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## A BILL

## FOR AN ACT

*To make provision for the management, development, protection and conservation of the fisheries and living marine resources of Nauru, and in particular —*

- (a) to exercise the sovereign rights of the Republic to explore, exploit, conserve and manage those resources within the fisheries waters of Nauru in accordance with the relevant rules of international law; and*
  - (b) to utilise, manage, develop, protect and conserve those resources in such a way as to conserve and replenish them as a sustainable asset for future generations, and to achieve economic growth, improved social standards, improved nutritional standards, human resource development, increased employment and a sound ecological balance; and*
  - (c) to pursue effective strategies for managing the fisheries and marine resources of Nauru, including the registration of fishing boats and the licensing of fishing and fishing activities; and*
  - (d) to repeal the Marine Resources Act 1978;*
- and for related purposes.*

*Be it enacted by the Parliament of Nauru as follows:*

### PART I — PRELIMINARY

#### SHORT TITLE AND COMMENCEMENT

1. This Act may be cited as the Fisheries Act 1997 and shall come into force on a date to be notified by the Minister in the Gazette.

#### INTERPRETATION

2. In this Act, unless the context otherwise requires —
  - “access agreement” means an agreement entered into by the Republic, whether bilaterally or multilaterally, with another state or the fishing association or other similar body of another state, permitting access to fisheries waters or a part of fisheries waters by fishing boats of that state for the purpose of fishing;
  - “aircraft” means a craft capable of self-sustained movement through the atmosphere;

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- “approved automatic location communicator” means an automatic location communicator of a type for the time being approved by the South Pacific Forum Fisheries Agency member countries for use with the Regional Vessel Monitoring System;
- “aquaculture” means the cultivation, propagation or farming of fish, whether from eggs, spawn, spat or seed, or by rearing fish lawfully taken from the wild or lawfully imported, or any other similar process;
- “authorised officer” means —
- (a) a police officer; or
  - (b) a person authorised under section 14; or
  - (c) a surveillance officer; or
  - (d) any other person who is authorised by the Minister in accordance with section 14(2) to exercise such powers or perform such duties for such times under this Act as are specified;
- “Authority” means the Nauru Fisheries and Marine Resources Authority established by the Nauru Fisheries and Marine Resources Authority Act 1997;
- “automatic location communicator” means a machine or a system of machines which when installed on a boat is wholly or partially capable in itself of determining the boat’s position, course, speed or any of these and similar matters, and of transmitting this information by means of a vessel monitoring system to persons not on or in sight of the boat;
- “based in Nauru”, in relation to a boat, means exclusive or predominant use by the boat of land-based facilities in Nauru, and the use may include —
- (a) location of the boat’s home port in Nauru;
  - (b) offloading all or most of its catch in Nauru;
  - (c) tranships all or most of the fish taken in fisheries waters in the port of Nauru;
  - (d) obtaining or storing all or most of its supplies in Nauru;
- “Board” means the Board of Directors of the Authority;
- “boat” means a canoe, dinghy, launch, vessel, ship, hovercraft, or other floating or submarine craft;
- “Chief Executive Officer” means the Chief Executive Officer of the Authority;
- “crew member” means a person who is engaged or employed in any capacity on board a boat and in the business of the boat, other than —
- (a) the master; or
  - (b) a pilot; or
  - (c) a person temporarily employed on board the boat while it is at a port;
- “document”, in relation to a boat, includes any ship’s charts, logbooks, certificate of registry or registration, licence, permit, official paper, article of agreement and other documents or records, including electronically stored records, which are used in the operation of the boat or for the purpose of fishing by the boat, or which relate to the boat and to the crew or to any person on board the boat;
- “driftnet” means a gillnet or other net or a combination of nets which is more than one kilometre in length, the purpose of which is to enmesh, entrap or entangle fish by drifting on the surface of or in the water, and which is not used or intended to be used while attached to a point of land or to the seabed, irrespective of whether the net is used or intended to be used while attached to a boat;
- “driftnet fishing” means any fishing involving the use of a driftnet;

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“fish” means any aquatic plant or animal, alive or dead, whether piscine or not, the eggs and all juvenile stages and any of the parts of the plant or animal, and any fish product;

“fish aggregating device” means a man-made or partially man-made floating or semi-submerged device, whether anchored or not, intended to aggregate fish, and includes any natural floating object on which a device has been placed to facilitate its location;

“fisheries activity” means —

- (a) on-shore storing, buying, selling or processing fish from the time they are first landed; or
- (b) refuelling or supplying fishing boats whether on land or at sea, selling or supplying fishing equipment or performing other activities in support of fishing; or
- (c) aquaculture; or
- (d) exporting fish from Nauru; or
- (e) engaging in the business of providing agency, consultancy or other similar services for and in relation to fishing or a fisheries activity;

“fisheries waters” means the internal waters, the territorial sea, the exclusive economic zone and any other waters over which the Republic claims jurisdiction;

“fishery” means one or more stocks of fish or any fishing operations based on those stocks which can be treated as a unit for the purposes of conservation, development and management, taking into account geographical, scientific, technical, economic, recreational and other relevant characteristics;

“Fishery Strategy” means a strategy for the management and development of a fishery drawn up under Section 10;

“fishing” means —

- (a) searching for, catching, taking or harvesting fish; or
- (b) attempting to search for, catch, take or harvest fish; or
- (c) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish; or
- (d) placing, searching for or recovering any fish aggregating device or associated equipment including radio beacons; or
- (e) any operation at sea directly in support of or in preparation for any activity described in this definition; or
- (f) the use of any other vehicle, air or sea borne, in relation to any activity described in this definition except for emergencies involving the health and safety of the crew or the safety of a boat; or
- (g) storing, transshipping, processing or transporting fish taken from fisheries waters up to the time they are first landed;

