



REPUBLIC OF NAURU

# COASTAL FISHERIES AND AQUACULTURE ACT 2020

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No. 12 of 2020

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An Act to provide for the sustainable and efficient management of the coastal and aquaculture resources of the Republic, to develop the coastal fisheries and aquaculture sectors and for other related purposes.

Certified: 4<sup>th</sup> June 2020

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Enacted by the Parliament of Nauru as follows:

## PART 1 - PRELIMINARY

### 1 Short title

This Act may be cited as the *Coastal Fisheries and Aquaculture Act 2020*.

### 2 Commencement

This Act commences upon certification by the Speaker.

### 3 Definitions

In this Act:

**'Advisory Council'** means the Coastal Fisheries Advisory Council established under Section 10;

**'aquaculture'** means the cultivation, propagation or farming of aquatic organisms whether from eggs, spawn, spat or seed, or by rearing aquatic organisms lawfully taken from the wild or lawfully imported into the Republic, or any similar process;

**'artisanal fishing'** means small-scale fishing whether subsistence or commercial providing for local consumption but does not include export, such as gleaning, use of small boats and canoes;

**'authorised officers'** means authorised officers appointed under Section 40;

**'Authority'** means the Nauru Fisheries and Marine Resources Authority;

**'coastal fisheries'** means fishing activities targeting marine resources occurring within the coastal fisheries waters of the Republic;

**'coastal fisheries waters'** means the internal waters and the territorial sea of the Republic;

**'Community fisheries management areas'** means coastal fishing areas that have been declared by the Minister to be managed by district communities for the purpose of protecting the coastal fisheries and marine resources to ensure its long-term sustainability;

**'Chief Executive Officer'** means the Chief Executive Officer of the Authority;

**'fishery' or 'fisheries'** means one or more stocks of fish or any fishing operation based on those stocks which can be treated as a unit for the purposes of conservation, development and management, taking into

account geographical, scientific, social, technical, recreational, economic and other relevant characteristics;

**'fishing vessel'** means any vessel, ship or other craft which is used, equipped to be used or of a type that is normally used for fishing or related activities;

**'Forum'** means the Community Fisheries Stakeholder Forum established under Section 15;

**'Minister'** means the Minister responsible for Fisheries;

**'subsistence fishing'** means any fishing activity carried out primarily for personal consumption, excluding game fishing.

#### **4 Application**

This Act applies to:

- (a) all coastal fisheries waters and areas over which Nauru exercises jurisdiction or sovereign rights;
- (b) fisheries resources and related habitats in coastal fisheries waters;
- (c) coastal fisheries;
- (d) aquaculture and related activities;
- (e) persons, vessels, vehicles, aircraft, export facilities or other vessels or place engaged in or otherwise connected with any activity falling within the scope of this Act; and
- (f) persons and vessels in coastal fisheries waters.

#### **5 Objectives**

The objectives of this Act include:

- (a) preservation, protection and development of coastal fisheries waters of the Republic;
- (b) ensuring the sustainability of coastal fisheries waters and aquaculture management and development;
- (c) protection of livelihood and food security;
- (d) managing, developing and using fishery resources taking into consideration traditional knowledge, best available scientific information and in accordance with best management practices;
- (e) ensuring community participation in coastal fisheries and aquaculture management; and

- (f) co-ordinating the role of Government agencies and the community to ensure compliance with conservation and management measures for coastal fisheries waters and aquaculture.

## **6 General Principles**

- (1) The Chief Executive Officer in the performance of a function or exercise of a power under this Act shall as far as is reasonably practicable:
  - (a) ensure the application of conservation and management practices based on the best available scientific advice and generally recognised local and international customs, standards and best practices;
  - (b) ensure the application of the precautionary approach which shall be applied to the management and development of the fisheries at a standard that is equal or superior to the standard in any applicable international instrument;
  - (c) prevent over-fishing, in particular by ensuring that levels of fishing effort do not exceed the availability of resources;
  - (d) collect and share, in a timely manner, accurate data concerning fisheries and aquaculture, as well as information from national and international research programmes;
  - (e) take into account the particular rights, interests and needs of traditional, subsistence and other local fishers and fishing communities;
  - (f) adopt an integrated approach to fisheries and other coastal living resources use management, including minimising, to the extent practicable, conflicts among fishers using the same coastal space and between fishers and other users of coastal space;
  - (g) apply the principle of inter-generational equity, by which the present generation should ensure that the health, diversity and productivity of coastal living resources and the coastal fisheries waters are maintained or enhanced for the benefit of future generations;
  - (h) apply principles of good governance, accountability and transparency, including the need to involve fisheries stakeholders and fishing communities in decision-making where necessary.
- (2) For the purpose of subsection (1)(b), the precautionary approach is where there is a threat of serious or irreversible harm to fisheries resources and related habitats in coastal fisheries waters, lack of scientific certainty shall not be used as a reason to prevent or

postpone action to mitigate any harmful impacts to fisheries resources and related habitats in coastal fisheries waters.

## **7 Traditional knowledge and customary practices**

Where appropriate, the following shall be considered in the development of any national policies and management plans:

- (a) traditional coastal fisheries;
- (b) traditional aquaculture knowledge;
- (c) traditional practices; and
- (d) traditional fishing methods.

## **PART 2 – ADMINISTRATION**

### **8 Authority of Minister**

- (1) The Minister has the authority to do all things necessary or convenient to attain or further the objectives of this Act.
- (2) The Minister shall:
  - (a) determine national policies;
  - (b) designate fisheries management areas;
  - (c) designate marine protected areas;
  - (d) declare closed seasons;
  - (e) where necessary, impose control and management measures on fishing effort and catch; and
  - (f) appoint one or more committees as he or she deems necessary to advise and make recommendations on any areas under his or her authority.

