

ANALYSIS

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1989, No. 34

**An Act to provide for the management and development of fisheries and related matters**

(22 December 1989)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

**1. Short Title and commencement** - (1) This Act may be cited as the Marine Resources Act 1989.

(2) This Act shall come into force on a date to be appointed by the Minister and notified by publication in the Gazette.

**2. Interpretation** - In this Act, unless the context otherwise requires –

"Access agreement" means a treaty, agreement or arrangement entered into pursuant to section 13;

"Act" includes any regulations made under the Act referred to;

"Administrator" means an Administrator designated pursuant to Section 13(4)(b) or any multilateral related agreement;

"Aircraft" means any craft capable of self-sustained movement through the atmosphere and includes hovercraft;

"Aquaculture" means any activity designed to cultivate or farm fish and other living aquatic resources;

- "Authorisation" means any authorisation given pursuant to Section 18 or 19;
- "Authorised officer" means any fisheries officer, and any person or category of persons designated pursuant to section 30 to be an authorised officer for the purposes of this Act;
- "Cook Islander" means a person belonging to the part of the Polynesian race indigenous to the Cook Islands and who is ordinarily resident in the Cook Islands, and includes any permanent resident as defined in the Entry Resident and Department Act 1971-72;
- "Designated fishery" means any fishery designated in accordance with section 3;
- "Designated fishery of the island" in relation to sections 5, 6 and 7 means any designated fishery, or such part of a designated fishery which the applicable fisheries plan specifies as directly affecting a designated fishery, in any lagoon over which the Island Council has jurisdiction;
- "Driftnet" means a gillnet or other net which is more than 2.5 kilometres in length the purpose of which is to enmesh, entrap or entangle fish;
- "Driftnet fishing activities" includes fishing with the use of a driftnet and any related activities including transporting, transshipping and processing any driftnet catch, and provision of food, fuel and other supplies for vessels used or outfitted for driftnet fishing;
- "Exclusive economic zone" means the exclusive economic zone as defined in the Territorial Sea and Exclusive Economic Zone Act, 1977;
- "Farming" in relation to any fish or other marine vegetation, means the breeding, cultivating and rearing of any such fish or the cultivating of any such vegetation, as the case may be;
- "Fish" means any aquatic plant or animal, whether piscine or not; and includes any oyster or other mollusc, crustacean, coral, sponge, holothurian (bech-de-mer), or other echinoderm, turtle and marine mammal, and includes their eggs, spawn, spat and juvenile stages;
- "Fish aggregating device" means any man-made or partly man-made floating or semi-submerged device, whether anchored or not, intended for the purpose of aggregating fish, and includes any natural floating object on which a device has been placed to facilitate its location;
- "Fish processing" means the producing of any substance or article from fish by any method and includes the cutting up, dismembering, cleaning, sorting, loining, freezing, canning, salting and preserving of fish;
- "Fish processing establishment" means any place other than a licensed fishing vessel where the processing of fish is carried on for commercial purposes;
- "Fish processing establishment licence" means a licence issued under section 27;

"Fisheries Officer" means the Secretary, and any Fisheries Officer, or Assistant Fisheries Officer, or any Constable appointed under the Police Act 1981 pursuant to his office and any other person or category of public servant designated by the Minister, by notice published in the Gazette, to be a Fisheries Officer for the purposes of this Act;

"Fisheries plan" means a plan for the management and development of fisheries implemented pursuant to section 3;

"Fishery" or "Fisheries" means one or more stocks of fish or any fishing operation based on such stocks which can be treated as a unit for purposes of conservation and management, taking into account geographical, scientific, technical, recreational, economic, and other relevant characteristics;

"Fishery waters" means the waters of the territorial sea of the Cook Islands and of the exclusive economic zone and other internal waters, including lagoons, as defined in the Territorial Sea and Exclusive Economic Zone Act 1977 and includes any other waters over which the Government of the Cook Islands has fisheries jurisdiction;

"Fishing" means:

- (a) searching for, catching, taking or harvesting fish;
- (b) the attempted searching for, catching, taking or harvesting of fish;
- (c) engaging in any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
- (d) placing, searching for or recovering any fish aggregating device or associated equipment including radio beacons;
- (e) any operation at sea in support of or in preparation for any activity described in this paragraph; or
- (f) the use of an aircraft in relation to any activity described in this paragraph;

"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 aircraft;

"Fishing licence" means a foreign fishing licence, a local fishing licence, a sport fishing vessel licence, a locally based foreign fishing vessel licence or any other licence for fishing issued or recognised under this Act;

"Fishing 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 fishing or related activities;

"Foreign fishing licence" means a licence issued pursuant to section 16;

"Foreign fishing vessel" means any fishing vessel other than a local fishing vessel;

"Licence" means any licence issued under this Act;

"Local Fisheries Committee" means a committee established pursuant to section 4;

"Local fishing vessel" means a licence issued pursuant to section 9;

"Local fishing vessel" means any fishing vessel –

- (a) Wholly owned and controlled by the Government of the Cook Islands, or by any corporation established by or under any law in force in the Cook Islands, all of the shares in which are beneficially owned by the Government of the Cook Islands;
- (b) Wholly owned and controlled by one or more natural persons who are Cook Islanders or permanent residents of the Cook Islands as defined under the Entry, Residence and Departure Act, 1971-72; or
- (c) Wholly owned and controlled by any company, society, or other association of persons incorporated or established under the laws of the Cook Islands, which is a "local enterprise" as defined in section 2 of the Development Investment Act 1977.

"Locally based foreign fishing vessel" means any foreign fishing vessel based in the Cook Islands, or any foreign fishing vessel based in another country in the South Pacific region and jointly operated by or on behalf of the Government of the Cook Islands and one or more other Governments in the South Pacific region under an agreement to which the Cook Islands is a party;

"Master", in relation to any fishing vessel, means the person in charge or apparently in charge of the fishing activities of that vessel :

"Minister" means the Minister responsible for Marine Resources:

"Multilateral agreement" means a treaty, agreement or arrangement entered into pursuant to section 13 or 14, to which there are more than two parties;

"Observer" means any person authorised to act as observer pursuant to section 35 and any person designated in accordance with an access agreement or related agreement to act as observer aboard a vessel licensed under that access agreement;

"Operator" means any person who is in charge of, directs or controls a vessel, including the owner, charterer and master;

"Owner", in relation to a fishing vessel, means any person exercising or discharging or claiming the right or accepting the obligation to exercise or discharge any of the powers or duties of an owner whether on his own behalf or on behalf of another and includes a person who is

the owner jointly with any other person or persons and any manager director or secretary of any body corporate or company;

"Regional Register" means the Regional Register of Foreign Fishing Vessels maintained by the South Pacific Forum Fisheries Agency in Honiara, Solomon Islands;

"Related activities" includes doing, attempting to do or preparing to do any of the following:

- (a) Transshipping any fish or fish products to or from any vessel;
- (b) Storing, processing, or transporting fish or fish products taken from the fishery waters up to the time it is first landed; or
- (c) Refuelling or supplying fishing vessels or performing other activities in support of fishing operations.

"Related agreement" means any treaty, agreement or arrangement entered into pursuant to section 14;

"Secretary" means the Secretary of Marine Resources;

"Scientific research authorisation" means an authorisation issued pursuant to section 18;

"Sport fishing vessel licence" means a licence issued pursuant to section 10;

"Surveillance officers" include any officer of a vessel or aircraft used for the enforcement of this Act, whether or not such officers are Cook Islanders or whether or not such vessel or aircraft is registered in the Cook Islands;

"Test fishing operation" means any fishing operation undertaken over a limited period of time authorised by the Minister pursuant to section 19 for the purpose of testing the feasibility of commercial fishing operations with a view to the establishment of fishery operations based locally or in the region:

"Transshipment" means transferring any fish or fish products to or from any vessel;

"Vehicle" means any car, truck, van, lorry, bus or other land conveyance; and

"Vessel" means any boat, ship or other water going craft.

## PART I

### FISHERIES MANAGEMENT AND DEVELOPMENT

3. **Designated fisheries** – (1) The Minister may, by Notice in the Gazette on the recommendation of the Secretary, authorise a fishery as a designated fishery where, having regard to scientific, economic, environmental and other relevant considerations, it is determined that such fishery:

- (a) is important to the national interest; and
- (b) requires management and development measures for effective conservation and optimum utilisation.