“fishing boat” means a boat which is used for, equipped to be used for or of a type that is normally used for fishing;

“fishing equipment” means any equipment, implement or other thing that can be used in the act of fishing, including any net, rope, line, float, trap, hook, winch, aircraft or support craft carried on board a boat;

“fishing trip” means a period which —

- (a) starts with the departure of a boat from port to transit to a fishing area or to transit to another port to complete offloading; and
- (b) ends when the boat enters port to offload part or all of its catch, either ashore or to another boat;

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- “foreign boat” means a fishing boat other than a small boat or a national boat;
- “good standing” means the original status granted to boats applying for inclusion on the Regional Register of Foreign Fishing Vessels maintained by the South Pacific Forum Fisheries Agency;
- “import” means to bring into Nauru or any part of fisheries waters;
- “joint venture” means an enterprise of which —
- (a) at least 51% of the shares are held by one or more citizens of Nauru, or the Republic, or a statutory corporation of the Republic; and
  - (b) the management and control exercisable in law or by agreement between the shareholders, or by agreement between the enterprise and a third party, or in practice, adequately reflect the majority Nauruan shareholding; and
  - (c) the arrangements for contribution towards costs and expenses and for distribution of profits, dividends and other payments adequately reflect the majority Nauruan shareholding;
- “licence” includes a permit, authority or other form of authorisation issued under this Act;
- “licensed boat” means a fishing boat licensed under this Act, or deemed to be licensed by section 12(2);
- “licensee” means a person to whom a licence is issued, whether in respect of the person or a boat, premises or place;
- “machine” includes an electric or electronic device and a satellite;
- “master”, in relation to a boat, the fishing operations of a boat, an aircraft or other vehicle, means the person having lawful command or charge, or for the time being in charge, of the boat, fishing operations, aircraft or vehicle, but does not include a pilot;
- “national boat” means a fishing boat, other than a small boat, which —
- (a) is wholly owned by one or more Nauruan citizens, the Republic, a statutory corporation of the Republic or a Nauruan corporation; or
  - (b) is operating under a joint venture; or
  - (c) is based in Nauru;
- “Nauruan corporation” has the meaning given to it by the Corporation Act 1972;
- “net” means a fabric of rope, cord, twine or other material knotted or woven into meshes and designed to take fish;
- “observer” means any person authorised in writing by the Minister under section 13 to perform scientific, compliance, monitoring and other similar observation duties on board a fishing boat in accordance with this Act;
- “officer” means a person appointed as an officer in the service of the Authority;
- “operator” means the owner, charterer, master and any other person who is in charge of, responsible for the operations of, directs or controls a boat, but does not include a pilot;
- “owner” means a 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, in relation to a corporation which is an owner, means a person who is the owner jointly with one or more other persons and the manager, director and secretary, or other similar officer or any person purporting to act in such a capacity, of the corporation;
- “process”, in relation to fish, means the producing of any substance or article from fish by any method and includes the work of cutting up, dismembering, separating parts of, cleaning, sorting, packing, loining, freezing, canning, salting and preserving of fish;

"Regional Licensing Arrangement" means —

- (a) the Treaty on Fisheries between the Governments of certain Pacific Island States and the United States of America signed in Port Moresby on 2<sup>nd</sup> April 1987, and any renewal or extension of the Treaty; or
- (b) the Federated States of Micronesia Arrangement for Regional Fisheries Access done at Honiara on 30<sup>th</sup> November 1994; or
- (c) any similar treaty or arrangement to which the Republic is a party, which makes provision for an international, regional or sub-regional system of fishing boat licences;

"Regional Vessel Monitoring System" means the vessel monitoring system accepted for use in the region by the South Pacific Forum Fisheries Agency member countries, or any other substituted vessel monitoring system accepted for use by the Republic;

"small boat" means a boat which —

- (a) does not exceed 10 metres in length; and
- (b) is used or intended to be used solely in coastal or internal waters, but does not include a support craft;

"support craft" means a dinghy, tender or other craft not exceeding 10 metres in length which is used in conjunction with a fishing boat in support of fishing by the boat;

"surveillance officer" means an officer of a boat or aircraft which is being used for the enforcement of this Act, whether or not the boat or aircraft is registered in Nauru and whether or not the officer is a Nauruan citizen;

"take", in relation to fish, means take, catch, capture or harvest fish;

"total allowable catch", in relation to an area of waters, means the amount of fish that will produce from those waters the maximum sustainable yield, as qualified by any relevant economic or environmental factors, fishing patterns, the interdependence of stocks of fish and any generally accepted or recommended international, regional or sub-regional standards, reference points and accepted conservation and management approaches;

tranship" means to transfer any or all of the fish on board a boat to another boat, either directly or by offloading the fish to the shore and immediately onto another boat;

"vessel monitoring system" means a system of machines which is capable wholly or partially in itself of processing, transmitting and disseminating information obtained by use of an automatic location communicator.

## APPLICATION

3. (1) In and in relation to fisheries waters, this Act applies, unless the context otherwise requires, to all persons, whether or not they are Nauruan citizens, and to all boats, including foreign boats.

(2) In and in relation to any waters other than fisheries waters, this Act applies, unless the context otherwise requires —

- (a) to all fishing boats registered in Nauru and all national boats, and to all persons on them, or dealing with or having any relevant relationship to them or persons on them; and
- (b) following hot pursuit conducted in accordance with international law and commenced within fisheries waters, or as required or permitted by international law or any convention, treaty or agreement to which Nauru is a party, to all persons and all boats.