### **9 Power of Chief Executive Officer**

The Chief Executive Officer has the power to do all things necessary or convenient for the implementation of this Act in his or her capacity as head of the Authority, including the power to:

- (a) do any act or thing authorised by this Act or any other written law;
- (b) manage and control the affairs of the Authority for the purposes of this Act;

- (c) advise the Minister and the Cabinet on all aspects of coastal fisheries and aquaculture;
- (d) liaise with other Governments, international or regional organisations or agencies, Government Departments, other instrumentalities of the Republic to allow mutual support in dealing with issues relating to the management of coastal fisheries waters and aquaculture resources;
- (e) prepare national management and development plans for coastal fisheries and aquaculture;
- (f) make recommendations to the Minister on coastal fisheries and aquaculture resources conservation, management and development;
- (g) assist stakeholders to meet their obligations under this Act;
- (h) advise Government Departments and committees on the management or development of coastal fisheries and aquaculture resources;
- (i) monitor impacts on the management and development of coastal fisheries and aquaculture resources, and related habitats;
- (j) assist in coastal fisheries or aquaculture research;
- (k) collect or disseminate timely, reliable and effective data on coastal fisheries and aquaculture;
- (l) promote public awareness and education in relation to coastal fisheries and aquaculture management and development;
- (m) keep and maintain a Register of Community Fisheries Management Committees;
- (n) ensure public consultation on initiatives for the conservation, management and sustainable development of coastal fisheries and aquaculture; and
- (o) delegate in writing to an officer of the Authority any power except the power of delegation.

## **PART 3 – COASTAL FISHERIES**

### ***Division 1 – Coastal Fisheries Advisory Council***

#### **10 Establishment of Coastal Fisheries Advisory Council**

A Coastal Fisheries Advisory Council is hereby established.



**11 Function of Council**

The Council shall advise the Minister on policy matters relating to coastal fisheries and aquaculture:

- (a) conservation and management; and
- (b) development and sustainable use.

**12 Composition of Council**

(1) The Council shall comprise of the following:

- (a) the Chief Executive Officer who shall be the Chairperson;
- (b) a senior official of the Authority who is responsible for coastal fisheries and who shall be the Deputy Chairperson;
- (c) one representative of a non-governmental organisation or from a scientific organisation with functions relating to or experience in coastal fisheries;
- (d) one representative of a non-governmental organisation or from a scientific organisation with functions relating to or experience in aquaculture;
- (e) the Chairperson or Deputy Chairperson from the Community Fisheries Stakeholder Forum; and
- (f) the Secretary for the Department responsible for environment and agriculture or his or her nominee.

(2) The Council may co-opt any other number of persons it deems necessary for the performance of its functions.

**13 Meetings of the Council**

(1) The Council is to hold such meetings as are necessary for the performance of its functions.

(2) The Council shall appoint an officer of the Authority to act as and perform all such duties as is required of a secretary to the Council.

(3) The Council may:

- (a) determine its own procedures for its meetings; and
- (b) cause minutes to be kept of its meetings.

**14 Disclosure of interest**

- (1) Where a member of the Council has an interest of a financial or fiduciary nature that conflicts with his or her function or duty under this Act, he or she shall promptly disclose the nature of such interest at the meeting.
- (2) Any conflict of interest disclosed under subsection (1) shall be recorded in the minutes of a Council meeting.
- (3) Where a member contravenes subsection (1), such member may be removed from the Council.

***Division 2 – Community Fisheries Stakeholder Forum***

**15 Community Fisheries Stakeholder Forum**

A Community Fisheries Stakeholder Forum is hereby established.

**16 Objectives of the Forum**

The Forum may:

- (a) work collaboratively on the development of project outcomes;
- (b) work directly with key stakeholders to ensure that their concerns and needs are considered;
- (c) with the assistance of the Chief Executive Officer, develop a dispute resolution mechanism to resolve disputes between members;
- (d) provide feedback on analysis, alternatives or outcomes including policies, national coastal fisheries and aquaculture plans, legislation or other conservation, management and development measures; and
- (e) where necessary or when required, provide relevant parties including the Coastal Fisheries Advisory Council with balanced, objective and accurate information.

**17 Composition of Forum**

The Forum shall comprise of:

- (a) a Chairperson nominated by the members from its membership;
- (b) one representative from each district community fisheries management committee; and
- (c) a senior staff member of the Authority as secretary.

**18 Meetings of Forum**

- (1) The Forum may determine its own procedures for its meetings.
- (2) Any minutes of meetings and correspondence shall be kept and maintained by the secretary to the Forum.

***Division 3 – Coastal Fisheries Conservation, Management and Development***

**19 Designated fisheries management areas**

- (1) The Minister may, on the advice of the Chief Executive Officer and in consultation with the Cabinet:
  - (a) by notice published in the Gazette, declare an area as a designated fisheries management area; and
  - (b) mark such area as a designated fisheries management area.
- (2) The Minister may make a declaration under subsection (1), if the Minister deems appropriate having regard to scientific, social, economic, environmental and other relevant considerations that the area:
  - (a) is important to the national interest; and
  - (b) requires conservation and management measures for ensuring sustainable use of coastal fisheries resources.
- (3) The Minister may by notice published in the Gazette declare a buffer zone of up to two nautical miles around the designated fisheries management areas to ensure the sustainability of species within such areas.

**20 National Coastal Fisheries Management Plan**

- (1) The Chief Executive Officer shall be responsible for the preparation and review of a National Coastal Fisheries Management Plan in accordance with this Act.
- (2) The Plan shall:
  - (a) identify the relevant fishery or fisheries;
  - (b) specify objectives to be achieved in the management and development of the fishery or area;
  - (c) describe the status of the fishery;

- (d) specify management measures to be applied to the fishery including appropriate fines, penalties and sanctions for contravening such measures;
  - (e) protect the fishing interests of artisanal, subsistence and small scale fishers;
  - (f) specify the process for allocation of any fishing rights;
  - (g) include an assessment of risk;
  - (h) identify requirements for monitoring, reporting and assessment; and
  - (i) provide for any other matters as may be necessary for sustainable use, management and development of fishery resources.
- (3) In preparing the Plan, the Chief Executive Officer shall:
- (a) consult with the Community Fisheries Stakeholder Forum;
  - (b) consult with the stakeholders who will be affected by or has an interest, to the extent such members may not be informed through the Community Fisheries Stakeholder Forum;
  - (c) consult with other relevant government agencies on the proposed plan; and
  - (d) take into account the Objectives and General Principles of this Act under Sections 5 and 6.