(2) A fisheries plan for the management and development of each designated fishery in the fishery waters shall be prepared and kept under review.

(3) Each fisheries plan shall –

- (a) Identify each fishery and its characteristics including the present state of its exploitation;
- (b) Specify the objectives to be achieved in the management of each fishery;
- (c) Specify the management and development strategies to be adopted for each fishery;
- (d) Designate those fisheries for which licensing or other management measures may be established;
- (e) Specify, where applicable, the licensing programme to be followed for other fisheries, the limitations, if any, to be applied to local fishing operations and the amount of fishing, if any, to be allocated to foreign fishing vessels;
- (f) Take into account any relevant traditional fishing methods or principles.

(4) In the preparation and review of those parts of the fisheries plan concerning fisheries in or directly affecting fisheries in lagoons over which Island Councils exercise jurisdiction, consultations shall be held with the Island Council and any Local Fisheries Committee for the Island concerned, or where no such committee has been appointed, any local fisherman likely to be affected.

(5) Each fisheries plan, and each review thereof shall be submitted to Cabinet for approval, and shall be implemented upon such approval.

**4. Local Fisheries Committee** - (1) The Secretary may appoint a Local Fisheries Committee in any island to advise on the management and development of fisheries in relation to that island.

(2) Each Local Fisheries Committee shall consist of such persons as the Secretary may appoint. The members of the Committee shall hold office at the pleasure of the Secretary.

(3) In appointing members of a Local Fisheries Committee, the Secretary shall have regard to the need to secure adequate representation of all interests in the fisheries sector, including commercial and subsistence fishermen, fish farmers, sport fishermen and tour operators.

(4) The functions of a Local Fisheries Committee shall be to –

- (a) Advise the Secretary or his designee on issues related to the management and development of fisheries in relation to the island;
- (b) Make recommendations to the local Island Council with respect to the adoption or amendment of bylaws regulating the conduct of fishing operations and the issuing of fishing licences for any designated fishery of the island; and

- (c) Perform such other functions as the Secretary may from time to time require.

**5. Power of Island Councils to recommend the promulgation of bylaws -**

(1) Each Island Council may recommend the promulgation of bylaws in respect of any designated fishery of the island in accordance with the procedures set out in section 15 of the Outer Islands Local Government Act 1987.

(2) Every bylaw recommended for promulgation under this section shall be consistent with the relevant provisions of the fisheries plan and with this Act and any regulations made under this Act.

(3) Every bylaw recommended for promulgation under this section shall not be promulgated until it has been officially approved by the Minister.

(4) A bylaw promulgated on the recommendation of an Island Council under this section may –

- (a) Require that any person shall not engage in fishing or other operation relating to fishing or the cultivation of fish in any designated fishery of the islands unless that person has obtained a licence from the Island Council; and
- (b) Prescribed the conditions to be attached to any fishing licence or class of fishing licence issued by the Island Council; and
- (c) Regulate the conduct of fishing operations in designated fisheries with a view to reducing gear conflicts; and
- (d) Provide for such other matters consistent with the fisheries plan as may be necessary to ensure the proper regulation of the designated fishery.

**6. Power of Island Councils to declare seasons -** (1) An Island Council may from time to time, by resolution publicly notified, declare for the whole or part of a designated fishery of the island –

- (a) closed seasons, during which no person shall fish for the species or in the area or areas specified in the declaration; and
- (b) open seasons, during which fishing for the species or in the area or areas specified in the declaration is permitted.

(2) A resolution shall be publicly notified for the purposes of this section by posting a copy thereof in a conspicuous place in a post office or other building to which the public has access on the island.

**7. Power of Island Council to issue licences -** (1) An Island Council may, in accordance with any applicable bylaw promulgated on its recommendation under this Act, issue any person, a licence authorising him to engage in fishing or other specified operations relating to fishing or the cultivation of fish in any designated fishery of the island and in the area or areas and for the period of time specified in the licence.

(2) An Island Council may attach to any licence issued pursuant to this section such conditions consistent with the applicable bylaw as it may deem necessary.

(3) Any Island Council shall notify in writing each applicant of its decision on licence issuance under this section within fourteen (14) days after application has been made, and shall include reasons for each decision it makes.

(4) Any licence issued under this section shall be issued within fourteen (14) days after application has been made.

(5) A copy of every decision made under this section shall be transmitted promptly to the Minister who may, after consultation with the Island Council concerned, affirm, vary or reverse that decision.

(6) Any person who is affected by, and is dissatisfied with a decision of an Island Council made under this section may appeal, within thirty (30) days of the date of the decision, to the Minister, who may after consultation with the Island Council concerned, and within fifteen (15) days of the date of appeal, affirm, vary, or reverse the decision of the Island Council.

(7) Any decision of the Minister varying or reversing a decision of the Island Council shall immediately be communicated in writing to the Island Council concerned and shall come into effect 10 days after the date of that communication.

(8) Every person commits an offence who acts in contravention of any bylaw promulgated on the recommendation of any Island Council, or in contravention of any other action taken by an Island Council pursuant to this Act, and shall be liable to a fine not exceeding \$2,000, and, if the offence is a continuing one, to a further fine not exceeding \$500 for every day that the offence has continued.

**8. Right of Fisheries Officers to address Island Council meetings** – (1) The Secretary or his designee, or any Fisheries Officer shall be entitled to advise any Island Council and address any meeting of an Island Council in relation to any matter referred to in sections 5, 6 or 7, and the Island Council shall have regard to his submissions.

(2) Any Island Council intending to consider any matter referred to in sections 5, 6 or 7 at a meeting shall give adequate notice to the Secretary and the local Fisheries Officer for the Island and shall afford the Secretary, his designee and the local Fisheries Officer adequate opportunity to attend the meeting at which that matter is to be considered.

(3) The Clerk of the Island Council shall promptly transmit copies of the relevant portion of the minutes of any meeting of the Island Council at which any matter referred to in sections 5, 6 or 7 has been considered to the Secretary and the local Fisheries Officer for the Island.

**9. Local fishing licence** - (1) A local fishing vessel the length of which is 10 metres or more, other than a local fishing vessel used solely for sport fishing, shall not be used for fishing or related activities in the fishery waters without a valid licence issued by the Secretary in respect of that vessel.

(2) An application for a local fishing licence shall be made in the prescribed form to the Secretary.

(3) An application for a local fishing licence may be denied on any of the following grounds -

(a) That it is necessary in the opinion of the Secretary to do so in order to give effect to any licensing programme specified in an applicable fisheries plan;

(b) That the Secretary has reason to believe that the applicant will not comply with the conditions of the licence;

- (c) That the vessel in respect of which the application is made does not comply with any safety requirements which may be prescribed or otherwise required by law; or
- (d) Such other grounds as may be specified in this Act or in any regulations made under this Act.

(4) Where a local fishing vessel is used in contravention of subsection (1), or of any condition of the local fishing licence, the master, the owner, and the charterer of that vessel each commits an offence, and shall each be liable on conviction to a fine not exceeding \$10,000.

**10. Sport fishing vessel licence** - (1) No fishing vessel shall be used for reward or offered for charter or hire for sport fishing in the fishery waters, and no foreign fishing vessel shall be used for sport fishing without a valid sport fishing vessel licence issued by the Secretary in respect of that vessel.

(2) An application for a sport fishing vessel licence shall be made in the prescribed form to the Secretary.

(3) An application for a sport fishing vessel licence may be denied on any of the following grounds -

- (a) That it is necessary in the opinion of the Secretary to do so in order to give effect to any management programme specified in any fisheries plan;
- (b) That the Secretary has reason to believe that the applicant will not comply with the conditions of the licence;
- (c) That the vessel in respect, of which the application is made does not comply with any safety requirements which may be prescribed or otherwise required by law; or
- (d) Such other grounds as may be specified in this Act or any regulations made pursuant to this Act.

(4) Where a fishing vessel is used in contravention of subsection (1) or of any condition of a sport fishing vessel licence, the master, the owner and the charterer of that vessel each commits an offence and shall each be liable on conviction to a fine not exceeding \$10,000.