- (3) This Act has extraterritorial application according to its tenor.

## **PART II — FISHERIES MANAGEMENT**

### **MANAGEMENT PRINCIPLES**

4. (1) Subject to this Act and to any policy directions of the Minister, the utilisation, management, development, conservation and protection of all fish in fisheries waters is the responsibility of the Authority.

(2) The Minister, the Authority, and any other person exercising powers and performing functions under this Act shall have regard to —

- (a) the principle that Nauru's fisheries and marine resources shall be managed, developed, conserved and protected as a sustainable asset for future generations; and
- (b) the sustainable utilisation of the fisheries and marine resources of Nauru to achieve economic growth, improved social standards, improved nutritional standards, human resource development, increased employment and a sound ecological balance; and
- (c) the need to follow and adopt internationally recognised and accepted conservation and management measures to fisheries and marine resources, in accordance with the applicable rules and principles of international law; and
- (d) the need to apply the precautionary approach to the management and conservation of fisheries resources taking account of the best scientific information available, but not so that the absence of adequate scientific information may be used as a reason for postponing or failing to take conservation and management measures; and
- (e) any principles of maximum sustainable yields, allowable levels of fishing, precautionary reference points or total allowable catch which may be supported or adopted by the Republic from time to time; and
- (f) the dependence of the people of Nauru on the fish and marine resources of fisheries waters for their food and livelihood; and
- (g) the need to avoid adverse impacts on the marine environment, to preserve biodiversity, to maintain the integrity of marine ecosystems and to minimise the risk of long-term or irreversible effects of fishing operations; and
- (h) any relevant international obligations or bilateral or multilateral agreements of the Republic, or applicable rules of international law, relating to the exercise of jurisdiction of the Republic in fisheries waters; and
- (i) any fisheries and marine resources policy of the Republic; and
- (j) any Fishery Strategy drawn up in accordance with this Act.

### **FOREIGN FISHING AND FISHERIES PRINCIPLES**

5. In exercising powers under and in relation to this Act in respect of fishing in fisheries waters, or fisheries activities, by a foreign person or a foreign boat, the Minister, the Authority or the Chief Executive Officer, as the case may be, shall have regard to —

- (a) whether the state to which that person or boat belongs has cooperated with the Republic in, and made substantial contributions to, the development of Nauru's fishing industry, fishery research and the identification and management of fishing resources; and
- (b) any rights of a reciprocal nature granted to Nauruan citizens or boats by that state; and



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- (c) whether that state, its fishing associations and its fishing boats have cooperated with the Republic in the enforcement of fishing laws, the undertaking of flag state responsibility and the conservation and management of fishing resources, including the provision of information for those purposes; and
  - (d) whether, and to what extent, the fishing boats of that state have traditionally engaged in such fishing; and
  - (e) the good standing or otherwise of any foreign boat involved; and
  - (f) any relevant international, regional or sub-regional obligations of the Republic, or applicable rules of international law, relating to the exercise of jurisdiction of the Republic over any part of fisheries waters.

#### **AGREEMENTS AND ARRANGEMENTS**

6. The Republic may enter into conventions, treaties, agreements or arrangements which provide for —

- (a) the terms and conditions of access to fisheries waters by foreign fishing boats and licensing procedures in respect of foreign boats; and
- (b) the administration of any multilateral arrangement or agreement, including the designation of a state, a competent regional fisheries agency or an official of that state or agency as Administrator of the arrangement or agreement, and the powers and duties of the Administrator, including the issue of fishing licences under the arrangement or agreement; and
- (c) the taking of joint, reciprocal or harmonised surveillance and enforcement measures in respect of foreign boats; and
- (d) the sharing or apportionment of any penalties imposed by a court, whether within Nauru or elsewhere, as a result of the enforcement measures referred to in paragraph (c); and
- (e) any similar matters associated with fishing carried out in or near fisheries waters by foreign boats.

#### **PROVISION OF INFORMATION**

7. (1) The Chief Executive Officer shall make such arrangements and take such measures as may be appropriate to enable him to provide information to and exchange information with other states and organisations concerning fisheries management strategies.

(2) The information that may be provided to and exchanged with international, regional or sub-regional organisations may include information about —

- (a) catch and effort statistics in respect of fishing operations in fisheries waters; and
- (b) relevant biological and statistical data; and
- (c) relevant laws of Nauru; and
- (d) actions with respect to decisions taken and mutually agreed upon between the Republic and the organisation.

(3) The information that may be provided to and exchanged with states with which the Republic has reached agreement concerning cooperation in fisheries surveillance, monitoring and enforcement may include information about —

- (a) the location and movement of foreign fishing boats; and
- (b) foreign boat licensing; and
- (c) fisheries surveillance and law enforcement activities; and

- (d) evidentiary material; and
- (e) such other information as appears to him to be necessary or desirable to assist those states to enforce their fisheries laws and to deter breaches of those laws.

(4) Where he has reason to believe that a foreign fishing boat has engaged in activities that undermine any internationally, regionally or sub-regionally accepted conservation and management measures with regard to fisheries and marine resources, or that breach the fisheries management laws of another state, the Chief Executive Officer shall—

- (a) provide to the appropriate authorities of the flag state of the boat such information, including evidentiary material, relating to those activities, as may be necessary to assist the flag state in identifying the boat; and
- (b) when the boat is voluntarily in the port of Nauru, promptly notify the appropriate authorities of the flag state of the boat accordingly; and
- (c) take such measures as appear to him to be necessary or desirable in order to secure compliance by the boat with those fisheries conservation and management measures or laws or in order to enable another state to enforce its fisheries laws in respect of the boat.

