to such directions. [P.L. 1988-12, § 6.]

§ 7. Meetings of the Board.

(1) The Board shall meet at such times and places as may be designated by the Chairman, provided that the Board shall meet at least once every quarter.

(2) The Board shall adopt its own rules of procedure for transaction of business and for carrying out the purposes of this Act.

(3) The quorum for a meeting of the Board shall be three (3) members. [P.L. 1988-12, § 7.]

§ 8. Director and staff.

(1) Subject to any direction by the Cabinet, the Authority shall employ a Director of Marine Resources, hereinafter the "Director", who shall be in charge of and responsible for the management and administration of the Authority.

(2) The Director may act for and on behalf of the Authority subject to any direction the Board may give.

(3) The Authority may delegate to the Chairman the power to employ such other employees, consultants and advisers as he may deem necessary. The employees, consultants

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and advisers employed under this Section shall be exempt from Article VII of the Constitution. [P.L. 1988-12, § 8.]

§ 9. Employment of public servants.

At the request of the Minister, the Public Service Commission may make the services of members of the Public Service available to the Authority on such terms and conditions as the Commission may determine. [P.L. 1988-12, § 9.]

§ 10. Annual report.

The Authority shall report through the Minister to the Nitijela on its activities and planned programs on an annual basis and shall provide such additional reports and information from time to time as may be necessary. [P.L. 1988-12, § 10.]

§ 11. Powers and duties of the Authority.

- (1) The Authority shall have the following powers and duties:
 - (a) to conserve, manage and control the exploration and exploitation of all living and nonliving resources in the Fishery Waters, seabed, and subsoil thereunder, in accordance with the principles and provisions of this Act;
 - (b) to establish and implement an Exclusive Economic Zone Management program in accordance with this Act;
 - (c) to issue fishing licenses in accordance with the provisions of this Act and any regulations made under this Act;
 - (d) to issue licenses for the exploration and exploitation of the seabed and subsoil of the Fishery Waters;
 - (e) to negotiate and conclude foreign fishing agreements provided that no agreement shall be finally accepted without the approval of the Cabinet;
 - (f) to rebate, in accordance with regulations established by the Authority, all or a portion of a fee collected pursuant to this Act from any joint fishing venture established in accordance with law, if in the opinion of the Authority the rebate will promote fishery development;
 - (g) to participate in the planning and execution of programs related to fisheries or fishing, or the exploration or exploitation of the nonliving resources of the Fishery Waters, seabed, or subsoil thereunder, in which the Government of the Marshall Islands or any agency or instrumentality thereof has a proprietary interest, direct or indirect, by way of stock ownership, partnership, joint venture or otherwise;
 - (h) to seek technical assistance for the determination of the Fishery Waters boundaries;
 - (i) to submit the budget and a report regarding the expenditure of its funds to the Nitijela on an annual basis;
 - (j) to appoint authorized enforcement officers and observers in accordance with this Act; and
 - (k) to do such other things so as to give effect to the principles and provisions of this Act, and to carry out its powers and duties.

(2) The Authority may delegate any of its powers and duties to the Director in writing. [P.L. 1988-12, § 11.]

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§ 12. Power to make regulations.

(1) Subject to the provisions of this Act, the Authority may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Act, and in particular, but without restricting the generality of the foregoing, may make regulations:

- (a) respecting the conservation, management and protection of fish and other aquatic organisms in the Fishery Waters;
- (b) respecting the catching, loading, landing, handling, transporting, possession and disposal of fish;
- (c) respecting the operation of fishing vessels or any other vessel which may enter the Fishery Waters for any purpose which falls within the jurisdiction of this Act;
- (d) respecting the use of fishing gear and equipment;
- (e) respecting the issue, suspension and cancellation of licenses;
- (f) respecting the terms and conditions under which a license may be issued;
- (g) respecting the pollution of the Fishery Waters;
- (h) respecting the appointment of authorized officers and observers;
- (i) respecting the export of fish or any part thereof from the Republic;
- (j) respecting the conditions and procedures to be observed by foreign fishing vessels while within the Fishery Waters;
- (k) respecting the transitting of foreign fishing vessels through the Fishery Waters, and the manner in which fishing gear is to be stowed, by both licensed and unlicensed fishing vessels;
- (l) prescribing procedures to be followed by the operators of foreign and local fishing vessels to facilitate boarding and inspection by authorized officers;
- (m) respecting rewards to be paid to any person providing information on the operations of foreign fishing vessels leading to a conviction or compounding or other similar determination of an offense under this Act;
- (n) respecting the licensing and control of fish aggregating devices; and
- (o) prescribing the powers and duties of persons engaged in the administration or enforcement of this Act and providing for the carrying out of those powers and duties.