## **21 Approval of Plan**

- (1) A Plan prepared under this Part shall be submitted to the Cabinet for consideration.
- (2) The Cabinet may:
  - (a) approve the Plan where it is satisfied that the Plan complies with this Act; or
  - (b) request the Chief Executive Officer to provide more information.
- (3) Where the Cabinet approves the Plan under subsection (2)(a), the Plan shall be published in the Gazette as soon as practicable.
- (4) The Plan comes into effect on the date it is published in the Gazette or any other date stated in the Plan.

## **22 Review of National Coastal Fisheries Management Plan**

- (1) The Chief Executive Officer shall review the Plan:
  - (a) at any time at the direction of the Minister or the Cabinet; or
  - (b) if no direction is given under paragraph (a), at the end of every annual year following the endorsement of the Plan.
- (2) In reviewing the Plan, the Chief Executive Officer may consult with:
  - (a) any person or organisation consulted under Section 20(3) during the preparation of the Plan; or
  - (b) such other persons as the Chief Executive Officer considers appropriate to consult, in light of the review.
- (3) An amendment to the Plan arising from a review under subsection (2) shall be prepared and considered in the same manner as it applies to the Plan.
- (4) The Plan may be amended or revoked by the Cabinet in consultation with the Chief Executive Officer.

## **23 Determination of allowable catch in coastal fisheries waters**

- (1) The Minister shall determine the total allowable catch, the total applied effort or a combination of the same in coastal fisheries waters.
- (2) In determining the total allowable catch, the total applied effort or a combination thereof, the Minister shall apply necessary catch quotas or size limits:
  - (a) in a particular area;
  - (b) in respect of a particular species or a group of species of fish; or
  - (c) in respect of the use of a particular gear, fishing methods or the type of fishing vessel.

## **24 Closed seasons**

- (1) Where necessary, the Minister may by notice in the Gazette declare a closed season.
- (2) A declaration by the Minister under subsection (1) may include the:
  - (a) closed season period;

- (b) type of fish, fishery, fishing method or other parameters, as the case may be; and
  - (c) specific area.
- (3) For the purpose of this Section, '**closed season**' means the period of time during which fishing is not permitted in a specified area or areas in coastal fisheries waters.
- (4) A person who contravenes this Section commits an offence and upon conviction is liable to a fine not exceeding \$10,000.00 or to a term of imprisonment not exceeding 6 months or to both.

#### **PART 4 – COMMUNITY FISHERIES MANAGEMENT**

**25**

##### **Community fisheries management areas**

- (1) A district community may apply to the Minister for the delineation of an area in such district's coastal fisheries waters for the purposes of managing coastal fisheries resources.
- (2) The Minister, in consultation with the Cabinet and the Chief Executive Officer may approve a request under subsection (1) and delineate a community fisheries management area.
- (3) In delineating a community fisheries management area, the Minister shall:
- (a) consult with the Authority, the Coastal Fisheries Advisory Council, the Community Fisheries Stakeholder Forum and any other relevant stakeholders;
  - (b) take into account:
    - (i) the purpose and justification for the need to establish the fisheries management area;
    - (ii) the geographical location and size of the proposed fisheries management area in relation to the district involved;
    - (iii) the community management plan for the proposed fisheries management area;
    - (iv) the population of each district;
    - (v) the customary marine tenure in each district; and
    - (vi) any traditional fisheries practices and usages.

**26****Community fisheries management committees**

- (1) A district community may apply to the Chief Executive Officer to register a community fisheries management committee.
- (2) An application under subsection (1) shall consist of:
  - (a) the name of the community fisheries management committee;
  - (b) names of the Chairperson, other officers of the committee if any and other members of the committee;
  - (c) banking information;
  - (d) the committee's mission statement and proposed activities;
  - (e) the committee's rules of procedure; and
  - (f) such other information or documentation as the Authority may require.
- (3) The Chief Executive Officer shall review an application received under subsection (1) and may:
  - (a) register the community fisheries management committee; or
  - (b) decline the application, providing reasons in writing.
- (4) Where an application was declined under subsection (3)(b), a district community may make a new application under subsection (1) taking into consideration the reasons provided under subsection (3)(b).
- (5) No district community may perform the functions of a community fisheries management committee unless registered under this Act.

**27****Community fisheries management area plans**

- (1) The Authority may assist a community fisheries management committee to prepare, adopt and keep under review where necessary, a community fisheries management area plan.
- (2) A community fisheries management area plan shall:
  - (a) comply with any written laws and national plans relating to coastal fisheries;
  - (b) identify the fishery to be managed under the plan;
  - (c) describe the status of the fishery;

- (d) provide the management and development objectives of the fishery or area;
  - (e) identify any development strategies;
  - (f) specify conservation and management measures to be applied to the fishery;
  - (g) specify the process for the allocation of any fishing rights or additional catch quotas by species that has not been defined in this Act and the National Coastal Fisheries Management Plan;
  - (h) identify requirements for monitoring, reporting, and assessment; and
  - (i) make provision in relation to any other matter necessary for sustainable use of fisheries resources including sustainable finance activities.
- (3) Before submitting the plan for approval by the Minister, a community fisheries management committee shall:
- (a) present the proposed plan to a meeting of the Forum; and
  - (b) consult with neighbouring district communities.
- (4) The Minister on receipt of a plan under subsection (3) may:
- (a) approve the community fisheries management area plan;
  - (b) approve the community fisheries management area plan with modifications; or
  - (c) return the community fisheries management area plan to the community fisheries management committee for further consideration.
- (5) Any plan approved by the Minister under this Section shall be published in the Gazette within 7 days of such approval by the Minister.

**28 Review and amendment of community fisheries management area plans**

- (1) A community fisheries management committee shall undertake a detailed review of its management plan on a biennial basis.
- (2) Despite subsection (1), the plan may be amended at any other time where the committee and the Chief Executive Officer deem appropriate.



(3) Where a community fisheries management area plan is amended, such amendment shall be:

- (a) re-submitted to the Minister through the Authority for approval;
- (b) published in the Gazette within 7 days of such approval by the Minister.

**29 Monitoring and enforcement of community fisheries management area**

- (1) A community fisheries management committee shall:
- (a) monitor its community fisheries management area;
  - (b) enforce its community fisheries management area plan; and
  - (c) report any breach of its community fisheries management area plan to the Chief Executive Officer.
- (2) For the purpose of this Section, a community fisheries management committee may appoint persons from its committee to monitor its fisheries management area.