**11. Foreign investment in fisheries** - (1) Where any person who is not a Cook Islander intends to invest in any fishery, fish processing, related activities or other fishery-related operations, he shall first obtain the written approval of the Minister as to the nature, terms and conditions of such investment, and no licence may be issued until such approval has been obtained.

(2) For the purposes of this section, "person" includes bodies, organisations and associations not wholly owned and controlled by Cook Islanders and foreign governments or agencies or divisions thereof.

(3) The requirements of this section shall be in addition to the requirements of the Development Investment Act 1977.

**PART II**  
**FOREIGN FISHING**

**12. Foreign fishing vessels** - (1) No foreign fishing vessel shall –

- (a) Enter the fisheries waters except for a purpose recognised by international law; or
- (b) Be used for fishing or related activities in the fisheries waters or for such other activities as may be provided in this Act;

except in accordance with a valid licence issued pursuant to this Act, an access agreement or a multilateral access agreement or as otherwise authorised pursuant to this Act.

(2) No person, being aboard a foreign fishing vessel or being a member of the crew of or attached to or employed on a foreign fishing vessel, shall in the Cook Islands or in the fishery waters engage in fishing or related activities except in accordance with this Act.

(3) The owner, operator and each member of the crew of any foreign fishing vessel in the fisheries waters shall comply with any applicable access agreement and all applicable laws of Cook Islands, including this Act.

(4) All fishing gear on board any foreign fishing vessel in any place in the fisheries waters where it is not permitted to fish shall be stowed in such manner as it shall not be readily available for use for fishing or as may be prescribed.

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

(6) Where any foreign fishing vessel is used in contravention of subsections (1), (4) or (5), the owner, charterer and the master of that vessel each commits an offence, and shall be liable on conviction to a fine not exceeding \$500,000.

(7) Every person who contravenes subsections (2) or (3) commits an offence and shall be liable on conviction to a fine not exceeding \$100,000.

**13. Access agreements** -(1) The Minister may, on behalf of the Government of the Cook Islands, enter into international, bilateral or multilateral access agreements providing, inter alia, for fisheries access, related activities or such other matters as may be provided pursuant to this Act.

(2) Fishery allocations under access agreements shall not exceed a level consistent with the conservation and management of fishery resources and the protection of fishing by Cook Islanders, and be consistent with any fisheries plan.

(3) Every access agreement shall include a provision establishing the responsibility of the foreign party to take all measures to ensure compliance by its vessels with the terms and conditions of the access agreement and with all applicable laws, including those relating to fishing and related activities in the fishery waters.

(4) An access agreement may provide, inter alia, for –

- (a) The issuance of licences for fishing, related activities or other activities or operations described in this Act;

- (b) In the case of a multilateral access agreement, an Administrator authorised to perform such duties as may be specified in such agreement, including licence issuance and administration; and
- (c) Such other matters as may be required for effective implementation of the access agreement.

**14. Related agreements** - The Minister may enter into such other related agreements as may be appropriate for the implementation of any access agreement or the promotion of fisheries cooperation, including, inter alia –

- (a) Harmonised terms and conditions for fisheries access;
- (b) The implementation of a multilateral access agreement;
- (c) Harmonised, joint or reciprocal fisheries surveillance and enforcement measures;
- (d) Harmonised or joint exploitation and development of fisheries;
- (e) An observer programme; and
- (f) Fisheries conservation and management.

**15. Driftnet Fishing Activities** - (1) No fishing vessel shall be used for or assist in any driftnet fishing activities in the Cook Islands or the fishery waters.

(2) No person shall engage or assist in any driftnet fishing activities in the Cook Islands or the fishery waters.

(3) No fishing vessel, being registered pursuant to the laws of the Cook Islands, shall be used for or assist in any driftnet fishing activities.

(4) No person, being a Cook Islands national, shall engage or assist in any driftnet fishing activities.

(5) Where any fishing vessel is used in contravention of subsections (1) or (3), the owner, charterer and master each commits an offence, and shall be liable on conviction to a fine not exceeding \$250,000.

(6) Every person who contravenes subsection (2) or (4) commits an offence and shall be liable on conviction to a fine not exceeding \$250,000.

**16. Foreign fishing licences** – (1) Subject to subsections (2) and (3), no foreign fishing licence shall be issued in respect of any foreign fishing vessel unless an access agreement entered into pursuant to this Act is in force, to which the Government of the Cook Islands is a party.

(2) Subsection (1) shall not apply to a licence or authorisation issued in the absence of an applicable access agreement in respect of -

- (a) Test fishing operations;
- (b) A locally based foreign fishing vessel;
- (c) Related activities; or
- (d) Scientific research.

(3) The Minister may issue a foreign fishing licence to a foreign fishing vessel in the absence of an applicable access agreement where he determines that an access agreement is not practical and the applicant provides sufficient financial and such other guarantees as may be prescribed, and the Minister may require for the fulfillment of all obligations under this Act.

(4) Every application for a foreign fishing licence shall be made to the Minister in the prescribed form and in accordance with an applicable access agreement, or to an Administrator in accordance with an applicable multilateral access or related agreement.

(5) Subject to the provisions of this Act, and unless a multilateral access agreement or related agreement provides otherwise for licence issuance, the Minister may issue a foreign fishing licence in respect of any foreign fishing vessel authorising that vessel to be used in the fishery waters for such fishing or related activities as may be specified in the licence, or for other purposes in accordance with this Act.

(6) The Minister may deny an application for a foreign fishing licence on any of the following grounds and in accordance with an applicable access agreement –

- (a) The application is not in accordance with the requirements of this Act , and an applicable access agreement;
- (b) The owner or charterer is the subject of proceedings under the bankruptcy laws of any jurisdiction and reasonable financial assurances have not been provided;
- (c) There has been failure to satisfy a judgment or other determination for a contravention of this Act or an access agreement by the operator of the vessel in respect of which application for a licence has been made until such time as the judgment or other determination for has been made;
- (d) An operator of the vessel has contravened, or the vessel has been used for the contravention of an access agreement to which the Cook Islands is party, or has committed an offence against the laws of the Cook Islands;
- (e) Where the vessel in respect of which the application is made does not have good standing on the Regional Register; or
- (f) In accordance with such other grounds as may be prescribed.

Notwithstanding any other provision in this Act, the Minister may deny an application for a foreign fishing licence to any fishing vessel which has engaged in any driftnet fishing activities.

**17. Locally based foreign fishing vessel licence** - (1) No locally based foreign fishing vessel may be used for fishing or related activities in the fishery waters without a valid licence issued by the Minister in respect of that vessel.

(2) An application for a locally based foreign fishing vessel licence shall be made in the prescribed form to the Minister.

(3) An application for a locally based foreign fishing vessel licence may be denied on any grounds specified in this Act or which may be prescribed.

(4) The Minister shall attach such terms and conditions to the locally based foreign fishing vessel licence as may be prescribed, and may attach such additional terms and conditions he thinks fit and consistent with conditions which may be prescribed.

(5) Where a locally based foreign fishing vessel is used in contravention of subsection (1), or any condition of the fishing licence, the master owner and charterer each commits an offence, and shall each be liable on conviction to a fine not exceeding \$100,000.

**18. Authorisation of scientific research operations - (1)** The Minister may, on the submission of a research plan approved by the Secretary, authorise any vessel or person to undertake scientific research operations in the fishery waters, and may, in granting any such authorisation, exempt that vessel or person from the requirements of any fisheries management and conservation measures specified in the authorisation.

(2) The Minister shall attach such conditions as may be prescribed and may attach such additional conditions he thinks fit and are consistent with those which may be prescribed, to any authorisation granted under subsection (1).

(3) Each vessel or person authorised in accordance with this section shall comply with all applicable laws of Cook Islands and any conditions of such authorisation.

(4) The Minister may suspend or revoke such authorisation if there is failure to comply with the conditions of the authorisation or the requirements of this Act.

(5) Any authorisation or exemption granted under this section shall be in writing.

(6) Every person commits an offence who undertakes or assists in any scientific research in the fishery waters –

(a) Without authorisation under subsection (1);

(b) In contravention of any condition or conditions attached to the authorisation under subsection (2); or

(c) In contravention of the requirements of subsection (3);

and shall be liable to a fine not exceeding \$100,000.