(2) The regulations made under Subsection (1) of this Section, shall become effective only upon approval of the same by the Cabinet. [*P.L. 1988-12, § 12.*]

§ 13. Compensation of members.

(1) Members of the Board appointed under Section 5(1)(b) of this Act shall be compensated at the rate of \$35 per day for attending meetings of the Board, provided that a member of the Authority who is a member of the Public Service shall not be entitled to receive any compensation.

(2) Notwithstanding Subsection (1) of this Section, all members of the Authority shall receive per diem and travel expenses while on the business of the Authority. [*P.L. 1988-12, § 13.*]

PART III - FOREIGN FISHING

§ 14. Foreign fishing.

(1) The provisions of this Act relating to foreign fishing shall not apply to or in relation to any fishing referred to in Section 24 of this Act.

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(2) The Authority may enter into bilateral or multilateral foreign fishing agreements with other States and associations or organizations representing foreign fishing vessel owners or charterers, providing for the allocation of fishing rights to vessels from those States, associations or organizations.

(3) Any agreement entered into under this Section shall include a provision establishing the responsibility of the foreign State, association or organization to take all measures to ensure compliance by its vessels with the terms and conditions of the agreement and with the laws relating to fishing in the Fishery Waters. [*P.L. 1988-12, § 14.*]

§ 15. Foreign fishing licenses.

(1) The Authority may, on receipt of an application for a foreign fishing license, issue a license authorizing a foreign fishing vessel to enter the Fishery Waters for the purposes of:

- (a) fishing or related activities;
- (b) to provision, service, repair or maintain any other foreign fishing vessel while at sea;
- (c) fishing for purposes of marine scientific research; and
- (d) effecting repairs at a port within the jurisdiction of the Republic.

(2) No foreign fishing vessel shall fish in the Fishery Waters unless a valid foreign fishing license or regional license has been issued in accordance with this Act and any regulations made under this Act.

(3) No foreign fishing vessel shall fish within the jurisdiction of any Local Government Area without a license issued by the appropriate Local Government Council. Such jurisdiction extends with respect to each Council, to the sea and seabed of the internal waters of the atoll or island and to the surrounding sea and seabed to a distance of five nautical miles from the baselines from which the territorial sea of that atoll or island is measured.

(4) Subject to Subsection (3) of this Section and except for locally based foreign fishing vessels as may be authorized by the Authority, it shall be a condition of licensing that no foreign fishing vessel shall fish in the territorial sea or within a radius of two nautical miles of any FAD which that vessel has not set.

(5) The Authority may attach to any foreign fishing vessel license such special conditions as it may require by in writing, including:

- (a) the type and method of fishing or related activity authorized;
- (b) the areas within which such fishing or related activities are authorized; and
- (c) the target, species and amount of fish authorized to be taken, including any restriction or by-catch.

(6) The Authority may, from time to time, where it is satisfied that it is expedient for the proper management of fisheries, vary special conditions attached to any foreign fishing license.

(7) Foreign fishing licenses shall only be issued in accordance with a foreign fishing agreement concluded in accordance with this Act.

(8) The provisions of Subsection (4) of this Section shall not apply to a license with respect to:

- (a) test fishing; and
- (b) a locally based foreign fishing vessel.

(9) The Director may exercise any of the powers and duties given to the Authority on behalf of the Authority under this Section, subject to any direction the Board may give. [*P.L. 1988-12, § 15.*]

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§ 16. Application for licenses.

(1) Application shall be made, in the prescribed form, to the Director or a competent regional agency or other body, person or State authorized to issue a regional license.

(2) The application shall contain such information as may be required by regulations promulgated by the Authority, except with respect to a regional license, and such other information the Director considers necessary to clarify or complete the details furnished by the applicant.

(3) The Authority may determine by regulation a registration fee which shall be paid with respect to every application.

(4) The Director may approve an application made in accordance with the requirements of this Act and any applicable foreign fishing agreement, on such terms and conditions as he deems appropriate.

(5) A license may be denied:

- (a) where the vessel with respect to which an application is made does not have good standing on the Regional Register of Foreign Fishing Vessels maintained by the South Pacific Forum Fisheries Agency;
- (b) where the application is not in accordance with the requirements of this Act;
- (c) where the owner or charterer is the subject of proceedings under the bankruptcy laws of any jurisdiction and reasonable financial assurances have not been provided;
- (d) where there has been a failure to satisfy a judgment or other determination for a breach of this Act or a foreign fishing agreement by the operator of the vessel with respect to which application for a license has been made, until such time as the judgment or other determination is satisfied;
- (e) where an operator of the vessel has contravened, or the vessel has been used for contravention of a foreign fishing agreement, or has committed an offense against the laws of the Republic; or
- (f) where the Authority determines that the issuance of a license would not be in the best interests of the Republic.