**30 Community fisheries management fund**

A community fisheries management area committee may establish a bank account for the purposes of:

- (a) receiving financial assistance or donations for the purpose of supporting the implementation of the community fisheries management area plan; or
- (b) receiving revenue from any sustainable financing activity identified and developed under the community fisheries management area plan.

**31 Disadvantaged communities**

- (1) A disadvantaged community or a member of a disadvantaged community shall have the right to participate on an equitable basis in the management of an area of the coastal fisheries waters through a community fisheries management committee where any one or more of the following exist:
- (a) traditional links and affinity;
  - (b) family or clan relationship;
  - (c) ownership of land adjacent to coastal fisheries waters; or

- (d) other arrangements between a disadvantaged community and a Community fisheries management committee.
- (2) For the purposes of this Section, a '**disadvantaged community**' means a district community whose access to the coastal fisheries waters is dependent on access to another district community.

## **PART 5 – AQUACULTURE**

### ***Division 1 – National Aquaculture Plan***

#### **32 National Aquaculture Plan**

- (1) The Chief Executive Officer shall prepare and review where necessary a national plan for the development of aquaculture.
- (2) A National Aquaculture Plan shall:
  - (a) identify the types of aquaculture activities and their characteristics;
  - (b) describe, as the case may be:
    - (i) the land tenure and characteristics including but not limited to soil, topography, and land use patterns in the area;
    - (ii) the aquatic area and tenure, and the characteristics including but not limited to water type and usage;
    - (iii) specify the objectives to be achieved by the aquaculture operations;
  - (c) specify management and development measures to be applied, as appropriate;
  - (d) consider the fishing interests of artisanal fishers;
  - (e) include an environmental impact assessment report;
  - (f) comply with the requirements of this Act and any other relevant written law; and
  - (g) make provision in relation to any other matter necessary for sustainable use of aquaculture resources.
- (2) When preparing the National Aquaculture Plan, the Chief Executive Officer shall ensure that consultation is carried out with the relevant stakeholders.

**33 Consideration of National Aquaculture Plan**

- (1) The National Aquaculture Plan shall be submitted to the Cabinet for consideration and approval.
- (2) The Cabinet may:
  - (a) approve the National Aquaculture Plan; or
  - (b) require the Chief Executive Officer to provide more information.
- (3) Where the Cabinet approves the National Aquaculture Plan under subsection (2)(a), such Plan shall be published in the Gazette within 7 days of Cabinet approval.
- (4) The National Aquaculture Plan comes into effect on the date it is published in the Gazette or any other date stated in the Plan.

**34 Review of National Aquaculture Plan**

- (1) The Chief Executive Officer shall review the National Aquaculture Plan:
  - (a) at any time at the direction of the Minister or the Cabinet; or
  - (b) if no direction is given under paragraph (a), at the end of every annual year from the coming into effect of the plan.
- (2) In reviewing the National Aquaculture Plan, the Chief Executive Officer may consult with:
  - (a) the relevant stakeholder consulted under Section 32 during the preparation of the National Aquaculture Plan; or
  - (b) such other persons as the Chief Executive Officer deems necessary.
- (3) An amendment to the National Aquaculture Plan as a result of a review shall be prepared and considered in the same manner as the initial approved National Aquaculture Plan.
- (4) The National Aquaculture Plan may be amended or revoked by the Cabinet in consultation with the Chief Executive Officer.

***Division 2 – Aquaculture Registration***

**35 Application to register as aquaculture operator**

- (1) A person who intends to engage in or carry out an aquaculture operation shall apply for registration to the Chief Executive Officer in the prescribed form.

- (2) The Chief Executive Officer may approve an application under subsection (1) where he or she is satisfied that the applicant is capable of complying with any aquaculture standards issued by the Authority.
- (3) Where the Chief Executive Officer approves an application for registration, a certificate of registration shall be issued to the applicant in the prescribed form.

**36 Register of Aquaculture Operators**

- (1) There shall be a Register of Aquaculture Operators.
- (2) The Chief Executive Officer shall be responsible for keeping and maintaining the Register of Aquaculture Operators as prescribed.

**37 Aquaculture standards**

- (1) The Chief Executive Officer, having regard to internationally agreed standards and codes of practice, may from time to time issue aquaculture standards which includes:
  - (a) use of good aquaculture practices relating to:
    - (i) aquaculture farm design and maintenance;
    - (ii) stocking densities, farming strategies;
    - (iii) feed;
    - (iv) supplementary feeding;
    - (v) biosecurity including the use of antibiotic and chemical treatments;
    - (vi) environmental management; and
    - (vii) waste management;
  - (b) site selection;
  - (c) water quality monitoring;
  - (d) use of gear, equipment or devices in aquaculture;
  - (e) aquaculture premises;
  - (f) record-keeping; and
  - (g) any other matter related to the management, development and control of aquaculture.

- (2) A person engaged in aquaculture operations shall implement the standards issued under subsection (1).
- (3) An authorised officer shall inspect aquaculture operations to ensure compliance with aquaculture standards issued under this Act.
- (4) An aquaculture operator that contravenes the aquaculture standards:
  - (a) shall be given a list of all non-compliance aspects and a timeline by which such standards are to be complied with; and
  - (b) shall be deregistered if he or she fails to meet the compliance advice issued to him or her.

## **PART 6 – STATISTICS AND REPORTING**

### **38 Information and statistics**

- (1) The Chief Executive Officer shall collect and analyse statistical and other information on coastal fisheries and aquaculture.
- (2) Where required by the Chief Executive Officer, a person engaged in coastal fisheries or aquaculture activities shall provide in the prescribed form data, statistics and other information in relation to:
  - (a) catches;
  - (b) bycatches;
  - (c) fishing methods;
  - (d) fishing effort;
  - (e) production;
  - (f) production methods; or
  - (g) any other relevant information.
- (3) The Chief Executive Officer may share the information received under subsection (2) with a Government Department, statutory authority, instrumentality of the Republic, agency or association.