**19. Other Authorisations - Transshipment and Test Fishing – (1)** Where there is no applicable access or related agreement, the Minister may authorise transshipment of fish from any foreign fishing vessel, or test fishing operations in the fishery waters in accordance with any requirements which may be prescribed.

(2) The Minister shall attach such conditions as may be prescribed and may attach additional conditions as he thinks fit which are consistent with any conditions which may be prescribed, to any authorisation granted under subsection (1).

(3) Each person authorised in accordance with this section shall comply with all applicable laws of the Cook Islands and any conditions of such authorisation.

(4) The Minister may suspend such authorisation if there is failure to comply with the conditions of the authorisation or the requirements of this Act.

(5) Any authorisation granted under this section shall be in writing.

(6) Any person commits an offence who undertakes test fishing or transshipment activity in respect of a foreign fishing vessel without an authorisation issued pursuant to this section, and is liable on conviction to a fine not exceeding \$250,000.

**20. Conditions of fishing licences** - (1) Every fishing licence issued by the Minister or the Secretary shall be in the prescribed form, and may be subject to -

- (a) Such conditions as may be prescribed;
- (b) Such general conditions as may be specified under subsection (2); and
- (c) Such special conditions as may be specified under subsection (3).

(2) The Minister may, by notice published in the Gazette, specify general conditions additional to those to which all fishing licences or any category of fishing licences shall be subject, including, but without limiting the generality of the foregoing provisions of this subsection, conditions relating to open and closed seasons, prohibited fishing areas, minimum mesh sizes, and minimum species sizes.

(3) The Secretary, or, in the case of a foreign fishing licence, the Minister, may attach to any fishing licence such special conditions as he thinks fit, including conditions relating to -

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

(4) The Secretary, or, in the case of a foreign fishing licence and a locally based foreign fishing vessel licence the Minister, may from time to time, where he is satisfied that it is expedient for the proper management of fisheries in the fishery waters, vary any special conditions attached to any fishing licence.

(5) Where the Minister or the Secretary varies any special conditions attached to any fishing licence, he shall notify the licence holder of the variation as soon as practicable.

**21. Fees and other forms of compensation** - (1) There shall be payable in respect of every licence issued by the Minister or the Secretary such fees as may be prescribed.

(2) There shall be payable in respect of authorisations given pursuant to this Act such fees as may be prescribed.

(3) In addition to the requirements of subsection (1), there shall be payable in respect of every foreign fishing licence such fees and other forms of compensation as may be provided in the applicable access agreement.

(4) No licence shall be issued by the Minister or Secretary and no authorisation shall be given pursuant to this Act unless the required fees and other forms of compensation have been paid in accordance with this Act and an applicable access agreement in accordance with its terms.

**22. Period of validity of fishing licences** - (1) Subject to this section, every fishing licence issued by the Minister or the Secretary shall, unless earlier cancelled or suspended in accordance with section 28, be valid for a period of 12 months.

(2) The Secretary may issue licences in respect of local fishing vessels which shall be valid for such period not exceeding 5 years as is specified in the licence.

(3) Where a vessel licensed as a local fishing vessel becomes a foreign fishing vessel, or where a vessel licensed as a locally based foreign fishing vessel is no longer locally based, the licence shall automatically terminate.

(4) The period of validity of a foreign fishing licence shall not extend beyond the period of validity of the applicable access agreement.

(5) Except as may be otherwise prescribed in connection with the limitation of effort in any fishery, no licence issued in respect of any fishing vessel shall be transferable to any other vessel except with the written permission of the Secretary or, in the case of a foreign fishing licence, the Minister, unless provided otherwise by a multilateral access agreement.

**23. Cancellation or suspension of fishing licences - (1)** Subject to subsection (5), the Secretary, or, in the case of a foreign fishing licence or locally based foreign fishing licence, the Minister, may cancel or suspend a fishing licence on any of the grounds set out in subsections (2) or (3), or on such grounds as may be prescribed.

(2) A fishing licence may be cancelled or suspended where the Minister or the Secretary, as the case may be, is satisfied that –

- (a) It is necessary to do so in order to give effect to any licensing programme specified in the fisheries plan;
- (b) The vessel in respect of which the licence has been issued has been used in contravention of this Act or of any condition of the licence or in breach of any applicable access agreement; or
- (c) Payment has not been made and is overdue for any fees, other charges and compensation required under this Act, or for any penalty, fine or other determination imposed pursuant to this Act.

(3) A foreign fishing licence may be suspended where the Minister is satisfied that

–

- (a) Good standing on the Regional Register has been withdrawn in respect to the licensed vessel; or
- (b) He is required or authorised to do so in accordance with the provisions of any access agreement entered into under this Act.

(4) Where a fishing licence has been cancelled or suspended under this section, notification of the cancellation or suspension shall be given to the person to whom the licence was issued.

(5) Where a foreign fishing licence has been issued pursuant to a multilateral access agreement, it may only be suspended or cancelled in accordance with the terms of such agreement.

(6) Where a fishing licence has been suspended or cancelled on the grounds specified in subsection (2) (a), a proportion of any fees paid for the fishing licence representing the unexpired period of that licence or the period of suspension, as the case may be, shall be reimbursed to the licensee at his request.

(7) Any notification given under subsection (4) shall be in writing, except as otherwise specified in subsection (8).

(8) In the case of a foreign fishing vessel, a notification referred to in subsection (1) may be in writing or by telex, radio, facsimile or such other form as the Minister thinks appropriate.

**24. Observation of laws** - A licence or authorisation issued under this Act shall not relieve any foreign fishing vessel or its master or crew of any obligation or requirement imposed by law concerning navigation, customs, immigration, health or any other matter.

**25. Appeals** – Any person affected and aggrieved by –

- (a) The refusal of the Secretary to issue or renew a licence in respect of a local fishing vessel; or
- (b) The cancellation or suspension by the Secretary of a licence issued in respect of a local fishing vessel –

may, within 30 days of the receipt of notification of that decision appeal against it to the Minister, whose decision shall be final.

**26. Prohibited fishing methods** – (1) Every person commits an offence who –

- (a) Permits to be used, uses, 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 the explosive, poison, other noxious substance for any of the purposes referred to in paragraph (a),

and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 months or to both.

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

(3) Every person commits an offence who lands, sells, receives, or is found in possession of any fish taken by any means which is in contravention of subsection (1)(a), and who knows or has reasonable cause to believe them to have been so taken, and is liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 2 months or to both such fine and imprisonment.

(4) In any proceedings for any offence against this section, a certificate as to the cause and manner of death or injury of any fish, signed by the Secretary, or by any person authorised by him in writing, shall, until the contrary is proved, be sufficient evidence as to the matters stated in the certificate.

(5) In any proceedings for any offence against this section, the defendant shall be given not less than 14 days notice in writing of the prosecution's intention to adduce a certificate under subsection (4).

**27. Fish processing establishment**, - (1) The Minister may grant to any person a licence to operate a fish processing establishment on payment of such fees and subject to such conditions as may from time to time be prescribed.

(2) Every person commits an offence who operates or allows to be operated any fish processing establishment except under a licence granted under this section and in accordance with the conditions of such a licence, and shall be liable on conviction to a fine not exceeding \$100,000.

(3) In this section "fish processing establishment" means any land, premises, or other place except a licensed fishing vessel on or in which fish are canned, dried, gutted, salted, iced, chilled, frozen, or otherwise processed for sale by wholesale in or outside the Cook Islands.

**28. Register of Licences** - The Secretary shall cause to be maintained a register of all licences issued pursuant to this Act by the Minister and the Secretary, containing information relating to –

- (a) The nature of the activity licensed;
- (b) The vessel, person or establishment licensed; and
- (c) The period of validity of each licence;

and such additional information relating to the licences as may be prescribed.

**29. Leasing of land for aquaculture** – (1) The Cook Islands Government Property Corporation may, on the advice of the Minister, or in the case of the Outer Islands, on the recommendation of the Island Council for the island concerned and with the approval of the Minister, lease or grant a licence over Crown land vested in the Corporation, including areas of lagoons, the foreshore, and sea-bed, for the purposes of aquaculture.

(2) Any lease or licence made under this section shall be in conformity with any regulations made under section 60 relating to the leasing of land for aquaculture.