### **ACCESS AGREEMENTS**

8. (1) The Republic may enter into an access agreement with another state or with the fishing association or a similar body of another state, to provide for the licensing of foreign boats under this Act.

(2) The state or the fishing association or other similar body of the state entering into an access agreement shall undertake in the terms of the agreement to —

- (a) recognise the Republic's sovereignty and exclusive fisheries management authority over its fisheries waters and the resources of those waters; and
- (b) recognise and agree to comply with the laws of the Republic, including and in particular this Act; and
- (c) take all measures to ensure compliance by the boats of that state with the terms and conditions of the access agreement and the laws of the Republic, in particular the laws relating to fishing and fisheries waters, either by acknowledging the Republic's right to enforce its laws, or by assuming responsibility for the enforcement of those laws.

(3) The undertakings in subsection (2) are in addition to and not in derogation of any other undertakings that may be made in the agreement.

(4) An access agreement shall also include provisions as to the obligations of any operator of a boat covered by the agreement to implement, or to recognise the implementation of, minimum terms and conditions and other agreed conditions of fishing access as may be agreed from time to time between the Republic and one or more other states, or between states in accordance with any applicable rules of international law.

(5) An access agreement may include a requirement that all or any of the boats licensed under the agreement shall be fitted with an approved automatic location communicator.

(6) Every access agreement negotiated by or on behalf of the Republic shall secure substantial agreement with the requirements of this section.

(7) A provision of an access agreement that is inconsistent with this or any other Act is, to the extent of that inconsistency, void.

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**LIMITS OF CATCH AND LICENCES**

9. (1) The Minister may, on the advice of the Authority, and subject to any regional or sub-regional criteria with respect to total allowable catch as agreed to by the Republic, from time to time determine the total allowable catch in respect of fisheries waters or a specified part of fisheries waters.

(2) The Minister may, on the advice of the Authority, from time to time determine the maximum numbers of licences that may be issued in respect of a fishery or a fisheries activity.

(3) A determination under subsection (1) or (2) may be made irrespective of whether any Fisheries Strategy has been drawn up under section 10.

**FISHERY STRATEGIES**

10. (1) The Authority may, and where the Minister requires it to, shall draw up a Fishery Strategy in respect of any fishery.

(2) A Fishery Strategy shall —

- (a) identify the fishery and its characteristics, including its current state of exploitation; and
- (b) specify the objectives to be achieved in the management of the fishery; and
- (c) identify any possible adverse environmental effects of fishing operations in the fishery, together with proposals for the management of those effects; and
- (d) specify the management and development strategies to be adopted for the fishery; and
- (e) ascertain precautionary reference points for the fishery, in accordance with internationally accepted principles, which can be used to trigger pre-agreed conservation and management action in relation to the fishery; and
- (f) specify the limitations, if any, to be applied to the issue of licences in respect of the fishery; and
- (g) specify, in international units appropriate to the type of fishing, and in accordance with any relevant international, regional or sub-regional agreement, the amount of fishing, if any, to be allocated to foreign fishing boats; and
- (h) specify the statistical and other data required to be given or reported for effective management and development of the fishery.

(3) The Authority shall, during the preparation of a Fishery Strategy, consult as appropriate with —

- (a) other government departments, branches and agencies, and any non-governmental bodies or organisations affected by the Strategy; and
- (b) where appropriate and practicable, the fisheries management authorities of other states in the region, with a view to ensuring the harmonisation of their respective fisheries management and development plans and strategies.

(4) A Fishery Strategy drawn up under this section shall take account of any applicable declaration of total allowable catch made under section 9.

(5) The Authority shall keep a Fishery Strategy under review and shall revise it as necessary.

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**FISHING PROHIBITIONS**

11. (1) The Minister may, by notice in the Gazette, prohibit fishing or a fisheries activity by any one or more of the following:—

- (a) by species, sub-species, class or type of fish;
- (b) by size, weight or dimensions of fish or of parts of fish;
- (c) by age or growth stage of fish;
- (d) by limits set on catches, fishing efforts, the number of persons who may engage in the fishing or fisheries activity or any other related matters;
- (e) in a specified area of water or at a specified place;
- (f) by class or type of boat;
- (g) by fishing method;
- (h) by the use, carrying on board a boat or possession of a class, type, size or quantity of fishing equipment, navigational or safety equipment or equipment used in connection with a fisheries activity;
- (i) by the failure to use, carry on board a boat or possess a class, type, size or quantity of fishing equipment, navigational or safety equipment or equipment used in connection with a fisheries activity;
- (j) by class, type, category or manner of conduct of a fisheries activity;
- (k) by time, date or season, or by period, or indefinitely;
- (l) by class or category of persons.

(2) A notice under this section may provide for exemptions from the prohibition in the notice.

(3) An exemption under subsection (2) shall not exceed three months.

**LICENSING OF FISHING AND FISHERIES ACTIVITIES**

12. (1) The Chief Executive Officer may, in accordance with this Act, register boats and grant certificates of registration, permits, licences and other authorisations to engage in or to use a boat for fishing or a fisheries activity in accordance with this Act, and may renew those registrations, certificates, permits, licences and authorisations from time to time.

(2) Where the terms of a Regional Licensing Arrangement permit a foreign boat licensed in accordance with its terms to fish in fisheries waters, or a part of fisheries waters, the boat shall be deemed to be licensed under this Act according to the terms of the Arrangement and the licence.