(6) Every license shall:

- (a) apply only to the foreign fishing vessel described therein and where applicable to the crew of the vessel, unless the Authority, by written permission, otherwise authorizes or unless a foreign fishing agreement otherwise provides;
- (b) be valid only for the period specified therein; and
- (c) cease to be valid on any change in the flag State registry or ownership of the vessel described in the license.

(7) Every license shall be kept on board the foreign fishing vessel described in the license while that vessel is in the Fishery Waters and shall be produced at the request of an authorized officer at his request. Prior to the receipt of the license, the correct citation of the license number shall satisfy this requirement. [*P.L. 1988-12, § 16.*]

§ 17. Revocation, suspension and variation of licenses.

If any foreign vessel for which a license has been issued or the operator or any crew member thereof has contravened this Act or if any penalty has not been paid or is overdue, the Authority may:

- (a) revoke or suspend such license at its discretion; or
- (b) impose additional conditions and restrictions on the license holder. [*P.L. 1988-12, § 17.*]

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§ 18. Period of validity.

Every foreign fishing license shall be valid for a period of twelve (12) months from the date of issue, unless previously terminated, revoked or suspended, except that the term of validity of a foreign fishing license shall not extend beyond the term of validity of the applicable foreign fishing agreement. [*P.L. 1988-12, § 18.*]

§ 19. Foreign fishing agreements.

The Authority may, by regulation, determine terms and conditions of foreign fishing agreements to which substantial agreement should be sought. [*P.L. 1988-12, § 19.*]

§ 20. Regional foreign fishing agreements.

(1) The Authority may enter into arrangements or agreements with other States in the region, or any competent regional organization or agency, providing for:

- (a) the harmonization of licensing procedures and conditions with respect to foreign fishing vessels and the maintenance of a regional register of foreign fishing vessels;
- (b) the issuance of fishing licenses with respect to foreign fishing vessels by any State, competent regional organization or agency, body, or person;
- (c) the recognition of regional licenses, certificates of access, or other such documents which may be issued in accordance with Paragraph (b) of this Subsection, subject to such conditions as may be specified in the agreement, arrangement or authorization and to such additional conditions as the Authority may specify from time to time;
- (d) a regional or sub-regional observer program; or
- (e) taking joint or harmonized enforcement measures with respect to foreign fishing vessels.

(2) The Authority may authorize by regulation such measures as may be necessary for the implementation of such arrangements or agreements, including:

- (a) exemption from certain requirements of this Act and any or all of the requirements of any regulation made under this Act, any foreign fishing vessel or class of foreign fishing vessel holding a valid regional fishing license, certificate of access or other such document issued by a competent regional agency or regional organization;
- (b) prescription of the conditions to be observed by foreign fishing vessels exempted under Paragraph (a) of this Subsection, while fishing or navigating in the Fishery Waters;
- (c) provision that where any foreign fishing vessel contravenes any of the conditions prescribed under Paragraph (b) of this Subsection, the operator and the holder of the regional fishing license issued with respect to the vessel shall each be guilty of an offense and provide for a penalty or a fine for each offense; and
- (d) provision that on conviction of the operator or the holder of the regional fishing license for an offense, the court may also order the forfeiture of the fishing vessel, including its equipment, fishing gear, appurtenances, stores, furniture and fish. [*P.L. 1988-12, § 20.*]

§ 21. Compliance with foreign fishing agreement.

The foreign party or parties and the operators of any foreign fishing vessel fishing

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pursuant to a foreign fishing agreement shall comply with all requirements of such agreement and terms and conditions of licenses issued thereunder. [*P.L. 1988-12, § 21.*]

§ 22. Stowage of gear.

(1) Subject to Subsection (2) of this Section, all fishing gear aboard a foreign fishing vessel in the Fishery Waters shall be stowed in such a manner that it is not readily available for use for fishing.

(2) Subsection (1) of this Section shall not apply to a foreign fishing vessel in an area of the Fishery Waters in which it is authorized to fish in accordance with this Act. [*P.L. 1988-12, § 22.*]

PART IV - ACTIVITIES OTHER THAN FOREIGN FISHING

§ 23. Development of local fisheries.

(1) The Authority may take such measures it considers necessary for the development of local fisheries in the Fishery Waters, taking into account principles of conservation, management and optimum utilization. Including holding consultations, where appropriate, with Local Government Councils.

(2) Each Local Government Council shall, as much as possible, cooperate in such development for the proper management and development of the fisheries resource for the benefit of the people of the Republic.