(3) The provisions of the Cook Islands Government Property Corporation Act 1969 shall apply to any dealing in the Cook Islands Government property vested in the Corporation for the purposes of aquaculture under this section.

(4) The Cook Islands Government Property Corporation shall, by notice published in the Gazette, give particulars of any lease or licence granted under subsection (1), giving the boundaries of the area affected, and regulations made under section, 60 may restrict and control the use of such land, including areas of lagoons, the foreshore, or the sea-bed, by members of the public.

### **PART III**

#### **POWERS OF AUTHORISED OFFICERS AND OBSERVERS**

**30. Appointment of authorised officers** – (1) The Minister may, on the recommendation of the Secretary, by notice published in the Gazette, appoint any person or category of persons as authorised officers for the purposes of this Act including nationals of other States to an applicable access agreement or related agreement.

(2) Any fisheries officer is deemed to be an authorised officer for the purposes of this Act.

**31. Powers of authorised officers** – (1) For the purposes of enforcing this Act, any authorised officer may, without a warrant or other process –

- (a) stop, board and search any vessel he reasonably suspects is a foreign fishing vessel within the fishery waters;
- (b) stay on board any foreign fishing vessel;
- (c) require the master or any crew member or other person aboard to inform him of the name, call sign and country of registration of the vessel and the name of the master, owner, charterer or other crew member;
- (d) examine the master or any crew member or other person aboard about the cargo, contents of holds and storage spaces, voyage and activities of the vessel;
- (e) make such examination and inquiry as may appear necessary to him concerning any premises, vessel, vehicle or aircraft in relation to which any of the powers conferred by this subsection have been or may be exercised and take samples of any fish or fish product found therein;
- (f) require to be produced, examine and take copies of any licence, logbook, record or other document required under this Act or concerning the operation of any vessel;
- (g) make an entry dated and signed by him in a vessel's log;
- (h) require to be produced and examine any fish, fishing gear or explosive, poison or other noxious substance;
- (i) give directions to the master and any crew member of any vessel stopped, boarded or searched as may be necessary or reasonably expedient for any purpose specified in this Act or to provide for the compliance of the vessel or master or any crew member with the conditions of any licence or authorisation;

(2) Where an authorised officer has reasonable grounds to believe an offence against this Act is being or has been committed, he may without a warrant:

- (a) enter, inspect and search any premises, other than premises used exclusively as a dwelling-house, in which he has reasonable grounds to believe an offence has been or is being committed or fish taken illegally are being stored;
- (b) stop, enter and search, and stay in or on any vehicle or aircraft which he reasonably suspects of transporting fish or fish products;
- (c) following hot pursuit in accordance with international law and commenced within the fisheries waters, stop, board and search outside the fisheries waters any foreign vessel which he has reasonable grounds to believe has been used in the commission of any offence and

bring such vessel and all persons and things on board within the fisheries waters:

- (d) Seize:
    - (i) any vessel (together with its fishing gear, equipment, stores and cargo), vehicle or aircraft which he has reasonable grounds to believe has been or is being used in the commission of an offence or which he knows or has reasonable grounds to believe has been seized or forfeited in accordance with any provision of this Act;
    - (ii) any fish or fish products which he has reasonable grounds to believe have been caught in the commission of an offence or are possessed in contravention of this Act;
    - (iii) any logs, charts or other documents required to be maintained by this Act or under the terms of any permit or which he has reasonable grounds to believe show or tend to show, with or without other evidence, the commission of an offence against this Act;; and
    - (iv) any thing which he has reasonable grounds to believe might be used as evidence in any proceedings under this Act; and
  - (e) arrest any person whom he has reasonable grounds to believe has committed an offence against this Act.
- (3) An authorised officer may, with or without a warrant or other process:
- (a) execute any warrant or other process issued by any court of competent jurisdiction; and
  - (b) exercise any other lawful authority.

**32. Powers of authorised officers beyond limits of fishery waters** – Where, following hot pursuit in accordance with Section 3 (2) (d) a foreign fishing vessel is pursued beyond the limits of the fishery waters, the powers conferred on authorised officers under this Act shall be exercisable beyond the limits of the fishery waters in accordance with **international law**.

**33. Requirements for seized vessels, etc.** – (1) Where any vessel is seized under this Act –

- (a) the master and crew shall take it to such port as the authorised officer shall designate, being the nearest or most convenient port: and
- (b) the master shall be responsible for the safety of the vessel and each person on board the vessel, including the crew, himself and any authorised officer until the vessel arrives at the designated port.

(2) If the master fails or refuses to take the seized vessel to the designated port then an authorised officer or person called upon to assist him may do so.

(3) If a vessel is brought to port in the circumstances described in paragraph (2), no claim whatever may be made against any authorised officer or the Government of the Cook Islands in respect of any death, injury, loss or damage occurring while the vessel is being so taken.

(4) The provisions relating to vessels and masters described in subsections (1) to (3) apply mutatis mutandis to vehicles and aircraft seized in accordance with this Act, and their drivers and pilots respectively.

**34. Removal of Parts from seized vessels, etc. - (1)** An authorised officer may remove any part or parts from any vessel, vehicle or aircraft held in the custody of the Government of the Cook Islands for the purpose of immobilising that vehicle or aircraft.

(2) Any part or parts removed under subsection (1) shall be kept safely and returned to the vessel, vehicle or aircraft upon its lawful release from custody.

(3) No person shall knowingly possess or arrange to obtain any part or parts removed under subsection (1) or knowingly possess or arrange to obtain or make any replacement or substitute part or parts for those removed under subsection (1) or shall fit or attempt to fit any part or parts or any replacement or substitute part or parts to a vessel, vehicle or aircraft held in the custody of the Government of the Cook Islands.

**35. Observers - (1)** The Secretary may designate in writing persons to act as observers on vessels issued with valid foreign fishing licences or authorisations pursuant to this Act.

(2) Observers may be designated in accordance with an access agreement or related agreement.

(3) Persons designated in accordance with subsection (2) who are not Cook Islanders shall be subject to the provisions of this Act while in the fishery waters for the purposes of carrying out their duties and functions and enforcing their rights.

(4) Observers shall exercise scientific, compliance, monitoring and other functions.

(5) Observers shall be permitted to board any vessel issued with a valid licence or authorisation pursuant to this Act and remain on such vessel for the purpose of exercising his functions.

(6) The operator and each member of the crew of such vessel shall allow and assist an observer to:

- (a) board such vessel;
- (b) have full access to and the use of facilities and equipment on board the vessel which the observer may determine is necessary to carry out his or her duties; have full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish; remove samples; have full access to the vessel's records including its log and documentation for the purpose of records inspection and copying; and gather any other information relating to fisheries in the fishery waters;
- (c) carry out his duties safely; and

- (d) disembark at such time and place as may be determined by the Secretary or in accordance with an access agreement.

(7) The operator shall provide the observer, while on board the vessel, at no expense to the Government of the Cook Islands with food, accommodation and medical facilities equivalent to officers of such reasonable standard as may be acceptable to the Secretary.

(8) Any operator of any vessel with a valid foreign fishing licence issued by the Minister shall allow and assist any observer to have full access to any place within the Cook Islands where fish taken in the fishery waters is unloaded or transhipped, to remove samples and to gather any information relating to fisheries in the fishery waters.

**36. Duties to authorised officers and observers - (1)** The master and each crew member of any foreign fishing vessel, the driver of any vehicle and the pilot and crew of any aircraft shall immediately comply with every instruction or direction given by an

authorised officer or observer as appropriate, and facilitate safe boarding, entry and inspection of the vessel, vehicle or aircraft and any fishing gear, equipment, records, fish and fish products.

(2) The master and each crew member of a vessel, driver of a vehicle and pilot and crew of an aircraft shall take all reasonable measures to ensure the safety of an authorised officer or observer as appropriate in the performance of his duties.