### **39 Annual report**

- (1) The Chief Executive Officer shall, as soon as practicable at the end of each financial year, provide as part of the annual report of the Authority to the Minister, a report on coastal fisheries and aquaculture which includes:
  - (a) an evaluation of any community fisheries management plans;

- (b) statistical information on coastal fisheries and aquaculture; and
  - (c) any information relevant to the management and development of coastal fisheries and aquaculture.
- (2) The annual report shall be presented to the Cabinet by the Minister.

## **PART 7 – AUTHORISED OFFICERS**

### **40 Appointment of authorised officers**

- (1) The Chief Executive Officer shall be an authorised officer for the purposes of this Act.
- (2) The Minister may, by notice in the Gazette, appoint an officer of the Authority to be an authorised officer for the purposes of this Act.
- (3) An authorised officer appointed under this Section shall act under the directions or instructions of the Chief Executive Officer.
- (4) An authorised officer appointed under subsection (1) except a police officer shall:
  - (a) be issued with an identification card duly signed by the Minister at the time of his or her appointment;
  - (b) produce his or her identification card on request.
- (5) Where an authorised officer fails to produce his or her identification card under subsection (4), he or she shall not exercise any powers under this Act.

### **41 Powers of authorised officers**

- (1) An authorised officer may:
  - (a) enter and search any conveyance, including a vessel, aircraft or vehicle; or
  - (b) stop and search a person; or
  - (c) pass across any land.
- (2) An authorised officer may only exercise any power under subsection (1) if he or she has reasonable cause to believe that:
  - (a) an offence under this Act is being or has been committed; or
  - (b) any of the following may be concealed to avoid prosecution:

- (i) any fish taken or item used or intended to be used in contravention of this Act;
  - (ii) any record or information required under this Act to be kept, completed or provided; or
  - (iii) any document or item which may be taken as evidence as to the commission of an offence under this Act.
- (3) An authorised officer may:
- (a) subject to any other written laws, detain a person or any conveyance, including a vessel, aircraft or vehicle; and
  - (b) retain in his or her custody a thing, including a parcel, package, record, document, article, gear, apparatus, container or fish, for any period as is reasonably necessary to enable the authorised officer to carry out a search under this section.

(4) In this Section:

**'enter'** includes to stop or board or both; and

**'search'** means to examine or open anything in the searched premises, including a document, record, article, gear, apparatus, device or container.

## **42 Arrest**

- (1) An authorised officer may:
- (a) order a person found committing an offence to stop committing the offence and if the person fails to obey the order, arrest the person without a warrant; or
  - (b) with a warrant issued by a Resident Magistrate or judge, arrest a person whom the officer reasonably suspects of having committed an offence under this Act.
- (2) Where an authorised officer, other than a police officer, arrests a person under subsection (1), such authorised officer shall, as soon as practicable, take the arrested person to the police station or into the custody of a police officer.

## **43 Directions to master**

- (1) Subject to subsection (3), an authorised officer may, in consultation with the Chief Executive Officer and Nauru Maritime and Port Authority, where such officer believes that a vessel is being or has been used to contravene this Act, require the master to take the vessel, as soon as reasonably practicable, to a Nauru port or any

other place as may be agreed to by the master and authorised officer.

- (2) Where the vessel is proceeding to port, the authorised officer may, in consultation with the Chief Executive Officer, give any reasonable directions to the master or any person aboard the vessel in relation to any:
  - (a) activity;
  - (b) method;
  - (c) procedure;
  - (d) item;
  - (e) gear;
  - (f) document;
  - (g) fish;
  - (h) property; or
  - (i) other thing.
- (3) Despite subsection (1), an authorised officer may not consult with the Nauru Maritime and Port Authority where the consultation cannot be done:
  - (a) within a reasonable timeframe; or
  - (b) due to an emergency involving the imminent loss of life or property that requires immediate action to be taken.

#### **44 Reasonable force**

An authorised officer may use reasonable force as may be necessary, to enable the exercise of powers and performance of functions under this Act.

#### **45 Copies of documents**

An authorised officer may:

- (a) make, remove or take copies of any record or document; or
- (b) if necessary, require a person to reproduce or assist the authorised officer to reproduce a document stored or information recorded.



**46****Seizure**

- (1) An authorised officer may seize:
  - (a) any conveyance or thing, including a vessel, aircraft, vehicle, fishing gear, implement, appliance, material, container, goods, equipment, which the authorised officer reasonably believes is being or has been or is intended to be used to contravene this Act;
  - (b) any fish, including any other fish with which the fish has been intermixed, which the authorised officer reasonably believes is being or have been, taken, killed, transported, bought, sold or found in the possession of a person, in contravention of this Act; or
  - (c) any item or article, including a record or document which the authorised officer reasonably believes is evidence of the commission of an offence.
- (2) A written receipt shall be provided by an authorised officer for any article or item seized under this Section.
- (3) Any property seized under subsection (1) shall be delivered immediately into the custody of the Authority.

**47****Release of seized property**

- (1) The following persons may apply in writing to the Chief Executive Officer for the release of any property seized under this Act:
  - (a) the person from whom the property was seized;
  - (b) the owner of the property; or
  - (c) the person entitled to the possession of the property.
- (2) The Chief Executive Officer may, before the information or charge is laid for the offence, release the property to the applicant under a bond in the sum equal to the value of the property seized or under any surety or condition imposed by the Chief Executive Officer.
- (3) Where a person to whom property is released under subsection (1) fails to comply with the condition of a bond or surety or condition imposed by the Chief Executive Officer:
  - (a) the property may be re-seized at any time at the direction of the Chief Executive Officer; and
  - (b) this section applies to the property as if it had been seized under Section 46; and

- (c) the Chief Executive Officer may apply to the Court for an order to forfeit the bond.
- (4) Where the Chief Executive Officer applies for an order under subsection (3)(c), the Registrar of the Courts shall:
  - (a) fix a time and place for the hearing of the application; and
  - (b) at least 7 days before the time fixed for hearing, cause the application to be served on a person bound by the bond.
- (5) Where it is proved to the satisfaction of the Court that the bond has been contravened, the Court may make such order that it deems fit.