(3) Subject to Subsection 2 of this Section, each Local Government Council shall be responsible for the proper management and development of the reef and inshore fisheries within its waters. [*P.L. 1988-12, § 23.*]

§ 24. Issue of licenses for local fishing vessels.

The Authority, or the Director on its behalf, may issue licenses to local fishing vessels, taking into consideration principles of conservation and management in any relevant fisheries management program, subject to such terms and conditions as it may prescribe from time to time by regulation. [*P.L. 1988-12, § 24.*]

§ 25. Issue of licenses for noncommercial fishing.

The Authority, or the Director on its behalf, may issue licenses to foreign vessels or parties for research, survey, recreation or other noncommercial fishing within the Fishery Waters on such terms and conditions as it may prescribe from time to time by regulation. [*P.L. 1988-12, § 25.*]

§ 26. Issue of licenses for fish processing.

(1) The Authority, or the Director on its behalf, may grant to any person a license to operate a fish processing establishment on payment of such fees and subject to such terms and conditions as it may prescribe from time to time by regulation.

(2) No person shall operate or allow to be operated any fish processing establishment except under a license granted under this Section and in accordance with the conditions of such a license.

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(3) In this Section "fish processing establishment" means any land, premises or other place on or in which fish are canned, packed, dried, gutted, salted, iced, chilled, frozen, or otherwise processed for sale by wholesale in or outside the Republic. [*P.L. 1988-12, § 26.*]

§ 27. Agreement relating to fish processing.

(1) Any person not a citizen or permanently domiciled or resident in the Republic who intends to invest or be involved in fisheries, including fishing, fish processing and related activities, shall agree with the Authority on the terms and conditions of such investment.

(2) Where agreement is not reached in accordance with Subsection (1) of this Section, the Authority may refuse to issue any fishing or fish processing license with respect to any vessel or fish processing establishment operated by or on behalf of that person or any company through which an investment is made.

(3) The requirements of this Section shall be in addition to the requirements of the Foreign Investments Advisory Board Act 1987. [*P.L. 1988-12, § 27.*]

§ 28. Issue of licenses for nonliving resources.

The Authority, or the Director on its behalf, may issue licenses for the exploration and exploitation of the nonliving resources of the Fishery Waters, seabed, and subsoil thereunder, subject to such terms and conditions as it may prescribe from time to time by regulation. [*P.L. 1988-12, § 28.*]

§ 29. License fees.

There shall be payable with respect to each license issued by the Authority such fees, royalties or other charges as may be prescribed by the Authority. [*P.L. 1988-12, § 29.*]

PART V — FINANCE

§ 30. Marshall Islands Marine Resources Authority Fund.

(1) There shall be established a Marshall Islands Marine Resources Authority Fund, hereinafter referred to as the "Fund".

(2) The Fund shall be a fund other than the General Fund within the meaning and for the purposes of Article VIII, Section 3 of the Constitution. [*P.L. 1988-12, § 30.*]

§ 31. Payments into the fund.

(1) There shall be paid into the Fund:

- (a) all monies appropriated by the Nitijela for the purposes of the Authority;
- (b) all monies designated by the Compact for fisheries or related activities, including surveillance;
- (c) any monies received by the Authority by way of loans, grants, aid, advances, contributions, gifts or other assistance;
- (d) in the case of goods and services, all monies realized on such goods and services; and
- (e) such other monies as may be received by the Authority pursuant to this Act.

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(2) The Secretary of Finance shall keep within a separate account all monies referred to in Subsection (1)(b) of this Section. [*P.L. 1988-12, § 31; amended by P.L. 1988-14, § 19, deleting original Paragraph (c) of Subsection (1) and renumbering the remaining Paragraphs as new Paragraphs (c), (d), and (e).*]

§ 32. Payments out of the fund.

- (1) Payment may be made out of the Fund only for:
- (a) carrying out the powers and duties of the Authority;
 - (b) the costs and expenses of the Authority, including administration;
 - (c) the purposes of working capital and petty cash, and similar purposes;
 - (d) giving effect to the provisions of this Act and any regulations made under this Act.

(2) No money may be withdrawn from the Fund except with the Authority of the Secretary of Finance and such member of the Board as the Board may designate, who shall be satisfied that the withdrawal is made in accordance with this Act and regulations made under this Act, and any other applicable law.

(3) The Secretary of Finance, with the concurrence of the Board, may transfer any excess monies, which in his opinion may not be required for the Authority, to the General Fund. [*P.L. 1988-12, § 32; amended by P.L. 1988-14, § 19, deleting original Paragraph (d) of Subsection (1) and renumbering Paragraph (e) as new Paragraph (d).*]

§ 33. Exemption from tax.