(3) Every person commits an offence who contravenes subsections (1) or (2), or –

- (a) Assaults, obstructs, resists, delays, refuses boarding to, intimidates or fails to take all reasonable measures to ensure the safety of or otherwise interfere with an authorised officer or observer in the performance of his duties:
- (b) Incites or encourages any other person to assault, resist, or obstruct any authorised officer while in the execution of his powers or duties, or any person lawfully acting under the officer's orders or in his aid:
- (c) Uses threatening language or behaves in a threatening or insulting manner or uses abusive language or insulting gestures towards any authorised officer or observer while in the execution of his powers or duties, or any person lawfully acting under an authorised officer's orders or in his aid;
- (d) Fails to comply with the lawful requirements or any authorised officer or observer;
- (e) Furnishes to any authorised officer any particulars which, to his knowledge are false or misleading in any material respect; or
- (f) Personates or falsely represents himself to be an authorised officer, or who falsely represents himself to be a person lawfully acting under an authorised officer's orders or in his aid.

(4) For the purpose of subsection (3), any person who does not allow any authorised officer, or any person acting under his orders or in his aid, or an observer to

exercise any of the powers conferred on such person by this Act shall be deemed to be obstructing that officer or person.

(5) Every person who commits an offence against this section is liable to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding two months or to both such fine and imprisonment.

**37. Identification of authorised officers and observers** - An authorised officer or observer when exercising any of the powers conferred on him by this Act shall on request produce identification to show he is an authorised officer or observer under this Act.

**38. Protection of authorised officers, observers and others** - A person who does any act in pursuance or intended pursuance of the functions conferred on him by or under this Act shall not be subject to any civil or criminal liability in respect thereof, whether on the ground of want of jurisdiction, or mistake of law or fact, or on any other ground, unless he has acted, or omitted to act, in bad faith without reasonable cause.

**39. Information must be true, complete and correct** - (1) Any information required to be recorded, notified, communicated or reported pursuant to any requirement of this Act shall be true, complete and correct.

(2) Any change in circumstances which has the effect of rendering any such information false, incomplete or misleading shall be notified to the appropriate authority immediately.

(3) Every person commits an offence who contravenes this section and is liable on conviction to a fine not exceeding \$250,000.

#### **PART IV**

#### **SALE, RELEASE AND FORFEITURE OF RETAINED PROPERTY**

**40. Release of seized goods** - (1) The Court may, and in the case of a foreign fishing vessel, vehicle or aircraft shall, on application, order the release of any fishing vessel (together with its fishing gear, equipment, stores and cargo), vehicle, aircraft or other items seized under this Act on receipt of a bond or other form of security.

(2) In determining the value of the bond or other form of security, the Court shall have regard to the aggregate amount of the value of the property to be released, the total maximum fine or fines provided for the offences charged or likely to be charged and the costs the prosecution would be likely to recover if a conviction were entered, and may set the value at such aggregate amount.

(3) Where any vessel, vehicle, aircraft or other item seized is released upon the lodging of a bond or other form of security under subsection (1), the court shall in the order state separately the sums which are attributable to the property to be released, the total fine or fines and the likely costs.

(4) Nothing in subsection (1) shall require a Court to release any vessel, vehicle, aircraft or other item if it might be required as an exhibit in court proceedings or is reasonably required for any further investigations of offences against this Act.

**41. Sale of perishable goods seized** - (1) Any fish or other item of a perishable nature seized under this Act or the proceeds of sale of such fish or item shall be held and dealt with in accordance with the provisions of this Act.

(2) The Secretary may sell the fish or other items referred to in subsection (1), except that where, after making all reasonable efforts, he is unable to sell them, or where such fish or other items are unfit for sale, he may dispose of them in such other manner as he thinks fit.

**42. Holding of seized goods etc.** - Any vessel, vehicle, aircraft or other item seized under this Act or any bond or other security or net proceeds of any sale in respect thereof shall be held by the Government of the Cook Islands pending the outcome of any legal proceedings under this Act or until it is decided not to lay an information or charge and any penalties imposed under this Act have been paid.

**43. Court's power of forfeiture** - (1) Where any person is convicted of an offence against this Act, the High Court, in addition to any other penalty –

- (a) May order that any fishing vessel (together with its fishing gear, equipment, stores and cargo) and any vehicle or aircraft used or involved in the commission of that offence be forfeited to the Crown;
- (b) Shall order that any fish caught unlawfully or the proceeds of sale of such fish or any perishables and any explosive, poison or other noxious substance used or involved in the commission of the offence shall be presumed to have been caught in the commission of that offence.

(2) Where any vessel, vehicle, aircraft or other item seized under this Act, or any bond, security or nett proceeds of sale in respect thereof is not forfeited or applied in the discharge of any fine, order for costs or penalty imposed under this Act, it shall be made available for collection by the registered owner or his nominee or, in the absence of such persons, the person who appears to be entitled to it.

(3) Where any vessel, vehicle, aircraft or other item has been released upon the lodging of a bond or security an order for forfeiture shall, unless the court for special reasons fixes a smaller sum, operate as an order for forfeiture of the bond or security.

(4) Where any vessel, vehicle, aircraft or other item has been released upon the lodging of a bond or security under section 4(3), the court may order any convicted defendant and the owner of the vessel, vehicle, aircraft or other item concerned, whether or not he is a defendant, to pay the difference between the bond or amount lodged in respect of the forfeited property and the aggregate value of the forfeited property as stated under section 4(2).

**44. Application of bond etc.** - Any bond, security or nett proceeds of sale held in respect of any vessel, vehicle or aircraft or other item shall be applied as follows and in this order –

- (a) The discharge of any forfeiture ordered under section 43;
- (b) The payment of all fines for offences against this Act or penalties imposed under this Act arising out of the use of or in connection with the vessel, vehicle, aircraft or other item;
- (c) The discharge of all orders for costs in proceedings under this Act arising out of the use of or in connection with the vessel, vehicle, aircraft or other item; and
- (d) Return as provided in section 46.

**45. Removal of seized goods** – Where any vessel, vehicle, aircraft or other item held or forfeited under this Act has been unlawfully removed from the custody of the Government of the Cook Islands it is liable to seizure at any time within the fishery waters.

**46. Disposal of forfeited goods** – (1) Any vessel, vehicle, aircraft or other item ordered to be forfeited under this Act may, at the expiry of the time limited for appeal and if no appeal is lodged, be disposed of in such manner as the Minister may direct.

(2) Any vessel, vehicle, aircraft or other item seized under this Act but not forfeited in any legal proceedings may be held by the Government of the Cook Islands until all fines, orders for costs and penalties imposed under this Act have been paid and failing payment within the time allowed be sold and the balance of the proceeds returned in accordance with section 44 after deduction of all fines, orders for costs, penalties imposed under this Act and costs of sale.

**47. Liability for loss, damage or deterioration of items in custody** - The Government of the Cook Islands shall not be liable to any person for any loss, damage to or deterioration in the condition of any vessel, vehicle, aircraft or other item while in the custody of the Government under this Act.

**48. Banning order** – (1) Where a person has been convicted of an offence against section 36(3), the court may in addition to any other penalty or forfeiture order that for a period not exceeding 5 years he be banned from going on or remaining aboard any fishing vessel in the fishery waters.

(2) Any person who contravenes an order made under subsection (1) or the master of a fishing vessel who has aboard a person he knows is banned under subsection (1) commits an offence and is liable to a fine not exceeding \$250,000.

**49. Removal of item in custody** - Any person who removes any vessel, vehicle, aircraft or other item held in the custody of the Government of the Cook Islands under this Act commits an offence whether or not he knew the vessel, vehicle, aircraft or other item was held in the custody of the Government of the Cook Islands and is liable to a fine not exceeding \$250,000 or both such fine and imprisonment.

## **PART V**

### **JURISDICTION AND EVIDENCE**

**50. Jurisdiction of High Court** - Any Act or omission in contravention of any of the provisions of this Act committed:

- (a) By any person within the fishery waters;
- (b) Outside the fishery waters by any Cook Islander or person ordinarily resident in Cook Islands; or
- (c) By any person on board any local fishing vessel;

shall be dealt with and judicial proceedings taken as if such act or omission had taken place in the Cook Islands within the local limits of the jurisdiction of the High Court.

(2) Where an authorised officer or observer is exercising outside the fishery waters any powers conferred on him in accordance with this Act or an applicable access or related agreement, any act or omission of any person, which if committed within the fishery waters would be an offence against this Act, shall be deemed to have been committed within the fishery waters.