**PART III —MONITORING AND ENFORCEMENT****OBSERVERS**

13. (1) The Minister may, by notice in the Gazette, appoint a person as an observer.

(2) An observer shall be allowed and assisted to board and remain on board a licensed boat at any time, for scientific, compliance, monitoring and other similar observation functions.

(3) While on board a boat in accordance with subsection (2), an observer —

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- (a) shall be provided at no charge with reasonable food, accommodation and medical care equivalent to that provided for officers of the boat; and
  - (b) shall be provided with a suitable work area including a table and sufficient lighting to carry out his work; and
  - (c) shall have full access to the bridge, fishing equipment and fish on board and areas which may be used to hold, process, weigh and store fish; and
  - (d) shall have full access to the boat's documents for the purposes of inspection and copying; and
  - (e) shall have reasonable access to navigation equipment and charts and shall be provided upon request with the accurate position of the boat in latitude and longitude; and
  - (f) shall have messages on his behalf promptly sent and received by means of the communications equipment aboard the boat; and
  - (g) may take and remove from the boat samples and relevant information; and
  - (h) may take photographs of the fishing operations and any associated operations, including fish, fishing equipment and charts and records, and may remove from the boat any photographs or film that he may have taken or used on board the boat; and
  - (i) shall be allowed and assisted to carry out all duties safely; and
  - (j) shall be embarked and disembarked at times and places as agreed between the observer and the master.

(4) Where the boat on which the observer is placed is a foreign boat, the observer shall be provided with —

- (a) full travel costs to and from the points of embarkation and disembarkation; and
- (b) salary; and
- (c) full insurance cover in respect of loss of life, medical expenses or personal injury.

#### **AUTHORISED OFFICERS**

14. (1) The Minister may, by notice in the Gazette, appoint an officer of the Authority as an authorised officer.

(2) The Minister may, by notice in the Gazette, appoint a person to exercise such powers or perform such duties of an authorised officer under this Act as are specified in the notice.

#### **IDENTIFICATION OF AUTHORISED OFFICERS AND OBSERVERS**

15. An observer or an authorised officer, when exercising any of the powers conferred by this Act, shall on request produce identification to show that he is an observer or an authorised officer, as the case may be, under this Act.

#### **OFFENCES AS COGNISABLE OFFENCES**

16. For the purposes of section 10 of the Criminal Procedure Act 1972, an offence under this Act is a cognisable offence.

#### **POWERS OF AUTHORISED OFFICERS**

17. (1) For the purposes of enforcing this Act, an authorised officer may, without a warrant —

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- (a) stop any foreign fishing boat or small boat in fisheries waters and any national boat in or beyond fisheries waters; and
  - (b) require the master of the boat to stop fishing and take the fishing equipment of the boat back on board; and
  - (c) require the master to facilitate the boarding of the boat by all appropriate means; and
  - (d) board the boat and take with him such other persons as he may require to assist him in the exercise of his powers; and
  - (e) muster the crew of the boat; and
  - (f) require to be produced, examine and take copies of any document on board the boat which is required under this Act or relates to the boat, to fishing by the boat, to the crew or to any person on board the boat; and
  - (g) require the master to appear and give an explanation concerning the boat, fishing by the boat, any crew member or any person on board the boat and any document referred to in paragraph (f); and
  - (h) while on board, make any search, examination or enquiry which he considers necessary to find out whether any provision of this Act has been contravened; and
  - (i) make an entry dated and signed by him in a boat's log; and
  - (j) take or require the master to take the boat to any place in Nauru or in fisheries waters for the purpose of carrying out any search, examination or enquiry; and
  - (k) following hot pursuit carried out in accordance with international law and commenced within fisheries waters, stop, board and search outside fisheries waters any foreign fishing boat which he has reasonable grounds to believe has been used in the commission of an offence against this Act and bring the boat and all persons and things on board the boat within fisheries waters; and
  - (l) stop, enter and search any vehicle or aircraft which he has reasonable grounds to believe is being used or is involved in the commission of an offence against this Act; and
  - (m) take samples of any fish found in a boat, vehicle or aircraft searched under this section; and
  - (n) give such directions to the master and a crew member of any boat, or the driver or pilot of a vehicle or aircraft stopped, boarded or searched as may be necessary or reasonably expedient for any purpose under this Act or to provide for the compliance by the boat, the vehicle, the aircraft, the master or crew member or the driver or pilot with the conditions of a licence; and.
  - (o) arrest any person whom he has reasonable grounds to believe has committed an offence under this Act.

(2) Where, following the commission of an offence under this Act by a foreign boat, the boat is pursued beyond the limits of fisheries waters in circumstances and to the extent recognised by international law, the powers conferred on an authorised officer under this Act are exercisable beyond the limits of national jurisdiction in accordance with international law.

(3) An authorised officer who has reasonable grounds to believe that an offence under this Act has been or is being committed, may, without a warrant, seize —

- (a) any boat (together with its catch on board, fishing equipment, other 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 under this Act or which he knows has been forfeited in accordance with any provision of this Act; and

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- (b) any fish which he has reasonable grounds to believe have been taken in the commission of the offence or which are possessed in contravention of this Act; and
  - (c) any equipment which he has reasonable grounds to believe has been or is being used in the commission of an offence under this Act; and
  - (d) any explosive, poison or noxious substance which he has reasonable grounds to believe has been or is being used or is possessed or controlled in contravention of this Act; and
  - (e) any documents required to be maintained by this Act or in accordance with the conditions of any licence or which he has reasonable grounds to believe show or tend to show, with or without other evidence, the commission of an offence under this Act; and
  - (f) any thing which he has reasonable grounds to believe may be used as evidence in any proceedings under this Act.