The income, property and transactions of the Authority shall not be subject to any tax, rates, or charges imposed under any other law. [*P.L. 1988-12, § 33.*]

§ 34. Restrictions on borrowing.

Where any money is borrowed or any advance, grant, aid or other assistance is received for a specific purpose or subject to any condition; it shall be expended or used only for that purpose or subject to those conditions. [*P.L. 1988-12, § 34.*]

§ 35. Accounts.

- (1) The Secretary of Finance shall maintain proper accounts and records of:
- (a) the Fund; and
 - (b) the disposition of monies paid into or out of the Fund.

(2) The accounts and records of the Fund shall be audited by the Auditor-General as provided in Article VIII, Section 15 of the Constitution of the Marshall Islands.

(3) At the end of each financial year all monies remaining in the Fund, which is in excess of the Authority's budget estimate for the next financial year, shall be transferred to the General Fund. [*P.L. 1988-12, § 35.*]

PART VI — VIOLATIONS AND PENALTIES

§ 36. Violations and penalties.

- (1) Every person who:

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- (a) contravenes any provision of this Act or any regulations made under this Act;
- (b) uses any fishing vessel to engage in fishing in the Fishery Waters after revocation, or during the period of suspension of a license issued with respect to that vessel pursuant to this Act;
- (c) contravenes any provision of a foreign fishing agreement or any term or condition of any license issued in accordance with this Act and any regulations made under this Act, including a regional fishing license issued in accordance with this Act;
- (d) refuses to permit any authorized officer to board a fishing vessel for the purposes of conducting any search or inspection in connection with the enforcement of this Act or any regulations made under this Act or any foreign fishing agreement;
- (e) assaults, obstructs, resists, delays, refuses boarding to, intimidates or interferes with any authorized officer in the performance of his duties; and for the purposes of this Paragraph, any person who refuses to allow any authorized officer, or any person acting under his order or in his aid, to exercise any of the powers conferred on an authorized officer by this Act or any regulations made under this Act shall be deemed to be obstructing that officer or person;
- (f) fails to comply with the lawful requirements of any authorized officer or observer;
- (g) furnishes to any authorized officer any particulars which to his knowledge are false or misleading in any respect;
- (h) being on board any vessel being pursued or about to be boarded by any authorized officer, throws overboard or destroys any fish, fishing gear, explosive, poison or other noxious substance to avoid seizure of such fish, fishing gear, explosive, poison or other noxious substance or thing or the detection of any offense under this Act or the regulations made under this Act;
- (i) resists a lawful arrest for any prohibited act;
- (j) provides false, incomplete or misleading information required to be recorded, notified or communicated pursuant to any requirement of the provisions of this Act or the regulations;
- (k) ships, transports, offers for sale, sells, purchases, imports, exports or has custody, control or possession of any fish taken or retained in contravention of this Act;
- (l) interferes with, delays or prevents by any means, the apprehension or arrest of another person knowing that such person has committed any act prohibited by this Section,

shall be guilty of an offense. [*P.L. 1988-12, § 36. See Section 41(2) and (3) for penalties.*]

§ 37. Operating without a license.

(1) It shall be unlawful for any foreign fishing vessel, and for the operator or crew of such vessel to engage in fishing in the Fishery Waters of the Republic unless such fishing is authorized by, and conducted in accordance with, a valid license issued pursuant to this Act and the regulations made under this Act.

(2) It shall be unlawful for any foreign fishing vessel, and for the operator or crew of any foreign fishing vessel, to engage in fishing in waters under the jurisdiction of any Local Government unless such fishing is authorized by, and conducted in accordance with, a valid fishing license issued by the respective Local Government. [*P.L. 1988-12, § 37. See Section 41(4) for penalties.*]

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§ 38. Use of explosives.

(1) Every person who:

- (a) uses, permits to be used or attempts to use any explosive, poison or other noxious substance for the purpose of killing, stunning, disabling or catching fish, or in any way rendering fish more easily caught; or
- (b) carries or has in his possession or control any explosive, poison, or other noxious substance in circumstances indicating an intention of using such substance for any of the purposes referred to in Paragraph (a) of this Subsection,

shall be guilty of an offense and shall upon conviction be liable to a fine not exceeding fifty thousand dollars (US \$50,000).

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

(3) Every person who lands, sells, receives or is found in possession of any fish taken in contravention of Subsection (1) of this Section, knowing or having reasonable cause to believe them to have been so taken, commits an offense and shall upon conviction be liable to a fine not exceeding fifty thousand dollars (US \$50,000).