(3) Any act or omission of any person on the high seas, which if committed within the fishery waters would be an offence against section 56(9) shall be deemed to have been committed within the fishery waters.

(4) Where any regulation or licence condition requires specifically or incidentally the reporting of any fact while a vessel is on the high seas then proceedings may be taken in respect of any failure to report such fact as if it had occurred within the fishery waters.

(5) Notwithstanding any provision of (Criminal Proceedings Act) an information or charge in respect of any offence against this Act may be laid at any time within one year of the commission of the offence.

**51. Certificate evidence** - The Minister or any person designated in writing by him may give a certificate stating that –

- (a) A specified vessel was or was not on a specified date or dates a local vessel or a locally based foreign fishing vessel;
- (b) A specified vessel or person was or was not on a specified date or dates the holder of any specified licence, authorisation or certificate of registration;
- (c) An appended document is a true copy of the licence, authorisation or certificate of registration for a specified vessel or person and that specified conditions were attached to such document;
- (d) A particular location or area of water was on a specified date or dates within the fishery waters, or within a closed, limited, restricted or in any other way controlled area of the fishery waters, or an area of the fisheries waters subject to specified conditions;
- (e) An appended chart shows the boundaries on a specified date or dates of the fishery waters, territorial sea, closed or limited areas or other areas or zones delineated for any specified purpose;
- (f) A particular item or piece of equipment is fishing gear;
- (g) The cause and manner of death of or injury to any fish;
- (h) An appended document is a true copy of an access or related agreement;
- (i) A call sign, name or number is that of or allotted under any system of naming or numbering of vessels to a particular vessel;
- (j) That a specified vessel has good standing on the Regional Register, as evidenced by an appended certificate to that effect from the Director of the South Pacific Forum Fisheries Agency; or

- (k) A particular position or catch report, a copy of which is appended, was given in respect of a specified vessel.

**52. Validity and procedures for certificates** – (1) Unless the contrary is proved, a document purporting to be a certificate given under section 51 shall be deemed to be such a certificate and to have been duly given.

(2) Where a certificate given under section 52 is served upon a defendant seven or more days before its production in court in any proceedings under this Act then the certificate shall, unless the contrary is proved, be sufficient evidence of all the facts averred in it.

(3) Where a certificate issued under section 51 is served upon a defendant fourteen or more days before its production in court and the defendant does not, within seven days of the date of service, serve notice of objection in writing upon the prosecutor then the certificate shall, unless the court finds the defendant is unduly prejudiced by any failure to object, be conclusive proof of all the facts averred in it.

(4) Where any objection is notified under subsection (3) the certificate shall, unless the contrary is proved, be sufficient evidence of all the facts averred in it.

(5) Any certificate given under section 51 shall be headed "Certificate Made Under Section 51 Fisheries Act" and no certificate issued under section 51 may be used as conclusive proof of the facts averred therein unless it is served with a copy of sections 51 and 52 of this Act.

(6) Any omission from or mistake made in any certificate issued under section 51 shall not render it invalid unless the court considers such omission or mistake is material to any issue in the proceedings concerned, or the defendant is unduly prejudiced thereby.

(7) Where in any proceedings a certificate made under section 51 is produced to the Court, the prosecution shall not be obliged to call the maker of the certificate and the court shall, where material, rely on the facts therein unless the contrary is proved.

**53. Certificate as to location of vessel** - (1) Where in any proceedings under this Act the place or area in which a vessel is alleged to have been at a particular date and time or during a particular period of time is material to an offence charged then a place or area stated in a certificate given by an authorised officer shall be evidence, unless the contrary is proved, of the place or area in which the vessel was at the date and time or during the period of time stated.

- (2) An authorised officer shall in any certificate made under subsection (1) state:
- (a) His name, address, official position, country of appointment and provision under which he is appointed;
  - (b) The name and, if known, call sign of the fishing vessel concerned;
  - (c) The date and time or period of time the vessel was in the place or area;
  - (d) The place or area in which it is alleged the vessel was located;
  - (e) The position fixing instruments used to fix the place or area stated in (d) and their accuracy within specified limits;

- (f) A declaration that he checked the position fixing instruments a reasonable time before and after they were used to fix the position and they appeared to be working correctly;
- (g) If a position fixing instrument which is not judicially recognised as notoriously accurate or a designated machine is used, a declaration that he checked the instrument as soon as possible after the time concerned against such an instrument.

(3) Section 52 shall apply to a certificate given under this section as if it had been a certificate given under section 51 and any reference therein to section 51 shall be read as a reference to this section.

(4) For the purposes of this section "authorised officer" shall include surveillance officers and those charged with similar responsibilities in other countries.

**54. Designated machines** (1) The Minister may by notice in the Gazette designate any machine or class of machines as a designated machine or machines.

(2) The readings of designated machines shall be admissible as evidence of the facts they aver if –

- (a) The readings were made by a competent operator; and
- (b) The machine was checked for correct working a reasonable time before and after the readings it is sought to adduce in evidence were made and the machine appeared to be working correctly.

(3) A designated machine, when checked for correct working and read by a competent operator, shall, unless the contrary is proved, be presumed to give accurate readings within the manufacturer's specified limits.

(4) The readings of designated machines may be made from a printout or as observed from a visual display unit.

(5) The machines referred to in subsection (1) must be capable either wholly or partially in themselves of producing the readings concerned and not merely be receivers of information or data.

**55. Photograph evidence** - (1) Where a photograph is taken of any fishing or related activity and simultaneously the date and time on which and position from which the photograph is taken are superimposed upon the photograph then it shall be presumed unless the contrary is proved that the photograph was taken on the date at the time and in the position so appearing.

(2) The presumption set out in subsection (1) above shall only arise if:

- (a) The camera taking the photograph is connected directly to the instruments which provide the date, time and position concerned; and
- (b) The instruments which provide the date, time and position are judicially recognised as being notoriously accurate or are designated machines or were checked as soon as possible after the taking of the photograph against such instruments.

(3) Any authorised officer who takes a photograph of the kind described in subsection (1) may give a certificate appending the photograph stating:

- (a) His name, address, official position, country of appointment, and provision under which he is appointed;
- (b) The name and call sign, if known, of any fishing vessel appearing in the photograph;
- (c) The names of the camera, watch or clock or other instruments supplying the date and time and the position fixing instrument and a declaration that he checked those instruments a reasonable time before and after the taking of the photograph and, if necessary, in accordance with subsection (2)(b) and that they all appeared to be working correctly;
- (d) The matters set out in subsection (2)(a);
- (e) The accuracy of the fixing instrument used within specified limits; and
- (f) The maximum possible distance and the direction of the subject of the photograph away from the camera at the time the photograph was taken.

(4) Section 52 shall apply to a certificate given under this section as if it had been a certificate given under section 51 and any reference therein to section 51 shall be read as reference to this section.

(5) For the purposes of this section "authorised officer" shall include fisheries enforcement officers, surveillance officers and those charged with similar responsibilities in other countries.

**56. Observer devices** - (1) The Minister may by notice in the Gazette designate any device or machine or class of device or machine device as an observer.

(2) Observer device means any device or machine placed on a fishing vessel in accordance with this Act, as a condition of its licence or access agreement or related agreement, which transmits whether in conjunction with other machines elsewhere or not, information or data concerning the position and fishing activities of the vessel.

(3) The information or data concerning the vessel's position and fishing activities referred to in subsection (2) may be fed or input manually into the observer device or automatically from machines aboard the vessel or ascertained by the use of the observer device transmissions in conjunction with other machines.

(4) (a) Any machine aboard a vessel automatically feeding or inputting position fixing information or data into an observer device shall be judicially recognised as notoriously accurate or a designated machine;

- (b) Any machine used in conjunction with an observer device for the purpose of ascertaining or obtaining information or data need not be judicially recognised as notoriously accurate or a designated machine.

(5) All information or data obtained ascertained by the use of an observer device shall be presumed, unless the contrary is proved, to –

- (a) Come from the vessel so identified;
- (b) Be accurately relayed or transferred; and
- (c) Be given by the master, owner and charterer of the fishing vessel;

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

(6) The presumption set out in subsection (5) shall apply whether or not the information was stored before or after any transmission or transfer.