**48 Release of seized property on application by person to court**

- (1) Where the information or charge has been laid for an offence for which property was seized and such property remains in the custody of the Authority, the court may release the property under bond, surety or condition to:
  - (a) the person from whom the property was seized;
  - (b) the owner of the property; or
  - (c) the person entitled to the possession of the property seized.
- (2) In determining the value of a bond or the form of security or the type of condition, the court:
  - (a) shall take into account the aggregate amount of:
    - (i) the value of the property to be released;
    - (ii) the total maximum fine provided for the offence charged or likely to be charged; and
    - (iii) the loss, damages or costs the prosecution may need to recover, if a conviction is entered, and
  - (b) may set the value at any aggregate amount.

**49 Disposal of seized property**

- (1) Where any perishable property is seized by an authorised officer, the Chief Executive Officer may:
  - (a) sell such property at reasonable market value;

- (b) return such property to the person from whom it was seized on receiving security of equivalent value; or
  - (c) where he or she is unable to sell the property at reasonable market value or where such property is unfit for sale, dispose of it in such manner as he or she deems appropriate.
- (2) Where the owner of a property is not known at the time such property was seized, the property:
- (a) is forfeited to the Authority from the date it was seized; or
  - (b) is to be disposed of as directed by the Chief Executive Officer within 30 days of such seizure.
- (3) A buyer for valuable consideration of any property sold under this Section acquires good and unencumbered title to the property.
- (4) Any property seized under this Act or proceeds of sale of the property under this Section shall be kept by the Authority in its custody until:
- (a) a decision is made not to proceed with the offence for which the property was seized; or
  - (b) where a charge or information is laid:
    - (i) the final determination of proceedings, including any appeal, for the offence for which the property was seized; or
    - (ii) the court otherwise makes an order on the property.

**50 Removal of parts from a seized craft**

- (1) An authorised officer may remove any part of a seized craft in the custody of the Authority for the purpose of immobilising the craft.
- (2) A part removed under subsection (1) shall be kept safe and returned to the craft with the craft is released from custody.
- (3) A person may not, without the authority of the Chief Executive Officer:
  - (a) possess or arrange to obtain any part removed under subsection (1);
  - (b) possess or arrange to obtain or make a replacement or substitute part for that removed under subsection (1); or

- (c) fit or attempt to fit any part or a replacement or substitute part to the craft.

## **PART 8 – FORFEITURE**

### **51 Forfeiture of property on conviction**

Where a person is convicted of an offence under this Act, the court may, in addition to any other penalty imposed, order that any or more of the following be forfeited to the Republic:

- (a) any conveyance, including a vessel, aircraft or vehicle or goods used to commit the offence whether or not seized under Section 46;
- (b) any fish caught for which the offence was committed;
- (c) any illegal fishing gear for which the offence was committed; or
- (d) any proceeds from the sale of the property under Section 49.

### **52 Disposal of forfeited property**

- (1) A conveyance, including a vessel, aircraft or vehicle or goods seized under this Act may be disposed of in a manner directed by the Chief Executive Officer where:
  - (a) no appeal is lodged; or
  - (b) the appeal is finally determined.
- (2) Any property referred to under subsection (1) may be held by the Authority until all fines, orders for restitution or costs and penalties imposed under this Act have been paid.
- (3) Where the fines, orders for restitution or costs and penalties imposed under this Act are not paid within the time allowed, any property seized under this Act may be sold and all the proceeds be paid in the following order of priority:
  - (a) to pay for any fines, orders for costs, penalties imposed under this Act and costs of sale; and
  - (b) to the owner for the balance of the proceeds.

### **53 Liability for loss, damage or deterioration of property in custody**

- (1) The Republic is not liable for any loss or damage to, spoilage or deterioration in the condition of any property seized or while in the custody of the Republic under this Act.

- (2) An authorised officer who at the time of seizure returns to the water any fish seized under Section 46 which such officer believes to be alive, is not under any civil or criminal liability to the person from whom the fish was seized if:
  - (a) a decision has been made not to proceed with the offence relating to the seized fish; or
  - (b) the person has been acquitted of the charge.

## **PART 9 – FIXED PENALTY NOTICE**

### **54 Coastal Fisheries Fixed Penalty Notices**

- (1) A police officer or an authorised officer may issue a Fixed Penalty Notice in the prescribed form to a person who contravenes this Act.
- (2) The Cabinet may make regulations prescribing the:
  - (a) offences for which fixed penalties shall be imposed;
  - (b) penalties for each corresponding prescribed fixed penalty offences;
  - (c) fixed penalty notice which a police officer or an authorised officer may serve to the person who is alleged to have contravened this Act;
  - (d) time frame for payment of the prescribed penalty;
  - (e) prosecution procedure and additional penalties to be imposed by the court;
  - (f) procedure for dealing with fixed penalty notice; and
  - (g) any other matters for the effective enforcement of the fixed penalty notice.

## **PART 10 – EVIDENCE**

### **55 Certificate evidence**

The Chief Executive Officer or a person authorised in writing by the Chief Executive Officer may provide a certificate stating that:

- (a) a specified fishing vessel was or was not on a specified date licensed or a person was or was not on a specified date the holder of a licence, authorisation or certificate of registration;

- (b) an appended document is a true copy of the licence, authorisation or other document granted or issued under this Act and that specified conditions were attached to the document;
- (c) a particular location or area of water was, on a specified date, 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;
- (d) an appended chart shows the boundaries, on a specified date, of the fishery waters, territorial sea, closed or limited areas or other areas or zones delineated for any specified purpose;
- (e) a particular item or piece of equipment is a fishing gear;
- (f) the cause and manner of death of or injury to any fish;
- (g) a particular position or catch report appending a copy of the report was given for a specified vessel;
- (h) any specified return, log, record or information required to be kept or provided under this Act was or was not kept or provided; or
- (i) any specified interest in any specified fishing right was or was not held by a person named in the certificate.

**56 Photographic evidence**

(1) Subject to subsection (2), where a photograph is taken of any coastal fishing activity and:

- (a) simultaneously the date, time and position from which the photograph is taken are superimposed on the photograph; or
- (b) the date, time and position are certified on the photograph at a later date by an authorised officer who was present at the time the photograph was taken, -

it is presumed, unless the contrary is proved, that the photograph was taken on the date, at the time and in the position so appearing and shall be received in evidence by the Court.