(4) An authorised officer has such other powers as are prescribed for the purposes of enforcing this Act.

(5) In exercising powers under this Act, an authorised officer may use such force as is reasonably necessary.

#### **SEIZURE OF BOATS, VEHICLES AND AIRCRAFT**

18. (1) Where a boat is seized under section 17, the authorised officer may bring the boat, or require the master who was in charge of the boat immediately before it was seized, to bring the boat to a place which he specifies in Nauru or in fisheries waters, and the boat may be detained pending the outcome of any proceedings under this Act or its release on bond or other security under section.

(2) Where the master brings the boat to the specified place, he shall be responsible for the safety of the crew, boat, himself and any other person on board the boat.

(3) Where the master fails or refuses to take the boat to the specified place, an authorised officer may take charge of the boat for the purpose of bringing it to the specified place.

(4) Where a boat is brought to a specified place by an authorised officer under subsection (3), no claim whatever may be made against any authorised officer, the Authority or the Republic in respect of any death, injury, loss or damage occurring while the boat is being brought to the specified place.

(5) Where a vehicle or aircraft is seized under section 17, the driver or pilot shall take the vehicle or aircraft to a place in Nauru which the authorised officer specifies as being the nearest or most convenient place for the holding of the vehicle or aircraft, and the vehicle or aircraft may be detained pending the outcome of any proceedings under the Act or its release under section 21.

(6) In bringing the vehicle or aircraft to the specified place, the driver or pilot shall be responsible for the safety of the vehicle or aircraft, its passengers, crew and any other person on board the vehicle or aircraft.

(7) Where the driver or pilot fails or refuses to take the vehicle or aircraft to the specified place, an authorised officer may take charge of the vehicle or aircraft for the purpose of bringing it to the specified place.

(8) Where a vehicle or aircraft is brought to a specified place by an authorised officer under subsection (7), no claim whatever may be made against any authorised officer, the Authority or the Republic in respect of any death, injury, loss or damage occurring while the vehicle or aircraft is being brought to the specified place.

#### **IMMOBILISATION OF BOAT, VEHICLE OR AIRCRAFT**

19. (1) Having regard to the safety of the boat, vehicle or aircraft, an authorised officer may take steps to immobilise any boat, vehicle or aircraft seized, taken or detained in custody under the Act.

(2) The steps referred to in subsection (1) include removing any part from the boat, vehicle or aircraft, for the purpose of preventing its taking by any person prior to its release under section 21 or by the Court.

(3) A part removed under subsection (2) shall be kept safely and returned to the boat, vehicle or aircraft immediately upon its lawful release from custody.

#### **DISPOSAL OF SEIZED FISH AND OTHER THINGS**

20. (1) Where any fish or other thing of a perishable nature is seized under section 17, the Chief Executive Officer may —

- (a) return the fish or other thing to the person from whom it was seized on receiving security that, in his opinion, represents its equivalent value; or
- (b) sell the fish or other thing at reasonable market value; or
- (c) where he is unable to sell the fish or other thing at reasonable market value, or where the fish or other thing is unfit for sale, dispose of it in such other manner as he thinks fit.

(2) Where any equipment is seized under section 17, the Chief Executive Officer may return the equipment to the person from whom it was seized on receiving security that, in his opinion, represents its market value.

(3) Where Court proceedings relating to any fish or thing referred to in subsection (1) or equipment referred to in subsection (2) are instituted, the Chief Executive Officer shall pay into Court any security or proceeds of sale obtained under subsection (1) or (2), as the case may be, pending an order by the Court in respect of the forfeiture or otherwise of the security or proceeds.

(4) Where no proceedings are instituted in relation to any fish or thing referred to in subsection (1) or equipment referred to in subsection (2), the Chief Executive Officer shall release the security or proceeds to the person from whom the fish or other thing was seized.

#### **SECURITY FOR RELEASE OF A SEIZED BOAT**

21. (1) Where a boat is detained or seized under this Act and a complaint is made or a charge is laid in respect of the offence for which the boat has been detained or seized, the operator or the legal representative of the boat may, at any time before the determination of the matter to which the complaint or charge relates, apply to the Court by which the complaint or charge is due to be determined for the release of the boat on the provision of security in accordance with this section.

(2) Upon receipt of an application under subsection (1), the Court may, and in the case of a foreign boat, shall, unless the boat or any fishing equipment, fish or other property on board the boat is required as an exhibit in court proceedings or is reasonably required for any further investigation of an offence under this Act, order —



(a) the payment into Court of security in the total of the value of the boat, the maximum fine or fines provided for the offences charged or likely to be charged, and the costs likely to be recovered by the prosecution if a conviction is entered; and

(b) upon receipt of the security referred to in paragraph (a), the release of the boat or property.

(3) Notwithstanding subsection (2), the Court may, where it is satisfied that there are special circumstances to justify it doing so, order that the security shall be in a specified amount that is less than the amount required by that subsection.

(4) In this section "boat" includes all equipment on board or used by the boat and also includes all fish that has been seized from the boat under this Act and is held on board the boat while it is detained in custody.

## **PART IV — OFFENCES**

### **BREACH OF FISHING PROHIBITIONS**

22. (1) A person who, whether on his own account, or as partner, agent or employee of another person, or as operator or crew member of a boat, engages in fishing or a fisheries activity in contravention of a notice under section 11 is guilty of an offence and is liable to a penalty —

- (a) in a case involving the use of a foreign boat, not exceeding \$500,000; or
- (b) in a case involving the use of a national boat, not exceeding \$100,000; or
- (c) in the case of a crew member of a foreign or a national boat, not exceeding \$25,000; or
- (d) in any other case, not exceeding \$10,000.