(7) Any person may give a certificate stating –

- (a) His name, address and official position;
- (b) He is competent to read the printout or visual display unit of any machine capable of obtaining or ascertaining information from an observer device;
- (c) The date and time the information was obtained or ascertained from the observer device and the details thereof;
- (d) The name and call sign of the vessel on which the observer device is or was located as known to him or as ascertained from any official register, record or other document; and
- (e) A declaration that there appeared to be no malfunction in the observer device, its transmissions, or other machines used in obtaining or ascertaining the information.

(8) Section 52 shall apply to a certificate given under this section as if it had been a certificate given under section 51 and any reference therein to section 51 shall be read as a reference to this section.

(9) Any person who intentionally, recklessly or unintentionally destroys, damages, renders inoperative or otherwise interferes with an observer device or machine aboard a vessel which automatically feeds or inputs information or data into an observer machine, which is not officially required or is meaningless shall commit an offence and be liable on conviction to a fine not exceeding \$250,000.

**57. Presumptions** - (1) All fish found on board any fishing vessel which has been used in the commission of any offence under this Act shall be presumed to have been caught in the commission of that offence, unless the contrary is proved.

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

(3) Prima facie evidence of an entry in a logbook or other official record of an enforcement vessel or aircraft may be given by the production of a written copy or extract of the entry certified by an authorised officer as a true copy of accurate extract.

(4) For the purposes of any proceedings under this Act, the act or omission of any member of the crew of a fishing vessel while aboard that vessel or engaged in fishing activity related to that vessel shall be deemed to be also that of the master, owner and charterer.

(5) Any entry in writing or other mark in or on any log, chart or other document required to be maintained under this Act or used to record the activities of a foreign fishing vessel shall be deemed to be that of the master, owner and charterer of the vessel.

(6) Where any information is given in respect of a fishing vessel under this Act or an access agreement or related agreement in relation to any fishing activity of a foreign fishing vessel, it shall be presumed to have been given by the master, owner and charterer of the vessel concerned, unless it is proved it was not given by any of them.

(7) Where in any legal proceedings for an offence under this Act:

- (a) An authorised officer gives evidence on reasonable grounds to believe that any fish to which the charge relates were taken by the use of driftnets;
- (b) The Court considers that, having regard to the evidence, the grounds are reasonable; the fish shall be presumed to have been so taken, unless the contrary is proved.

(8) Where in any legal proceedings for an offence under this Act;

- (a) An authorised officer gives evidence of reasonable grounds to believe that any fish to which the charge relates were taken in a specified area of the fishery waters;
- (b) The Court considers that, having regard to that evidence the grounds are reasonable;

the fish shall be presumed to have been so taken, unless the contrary is proved.

**58. Onus of proof** - (1) Where, in any proceedings under this Act, a person is charged with having committed an offence involving an act for which a licence, authorisation or other permission is required, the onus shall be on that person to prove that at the relevant time the requisite licence or authorisation or either permission was held.

(2) Where a person is charged with having contravened section 12(1)(a), the onus shall be on that person to prove that his entry into the fishery waters was for a purpose recognised by international law.

(3) Where a person is charged with having contravened section 39, the onus shall be on that person to prove that the information given was true, complete and correct.

**59. Liability of master** - Where an offence 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 offence.

**PART VI****REGULATIONS**

**60. Regulations - (1)** The Queen's Representative may, by Order in Executive Council, make such regulations as may be necessary to give effect to the provisions of this Act and for due administration thereof.

(2) Without, limiting the generality of subsection (1), regulations made pursuant to this section may provide for all or any of the following –

- (a) Prescribing measures for the conservation, management, development, licensing and regulation of fisheries or any particular fishery;
- (b) Licensing, authorisation or registration in respect of any vessel or class or category of vessels to be used for fishing, related activities or any other purpose pursuant to this Act, including the form, issuance requirements, grounds for denial, terms and conditions and fees, charges, royalties, and other forms of compensation related to such licensing, authorisation or registration;
- (c) Licensing, authorisation or registration in respect of any fisherman or class of fisherman, fishing gear and other equipment or devices used for fishing;
- (d) The operation of, and conditions and procedures observed by any fishing vessel while in the fishery waters;
- (e) The operation of, and conditions and procedures to be observed by any other vessel which may enter the fishery waters for any purpose under this Act;
- (f) The catching, loading, landing, handling, transshipping, transporting, possession and disposal of fish;
- (g) The import, export, distribution and marketing of fish and fish products;
- (h) The manner in which any fishing gear is to be stowed;
- (i) The appointment, powers and duties of authorised officers and observers;
- (j) The duties and procedures to be followed by the master and crew of any vessel in respect of authorised officers and observers;
- (k) Rewards to be paid to any person providing information on the operations of foreign fishing vessels leading to a conviction of an offence against this Act;
- (l) The licensing, control and use of fish aggregating devices and the rights to the aggregated fish, and prescribing times and the minimum distances from such devices any vessel may fish around such devices;
- (m) Regulating or prohibiting the use of self-contained underwater breathing apparatus;

- (n) Regulating or prohibiting the use of spear guns or other similar devices;
- (o) Standards and measures for the safety of local fishermen and fishing vessels;
- (p) Regulating aquaculture and access to land leased for aquaculture and to the waters superjacent to such land;
- (q) Prescribing the terms and conditions of leases for aquaculture;
- (r) Requiring the provision of statistical and other information related to fisheries;
- (s) The control, inspection and conditions of operation of fish processing establishments;
- (t) The prevention of marine pollution;
- (u) The appointment, maintaining of and procedures for agents appointed to receive and respond to process pursuant to this Act;
- (v) The implementation of any access or related agreement or other agreement or arrangement entered into pursuant to this Act;
- (w) Regulating or prohibiting, either generally or in any specified fishery –
  - (i) The taking of coral and shells;
  - (ii) The setting of fish fences or nets;
  - (iii) The taking of aquarium fish; or
  - (iv) Aquaculture operations;
- (x) Prescribing measures for the protection of trochus, pearl and pearl-shell, turtles, green snails, clams and lobsters;
- (y) Regulating or prohibiting fishing of all kinds within any lagoon or any part of any lagoon, the time or times of year during which such fishing may occur or is prohibited, and approving, restricting or prohibiting the equipment or methods which may be used in connection with such fishing;
- (z) Prescribing offences against the regulations and penalties for such offences, not exceeding a fine of \$250,000 and, where the offence is a continuing one, a further fine not exceeding \$500 for every day that the offence has continued; and
- (zz) Prescribing any other matter which is required or authorised to be prescribed.

### **PART VIII**

#### **GENERAL**

**61. Saving** - All regulations, orders and notices made or given under the Territorial Sea and Exclusive Economic Zone Act 1977, and all licences, permits, other authorisations, and agreements issued or made thereunder shall, except so far as they are

inconsistent with this Act, continue to have effect as though made, given, or issued under this Act.

**62. Repeals** - The enactments specified in the schedule to this Act are hereby repealed to the extent specified in that schedule.

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This Act is administered in the Ministry of Marine Resources.

RAROTONGA COOK ISLANDS:  
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## SCHEDULE

### ENACTMENTS REPEALED

Enactment	Extent of Repeal
The Fisheries Regulations 1931 (New Zealand) Gazette, 1931, p.3 2G)	The whole regulations.
The Customs Export Prohibition Order 19 (No.4) New Zealand Statutory Regulations, S.R. 1937/216	The whole Order.
The Fisheries Ordinance 1950	The whole Ordinance.
The Cook Islands Commercial Fishing Regulations 1951 (New Zealand Statutory Regulations)	The whole Regulations.
The Rarotonga Fisheries Bylaws 1960	The whole Bylaw.
The Trochus Act 1975	The whole Act.
The Territorial Sea and Exclusive Economic Zone Act 1977	The definitions of the terms "Cook Islands fishing craft" "Fish", "fishery", "fishing", "fishing craft", "foreign fishing craft", "highly migratory species", "licence", "licensee", "master", "Minister", "owner", "take" and "total allowable catch" in section 2(1), and sections 9 to 22, 25 and 28.

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The Crimes Amendment Act 1981	The whole Act.
The Pearl and Pearl-Shell (Penrhyn, Rakahanga, and Manihiki Lagoons) Act 1982 as amended	The whole Act.

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