(4) In proceedings for an offense under this Section, a certificate stating the cause and manner of death or injury of any fish, signed by the Director, or by any person authorized by him in writing, shall be sufficient evidence as to the matters stated therein, without proof of the signature of the person appearing to have signed the certificate or his official designation, unless the contrary is proved. [*P.L. 1988-12, § 38. See also Marine Resources Act, § 2.*]

§ 39. Possession of prohibited fishing gear.

(1) Every person who, while within the Fishery Waters, uses for fishing or has on board any fishing vessel in circumstances which indicate an intention to use for fishing in those waters:

- (a) any net, the mesh size of which does not conform to the prescribed minimum mesh size for that type of net;
- (b) any fishing gear which does not conform to any standards prescribed for that type of fishing gear; or
- (c) any fishing gear which is prohibited by this Act or any regulations made under this Act, including without limitation, a drift net;

shall be guilty of an offense and shall upon conviction be liable to a fine not exceeding one hundred thousand dollars (US \$100,000).

(2) For purposes of this Section "drift net" means a gill net or other net:

- (a) which is more than 2.5 kilometers in length;
- (b) which acts by enmeshing, entrapping, or entangling any fish or other marine life;
- (c) which is used or intended to be used by being left to drift in, or on the surface of, the water; and
- (d) which is not used or intended to be used while attached to any point of land or the sea bed irrespective of whether the net is used or intended to be used while attached to any vessel.

[*P.L. 1988-12, § 39; amended by P.L. 1989-56, repealing and enacting new Paragraph (1)(c) and enacting new Subsection (2).*]

§ 40. Civil penalties.

(1) Any person who is found to have contravened this Act or any regulation made under this Act shall be liable for a civil penalty.

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(2) The amount of the civil penalty shall not exceed one million dollars (US \$1,000,000) for each violation. Each day of a continuing violation shall constitute a separate offense.

(3) In determining the amount of such penalty, the court shall take into account the nature, circumstance, extent and gravity of the prohibited act or acts committed and, with respect to the violators, the degree of culpability, any history of previous offenses, and such other matters which may be relevant.

(4) It shall be the duty of the Attorney General to initiate all proceedings under this Section and to recover the amount imposed as a civil penalty.

(5) The proceeds of civil penalties shall be credited to the Fund. [*P.L. 1988-12, § 40.*]

§ 41. Criminal penalties.

(1) Every person who contravenes any of the provisions of this Act or any regulation made under this Act shall be guilty of an offense, and if no penalty is prescribed he shall upon conviction be liable to a fine not exceeding one hundred thousand dollars (US \$100,000) for each offense.

(2) Unless otherwise provided, any offense described by Section 36, Subsection (1), Paragraphs (a), (b), (c) or (k) of this Act shall be punishable by a fine not exceeding two hundred fifty thousand dollars (US \$250,000).

(3) Unless otherwise provided, any offense described as a prohibited act by Section 36, Subsection (1), Paragraphs (d), (e), (f), (g), (h), (i), (j), or (l) of this Act shall be punishable by a fine not exceeding five hundred thousand dollars (US \$500,000), except that if in the commission of any such offense any person uses a dangerous weapon, engages in conduct that causes bodily injury to any authorized officer, or threatens any authorized officer with bodily injury, the offense shall be punishable by a fine not exceeding one million dollars (US \$1,000,000).

(4) Any offense described by Section 37 of this Act shall be punishable by a fine not exceeding seven hundred fifty thousand dollars (US \$750,000) and each day of continuing violation shall be considered a separate offense.

(5) Where an offense against this Act has been committed by any person on board or employed on a fishing vessel, the master of the vessel shall also be guilty of the same offense and shall be punished in the like manner. [*P.L. 1988-12 § 41.*]

§ 42. Forfeitures and seizures.

(1) Fishing vessels, including fishing gear, equipment, appurtenances, stores, furniture, and any fish taken or retained in any manner, in connection with or as a result of the contravention of this Act, shall also be subject to forfeiture to the Government of the Republic pursuant to a civil proceeding.

(2) If a judgment is entered for the Government in a civil forfeiture proceeding under this Section, the court may designate an officer of the Authority as enforcement officer and it shall be his duty to seize any property or other interest declared forfeited.

(3) Subject to the order of court, the forfeited vessel, gear, equipment, appurtenances, stores, furniture and any fish, may be retained for use by, or at the direction of, the Authority.

(4) Pending completion of the civil forfeiture proceedings, the seized vessel, gear, equipment, appurtenances, stores, furniture and fish, or any part thereof, may be discharged at the direction of the court upon deposit with the court of a satisfactory bond or other security as may be determined by the court.