(2) A person who, in any area of waters or at any place, has any fish in his possession or under his control in a boat at a time when the taking of the fish in that area or at that place is prohibited by a notice under section 11, is guilty of an offence and is liable to a penalty —

- (a) in a case involving the use of a foreign boat, not exceeding \$500,000; or
- (b) in a case involving the use of a national boat, not exceeding \$100,000; or
- (c) in the case of a crew member of a foreign or a national boat, not exceeding \$25,000; or
- (d) in any other case, not exceeding \$10,000.

(3) It is a defence to a prosecution for an offence under subsection (2) if the person charged satisfies the court —

- (a) that the fish was not taken in the area of waters referred to in that subsection; or
- (b) that the taking of the fish was not in contravention of this Act.

(4) A person who lands, sells, receives or has in his possession any fish which he knows or has reasonable cause to believe were taken in contravention of a notice under section 11 is guilty of an offence and is liable —

- (a) where the person proves that the landing, receipt or possession was not for the purpose of sale, trade or profit, to a fine not exceeding \$1,000 or imprisonment for a term not exceeding one year, or both; or

- (b) in any other case, to a fine not exceeding \$5,000 or imprisonment for a term not exceeding two years, or both.

(5) A person who carries, has in his possession or control or has on board any boat, in circumstances which indicate an intention to use for fishing in fisheries waters, any fishing equipment which is prohibited from use for fishing by a notice under section 11 is guilty of an offence and is liable to a penalty not exceeding \$5,000.

(6) It is a defence to a prosecution for an offence under subsection (5) if the person charged satisfies the Court that the equipment was not intended for use for fishing.

(7) For the purposes of the prosecution of a person for an offence against this section, where a person is charged for an act or omission done by a partner, agent or employee, the act or omission shall be deemed to have also been done by the person charged for the offence.

(8) Section 24 (Mistake of Fact) of the Criminal Code is not a defence to a prosecution for an offence under this section.

### **FISHING WITHOUT OR IN BREACH OF A LICENCE**

23. (1) A person who —

- (a) on his own account, or as the partner, agent or employee of another person; or
- (b) as operator or crew member of a boat,

engages in or uses a boat for fishing or a fisheries activity, of a kind of type, or at a time, or in a place or manner, for which a licence is required under this Act, except under, and in accordance with the conditions of, a licence granted under this Act, is guilty of an offence and is liable —

- (a) in a case involving the use of a foreign boat, not exceeding \$500,000; or
- (b) in a case involving the use of a national boat, not exceeding \$100,000; or
- (c) in the case of a crew member of a foreign or a national boat, not exceeding \$25,000; or
- (d) in any other case, not exceeding \$10,000.

(2) For the purposes of the prosecution of a person for an offence against this section, where a person is charged for an act or omission done by a partner, agent or employee, the act or omission shall be deemed to have also been done by the person charged for the offence.

(3) Section 24 (Mistake of Fact) of the Criminal Code is not a defence to a prosecution for an offence under this section.

### **FOREIGN BOATS IN FISHERIES WATERS**

24. (1) A person who, whether on his own account, or as operator or crew member, causes or permits a foreign boat to enter, be in or be used for fishing or related activities in fisheries waters —

- (a) except for a purpose recognised by international law; or
- (b) unless it is authorised to do so by a licence granted under this Act,

is guilty of an offence and is liable to a penalty —

- (a) in the case of a corporation, not exceeding \$500,000; or

- (b) in the case of a crew member, not exceeding \$25,000; or
- (c) in the case of any other natural person, not exceeding \$250,000.

(2) All fishing equipment on board a foreign boat in any place in fisheries waters where it is not licensed to fish under this Act shall be stowed and secured —

- (a) so that it is not readily available or accessible for use for fishing; or
- (b) in the prescribed manner.

(3) A person who —

- (a) on his own account, or as the partner, agent or employee of another person, causes or permits; or
- (b) as operator or crew member of a boat, causes or permits; or
- (c) causes or permits a person acting on his behalf to cause or permit,

a contravention of subsection (2) is guilty of an offence and is liable to a penalty —

- (a) in the case of a corporation, not exceeding \$50,000; or
- (b) in the case of a crew member, not exceeding \$2,000; or
- (c) in the case of any other natural person, not exceeding \$25,000.

(4) For the purposes of the prosecution of a person for an offence against this section, where a person is charged for an act or omission done by a partner, agent or employee, the act or omission shall be deemed to have also been done by the person charged for the offence.

(5) Section 24 (Mistake of Fact) of the Criminal Code is not a defence to a prosecution for an offence under this section.

#### **DRIFTNET FISHING**

25. (1) No boat shall be used for or assist in driftnet fishing in fisheries waters.
- (2) No national boat shall be used for or assist in driftnet fishing in any waters.
- (3) No foreign boat shall have a driftnet aboard while in fisheries waters.
- (4) Where a boat is used in contravention of subsection (1), (2) or (3), the master, owner, charterer and crew members of the boat are each guilty of an offence and are liable to a penalty —
- (a) in a case involving the use of a foreign boat, not exceeding \$500,000; or
  - (b) in a case involving the use of a national boat, not exceeding \$100,000; or
  - (c) in the case of a crew member of a foreign or a national boat, not exceeding \$50,000; or
  - (d) in any other case, not exceeding \$10,000.