(2) The presumption set out under subsection (1) shall arise where:

- (a) in the case of subsection (1)(a), the camera taking the photograph is connected directly to the instruments which provided the date, time and position concerned; and
- (b) in either case, the photograph was taken by an authorised officer.

- (3) An authorised officer who takes a photograph described in subsection (1) shall give a certificate in relation to that photograph stating:
- (a) his or her name, address, official position and authority under which he or she is appointed;
  - (b) the name, if known, of the person or owner of any fishing vessel appearing in the photograph;
  - (c) the name of the apparatus supplying the date and time and the position fixing instrument and a declaration that he or she has checked those instruments a reasonable time before and after the taking of the photograph and that they all appeared to be working correctly;
  - (d) the matters, as appropriate, under subsection (2)(a);
  - (e) the accuracy of the position-fixing instrument used, within the internationally accepted margin of errors or standards relating to such instrument; 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.

## 57

### Presumptions

- (1) Any fish found on or with any person, or 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 official record of any authorised officer place as being the place in which the event took place shall be *prima facie* evidence of the place in which the event took place, unless the contrary is proved.
- (3) 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 operator of the vessel.
- (4) Where in any proceedings 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 coastal fisheries waters; and

(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.

## **PART 11 – COASTAL FISHERIES AND AQUACULTURE DEVELOPMENT FUND**

### **58 Coastal Fisheries and Aquaculture Development Fund**

- (1) A Coastal Fisheries and Aquaculture Development Fund is hereby established for the purpose of:
  - (a) protecting, conserving and managing coastal fisheries;
  - (b) aquaculture development; and
  - (c) food security.
- (2) The Fund shall consist of:
  - (a) any compensation, expenses or costs awarded by a court in relation to any offence under this Act which shall be paid into the Fund;
  - (b) any amount appropriated for the Fund from the Treasury Fund; and
  - (c) any related levies or taxes imposed by any written law.

### **59 Withdrawal from Fund**

- (1) No withdrawal shall be made or authorised from the Fund unless:
  - (a) the withdrawal is for the purpose for which the Fund is established; and
  - (b) the purpose of the withdrawal has been authorised by the Cabinet in consultation with the Minister.
- (2) Subject to subsection (1), the Chief Executive Officer and the Secretary for Finance are authorised co-signatories of the Fund.

### **60 Accounts, audit and annual report**

- (1) The Chief Executive Officer shall:
  - (a) keep proper accounts and records of all transactions and affairs of the Fund;



- (b) ensure that all monies received are properly brought to account;
  - (c) all payments out of its monies are correctly made and properly authorised; and
  - (d) adequate control is maintained over its assets and liabilities.
- (2) The Chief Executive Officer shall, within 2 months after the end of each financial year, submit:
- (a) to the Cabinet an annual report in respect of that financial year containing:
    - (i) such financial statements as the Cabinet may require;
    - (ii) a report on the operations of the Fund; and
    - (iii) such other information as the Cabinet may direct in writing;
  - (b) to the Auditor General:
    - (i) the accounts of the Fund for the financial year; and
    - (ii) the annual report referred to in paragraph (a).
- (2) The Auditor General shall:
- (a) audit the accounts of the Fund; and
  - (b) within three months after receipt by him or her of the accounts and annual report, submit his or her opinion on such accounts and annual report to the Cabinet.

## **PART 12 – OFFENCES**

### **61           Illegal holding of fish**

- (1) Subject to subsection (2), a master shall not take or allow to remain on board a fishing vessel, within the coastal fisheries waters, fish or any other related species which:
- (a) was not taken under the authority of; and
  - (b) in accordance with a fishing licence,
- provided under this Act.
- (2) It shall be a defence to a prosecution for an offence arising under subsection (1) if the person charged satisfies the court that the fish was not taken or caught in the coastal fisheries waters.

- (3) Where this Section is contravened, the master of the vessel concerned commits an offence and upon conviction is liable to a fine not exceeding \$5,000.00 or to a term of imprisonment not exceeding 6 months or to both.

## **62 Prohibited fishing methods and practices**

- (1) No person shall:
  - (a) permit to be used, use or attempt to use an explosive, firearm, poison or any other noxious substance for the purpose of killing, stunning, disabling or catching fish or for any related purpose; or
  - (b) carry or possess or control without lawful authority an explosive, firearm, poison or any other noxious substance in circumstances indicating an intention of using that substance for any of the purposes referred to in paragraph (a).
- (2) An explosive, firearm, poison or any other noxious substance found on board a fishing vessel shall be presumed, unless the contrary is proved, to be intended for the purposes referred to in subsection (1)(a).
- (3) No person shall land, sell, receive or possess fish taken by any means in contravention of any provision under this Section and who knows or has reasonable cause to believe that the fish has been so taken.
- (4) A person who contravenes subsection (1) or (3) commits an offence and upon conviction is liable to a fine not exceeding \$10,000.00 or to a term of imprisonment not exceeding 12 months or to both.

## **63 Possession of prohibited gear**

- (1) No person on board a fishing vessel shall use, possess or have control of:
  - (a) any gear which does not conform to the standards that may be prescribed by Regulations for that type of gear; or
  - (b) any gear which is prohibited as prescribed by Regulations.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$10,000.00 or to a term of imprisonment not exceeding 12 months or to both.

## **64 Commercial fishing or fish processing establishment**

- (1) No person shall undertake commercial fishing or operate a fish processing establishment unless authorisation for such an activity

has been granted in accordance with this Act or any other relevant written law.

- (2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$50,000.00 or to a term of imprisonment not exceeding 24 months or to both.

**65 Offences against authorised officers**

- (1) No person shall:
- (a) knowingly provide false or misleading information pursuant to a requirement under this Act to provide information;
  - (b) assault, hinder, resist, delays, intimidates or obstruct an authorised officer who is exercising powers or carrying out duties, or attempting to do so, pursuant to this Act;
  - (c) incite or encourage any other person to assault, hinder, resist, delay, intimidate or obstruct an authorised officer who is exercising powers or carrying out duties, or attempting to do so, pursuant to this Act;
  - (d) use threatening language or behave in a threatening or insulting manner or uses abusive language or insulting gestures towards an authorised officer who is exercising powers or carrying out duties, or attempting to do so, pursuant to this Act; or
  - (e) impersonate or pretend to be an authorised officer or pretends to be a person lawfully acting under an authorised officer's orders or in aid of an authorised officer.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$10,000.00 or to a term of imprisonment not exceeding 12 months or to both.