(5) The bond or other security referred to in Subsection (4) of this Section shall be conditioned upon such person delivering such property to the court upon order thereof, without any impairment of its value, or paying the monetary value of such property pursuant to an order of the court.

(6) Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court. [*P.L. 1988-12. § 42.*]

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§ 43. Sale of fish.

Any fish seized pursuant to this Act may be sold, subject to the approval and direction of the court. The proceeds of any such sale shall be deposited with the court pending the disposition of the civil forfeiture proceeding. [P.L. 1988-12, § 43.]

§ 44. Proceeds of sale.

All fines and the proceeds of the sale of all forfeitures collected pursuant to this Act shall be credited to the Fund. [P.L. 1988-12, § 44.]

§ 45. Presumptions.

(1) Unless the contrary is proved, all fish found on board any fishing vessel which has been used in the commission of any offense under this Act or any regulations made under this Act shall be presumed to have been caught in the commission of that offense.

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

(3) In any legal proceedings under this Act where the defendant is charged with having committed an offense under which a license is required for the doing of any act, the onus shall be on the defendant to prove that at the time the offense was committed he was in possession of a valid license duly issued under this Act.

(4) All fish found on board a transmitting fishing vessel which has not reported to the Authority on entry and exit from the Fishery Waters, or which has been used in the commission of an offense in the Fishery Waters, shall be deemed to have been caught in the Fishery Waters, unless the contrary is proved. [P.L. 1988-12, § 45.]

§ 46. Jurisdiction of courts.

The High Court of the Republic shall have jurisdiction over any legal proceeding arising under this Act. The Court may at any time:

- (a) enter restraining orders or prohibitions;
- (b) issue warrants, process *in rem* or other processes;
- (c) prescribe and accept satisfactory bonds or other security; and
- (d) take such other actions as are necessary in the interest of justice. [P.L. 1988-12, § 46.]

§ 47. Compounding of offenses.

(1) Subject to Subsection (3) of this Section, the Director may, where he is satisfied that any person has committed an offense against this Act or any regulations made under this Act, compound such offense by accepting on behalf of the Government of the Marshall Islands from such person a sum of money not exceeding the maximum fine specified for that offense.

(2) On compounding an offense under this Section, the Director may order the release of any vessel or other article seized under this Act, or the proceeds of sale of any article under Section 44 of this Act on such conditions including the payment of such additional sums of money not exceeding the value of the vessel or other article seized, as he may think fit.

(3) Where the person who has committed the offense is no longer within the Republic, the Director may send written notice of his intention to compound the offense to the legal address of the person outside the Republic.

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(4) No offense shall be compounded under this Section unless the person who has committed the offense has expressed his willingness in the prescribed form that the offense be so dealt with, or in the case of notification under Subsection (3) of this Section, if the person concerned notifies the Director in writing that he does not wish the offense to be compounded, admits to the jurisdiction of the courts of the Republic and, where so required by the court, files a satisfactory bond or other form of security in accordance with the procedures required by this Act.

(5) The compounding of an offense under this Section shall be notified in writing to the appropriate court under the signature of both parties, except that in the case of compounding following notification under Subsection (3) of this Section, the signature of the Director alone will suffice.

(6) In any proceedings brought against any person for an offense against this Act or any regulation made under this Act, it shall be a defense if such person proves that the offense with which he is charged has been compounded under this Act. [*P.L. 1988-12, § 47.*]

§ 48. Disposal of seized goods.

(1) Any fish, fish produce or other article of a perishable nature seized or taken in accordance with this Act may, on the direction of the Director, be sold and the net proceeds of the sale held pending the outcome of any prosecution brought under this Act, and if no such prosecution is brought such proceeds shall be paid to the owner of the fish, fish produce or other article sold.

(2) Any fishing vessel, fishing gear, fish or fish product seized in accordance with this Act, which is not ordered to be forfeited, shall be returned to its owner. [*P.L. 1988-12, § 48.*]

PART VII — OBSERVERS AND ENFORCEMENT OFFICERS

§ 49. Authorized observers.

(1) The Authority may declare, by regulation, any person to be an authorized observer for the purposes of this Act.

(2) Any observer authorized by any regional organization, regional agency or other body or person in accordance with a regional observer program to which the Republic is a party, who is not a citizen of the Republic shall have such rights and privileges of a citizen of the Republic as may be required in the performance of his duties. [*P.L. 1988-12, § 49.*]

§ 50. Authorized officers.

(1) The Authority may, in consultation with the Attorney General, declare, in writing, any public officer, by name or office, to be an authorized officer for the purpose of enforcing the provisions of this Act and regulations made hereunder.