**66 Destroying, concealing, abandoning, discarding or tampering with evidence**

- (1) No person shall knowingly destroy, conceal, abandon, discard, tamper with:
- (a) a conveyance, including a vessel, aircraft or vehicle;
  - (b) fish, fishing gear, a net or any other item used on connection with fishing or a related activity; or
  - (c) any record, document or any equipment or device containing any record or document.

- (2) A person who contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding \$10,000.00 or to a term of imprisonment not exceeding 12 months or to both.

**67 Offences by corporations**

- (1) Where an offence has been committed under this Act by a corporation, firm, society or other body of persons, any person who at the time of the commission of the offence was a Director, manager, secretary or officer or a partner of the company, firm, society or other body of persons or was purporting to act in such capacity shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly unless he or she proves that:
- (a) the offence was committed without his or her consent or collusion; and
  - (b) he or she exercised all such diligence to prevent the commission of the offence as he or she ought to have exercised, having regard to the nature of his or her functions in that capacity and to all circumstances.
- (2) Upon conviction, the court may impose:
- (a) in the case of a corporation, firm, society or other body of persons, a fine not exceeding \$500,000; and
  - (b) in the case of a Director, manager, secretary or officer or a partner of the corporation, firm, society or other body of persons, a fine not exceeding \$50,000 or a term of imprisonment not exceeding 3 years or to both.

**PART 13 – LIABILITIES**

**68 Liability for loss, damage or costs incurred**

- (1) A person who commits an offence under this Act may, upon conviction, and in addition to any fine or penalty imposed on that person under this Act, be held liable to the Republic for:
- (a) any loss or damage caused by the offence, including loss or damage to the ecosystem or to losses to biological value or amenity;
  - (b) any costs incurred in detecting, apprehending, investigating or prosecuting the offence; and
  - (c) any costs incurred in detaining or seizing any property, fish, article or object in respect of that offence.

- (2) The amount of compensation for such loss, damage or costs may be awarded by the court as restitution in addition to and recovered in the same manner as a fine.

**69 Strict liability**

- (1) In a prosecution for any offence under this Act, it shall not be necessary for the prosecution to prove that the defendant intended to commit the offence.
- (2) It may be a defence for the defendant to prove that where it is alleged that anything:
  - (a) required to be done was not done, the defendant took all reasonable steps to ensure that it was done; or
  - (b) prohibited was done, that the defendant took all reasonable steps to ensure that it was not done.

**PART 14 – MISCELLANEOUS**

**70 Offence in community fisheries management area**

The court may, in addition to a fine imposed under any other provision of this Act, order that compensation in an amount not exceeding \$5,0000 be paid to the district community where the offence was committed.

**71 Information to public**

- (1) The Minister, the Chief Executive Officer, the Council and the Forum, shall, where it is appropriate to do so, provide and disseminate reports and other relevant information on their activities, including guidance, in such form as is considered expedient, in connection with the implementation of this Act.
- (2) The Authority shall ensure the wide publication and dissemination of:
  - (a) all laws, rules and standards in relation to coastal fisheries and aquaculture; and
  - (b) descriptions and maps of marine protected areas and coastal fisheries management areas, including community fisheries management areas, and the rules applicable to them.
- (3) The information under this Section shall be made available through any reasonable means including digital or mass media.

**72 Protection from liability**

- (1) The Government, Minister, Chief Executive Officer, Authority and authorised officers shall not be liable for any loss or damage arising

from or be subject to any criminal prosecution and civil claims for the performance of a function or duty or exercise of a power under this Act or any other written law.

- (2) A person referred to in subsection (1) is not personally liable to any action or proceedings for any matter or act done or omitted to be done in good faith in the exercise of any function, duty or power under this Act or any regulations made under this Act.

### **73 Jurisdiction**

- (1) The District Court shall have jurisdiction to hear and determine all offences under this Act and shall have the power to impose the full penalty or punishment in respect of the offences under this Act.
- (2) Despite any provision of any written law, an information or charge in respect of any offence against this Act may be laid at any time within two years of the commission of the offence.

### **74 Regulations**

- (1) The Cabinet may make regulations to prescribe all matters necessary or convenient to give effect to this Act.
- (2) Without limiting subsection (1), regulations may be made to:
- (a) prescribe forms and fees;
  - (b) prescribe the licensing process;
  - (c) provide for the type or class of fisher or fishing vessel;
  - (d) provide for the means of determining the total allowable catch, the maximum sustainable yield of fish, precautionary reference points, fish species catch quotas, fish species size limits, fishery areas;
  - (e) regulate the conduct of fishing and fisheries activities;
  - (f) provide for marine protected areas;
  - (g) determine sustainable conservation and management measures, including the use of a particular type of vessel or gear, area of fishing or type of fish to which a right may be subject;
  - (h) regulate, control and manage research, surveys, study and education regarding fish, fisheries resources and the coastal fisheries waters;
  - (i) provide for the monitoring and surveillance of fishing and fishing activities;

- (j) provide for the gathering, storing and use of information regarding fishers or fishing vessels, fishing and fisheries activities;
- (k) provide for the furnishing of returns containing information in relation to fishing, fisheries activities;
- (l) provide for any fees, charges, taxes, royalties, bonds or securities payable in respect of any matter under this Act;
- (m) prescribe penalties not exceeding \$10,000 for offences under any regulations or offences under this Act for which no penalty is provided;
- (n) prescribe prohibited fishing methods or practices;
- (o) prescribe measures for the development and management, of aquaculture;
- (p) regulate or prohibit the use of aquaculture gear, devices and equipment;
- (q) prescribe the standards of operation of an aquaculture farm;
- (r) provide for the import, export, distribution and marketing of aquaculture products, including live aquatic organism;
- (s) provide for statistical and other information related to aquaculture;
- (t) provide for matters relating to the control, inspection and monitoring of aquaculture operations; and
- (u) provide for any other matter related to the management, development and control of aquaculture.