(2) The Authority may declare, by regulation, any person to be an authorized officer for the purpose of enforcing the provisions of this Act and any regulations made under this Act.

(3) - The Director may at any time request the assistance of public safety and law enforcement authorities for the proper implementation of this Act. It shall be the duty of all such authorities to give assistance as requested by the Director. [*P.L. 1988-12, § 50.*]

§ 51. Powers of Authorized officers.

(1) For the purposes of ascertaining whether there is or has been any contravention of the provisions of this Act or any regulations made thereunder, any authorized officer may:

- (a) upon the issue of a warrant, at all reasonable hours enter any fish processing establishment and any premises other than premises used exclusively as a dwelling-house;

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- (b) where he has reasonable grounds for believing that an offense against the provisions of this Act or regulations made thereunder has been committed, stop, board, and search:
 - (i) any foreign fishing vessel, within the Fishery Waters; or
 - (ii) any local fishing vessel, inside or outside the Fishery Waters;
 - (c) stop and search any vehicle transporting, or reasonably suspected of transporting, fish or fish products;
 - (d) make such examination and inquiry as may appear necessary to him concerning any premises, fish processing establishment, vessel or vehicle in relation to which any of the powers conferred by this Section have been, or may be, exercised and take samples of any fish, or fish products, found therein;
 - (e) require any person to produce his license or his authority if it appears to the authorized officer that such person is doing any act for which a license or other authority is required under this Act and take copies of any such license or other authority; and
 - (f) require any person to produce any logbook, record or other document to be held by him under this Act or any regulations made under this Act, and take copies of such log book, record or other document.
- (2) Where he has reasonable grounds for believing that an offense against the provisions of this Act or any regulations made under this Act has been committed, any authorized officer may, with or without a warrant or other process:
- (a) following hot pursuit in accordance with international law and commenced within the fishery limits, stop, board, and search outside the Fishery Waters any foreign fishing vessel which he believes has been used in the commission of that offense within the Fishery Waters or in relation to which he believes such offense has been committed and bring such vessel and all persons and things on board within the Fishery Waters;
 - (b) within the Fishery Waters:
 - (i) arrest any person if he has reasonable cause to believe that such person has committed an offense prohibited by this Act;
 - (ii) seize any fishing vessel used or employed in, or when it reasonably appears to have been used or employed in, the violation of any provision of this Act;
 - (iii) seize any fishing gear, furniture, appurtenances, stores, cargo, and fish in or on a fishing vessel seized pursuant to this Section;
 - (iv) seize any fish which he reasonably believes have been taken or fish products produced in the commission of such offense; and
 - (v) seize any explosive, poison or other noxious substance which he reasonably believes has been used, carried, possessed or controlled in contravention of this Act.
- (3) Any authorized officer may execute any warrant or other process issued by any court of competent jurisdiction.
- (4) Where, following the commission of an offense under this Act by a foreign fishing vessel, that vessel is pursued beyond the limits of the Fishery Waters, the powers conferred on authorized officers under this Section shall be exercisable beyond the limits of the Fishery Waters in accordance with international law.
- (5) Any authorized officer may exercise any other lawful authority for the enforcement of this Act and any regulations made under this Act. [*P.L. 1988-12, § 51.*]

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PART VIII — GENERAL

§ 52. Immunities.

No action shall lie against any member of the Board, the Director, any employee of the Authority, any authorized officer or observer or any other person appointed pursuant to this Act with respect to anything done or omitted to be done by him in good faith in the execution or purported execution of his powers and duties under this Act. [*P.L. 1988-12, § 52.*]

§ 53. Application of other laws.

No license issued under this Act shall relieve any foreign fishing or other vessel or its operator or crew of any obligation or requirements imposed by law concerning navigation, customs, immigration, health or other matters. [*P.L. 1988-12, § 53.*]

§ 54. Exclusion of Administrative Procedure Act.

The provisions of the Marshall Islands Administrative Procedure Act 1979 shall not apply to this Act or to any actions taken or required to be taken under this Act. [*P.L. 1988-12, § 54.*]

§ 55. Transitional.

(1) All assets, liabilities, rights and obligations of the Marshall Islands Maritime Authority established under the Marine Resources Jurisdiction Act 1978 in existence immediately before the effective date of this Act shall stand transferred and vest in the Authority created under this Act.

(2) All regulations, orders and notices made or given under the Marine Resources Jurisdiction Act 1978 as amended, and all licenses, permits, other authorizations, and agreements issued or made thereunder shall, except so far as they are inconsistent with the Act, continue to have effect as though made, given or issued under this Act. [*P.L. 1988-12, § 55.*]

Note: This Act repealed the Marine Resources Jurisdiction Act 1978.