#### **IMPORT OF ILLEGALLY TAKEN FISH**

26. (1) Subject to subsection (3), a person who, in Nauru or in fisheries waters —
- (a) on his own account, or as the partner, agent or employee of another person, lands, imports, exports, transports, sells, receives, acquires or purchases; or
  - (b) uses a boat, to land, import, export, transport, sell, receive, acquire or purchase,

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any fish taken, possessed, transported or sold contrary to the law of another state is guilty of an offence and is liable to a penalty —

- (a) in a case involving the use of a foreign boat, not exceeding \$500,000; or
- (b) in a case involving the use of a national boat, not exceeding \$100,000; or
- (c) in the case of a crew member of a foreign or a national boat, not exceeding \$25,000; or
- (d) in any other case, not exceeding \$10,000.

(2) This section does not apply to fish taken on the high seas contrary to the law of another state where the Republic does not recognise the right of that state to make laws in respect of those fish.

(3) It is a defence to a prosecution for an offence under this section if the person charged satisfies the Court that he did not know and had no reasonable cause to believe that the fish had been taken, possessed, transported or sold contrary to the law of another state.

(4) Section 24 of the Criminal Code is not a defence to a prosecution for an offence under this section.

(5) Where there is in existence an agreement with another state to this effect, the penalty provided by subsection (2), or any portion of it according to the terms of the agreement, shall, after all costs and expenses incurred by the Republic and the Authority have been deducted, be remitted to that state according to the terms of the agreement.

#### **OBSTRUCTION OF AUTHORISED OFFICERS OR OBSERVERS**

27. (1) The master and each crew member of any boat, 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 and shall facilitate safe boarding, entry and inspection of the boat, vehicle or aircraft and any fishing equipment, equipment, records, documents and fish.

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

- (3) A person who contravenes subsection (1) or (2), or who —
- (a) assaults, obstructs, resists, delays, refuses boarding or entry to, intimidates or fails to take all reasonable measures to ensure the safety of or otherwise interferes with an authorised officer or observer in the performance of his duties; or
  - (b) incites or encourages any other person to assault, resist or obstruct an authorised officer or an observer while carrying out his powers or duties, or a person lawfully acting under the authorised officer's orders or in his aid; or
  - (c) uses threatening language or behaves in a threatening or insulting manner or uses abusive language or insulting gestures towards an authorised officer or observer while in the execution of his powers or duties, or a person lawfully acting under an authorised officer's orders or in his aid; or
  - (d) fails to comply with the lawful requirements of an authorised officer or observer; or
  - (e) furnishes to an authorised officer or an observer 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 an observer, or who falsely represents himself to be a person lawfully acting under an authorised officer's orders or in his aid; or
- (g) in any other way obstructs or hinders an authorised officer or observer in the exercise of his powers, duties or functions under this Act,

is guilty of an offence and is liable to a penalty —

- (a) not exceeding \$500,000; or
- (b) where the offence involves use or threat of use of a dangerous weapon, or violence or threat of violence, not exceeding \$1,000,000.

(4) In this section, “obstruct” means to prevent an authorised officer, or a person acting under his orders or in his aid, or an observer, from exercising any of the powers conferred on that person by this Act.

## **PART V — DEALING WITH OFFENCES**

### **LIABILITY OF MASTER AND OTHERS**

28. Where the owner or charterer of a foreign boat who is charged with an offence against section 22(1) or (2), 23, 24 or 26 is neither resident nor physically present in Nauru at the time when the boat was first arrested or at any time after the arrest —

- (a) the master of the boat; or
- (b) any employee, agent or representative of the owner or charterer who may be resident or physically present in Nauru at any time after the arrest,

shall be deemed to be the owner or charterer, as the case may be, and may be charged, prosecuted, convicted and sentenced as appropriate.

### **OFFENCES TRIABLE IN THE DISTRICT COURT**

29. (1) Notwithstanding any other law relating to the jurisdiction and powers of the District Court, a person charged with an offence under this Act shall be tried by the District Court.

(2) The limitation imposed by section 7(c) of the Criminal Procedure Act 1972 upon sentences that may be passed by the District Court shall not apply to the imposition by the District Court of a sentence for an offence under this Act.

### **JURISDICTION OF THE COURT**

30. (1) An act or omission in contravention of a provision of this Act which is committed —

- (a) by any person within fisheries waters; or
- (b) outside fisheries waters by any Nauruan citizen or any person ordinarily resident in Nauru; or
- (c) by any person on board a national boat,

shall be dealt with and judicial proceedings taken as if the act or omission had taken place in Nauru.

(2) Where this Act entitles an authorised officer or an observer to exercise a power or perform a function outside fisheries waters, any act or omission of any person outside fisheries waters in relation to the authorised officer or observer, which if committed

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within fisheries waters would be an offence against this Act, shall be deemed to have been committed within fisheries waters.

(3) Where a law or a condition of a licence specifically or incidentally requires the reporting of a fact while a boat is on the high seas, proceedings may be taken in respect of a failure to report the fact as if the failure had occurred within fisheries waters.

#### **EVIDENCE BY CERTIFICATE**

31. (1) In any proceedings for an offence under this Act —

- (a) the Chief Executive Officer or a person authorised by him in writing; and
- (b) an authorised officer or an observer;

may give a certificate as to such matters, in such form and containing such particulars, as are prescribed.

(2) A certificate given under this section —

- (a) shall be signed by the person who made it; and
- (b) shall contain a declaration by the person who made it that the matters stated in the certificate are true to the best of his knowledge and belief and that he made the certificate knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true.

(3) Unless the contrary is proved, a document purporting to be a certificate given under this section shall be deemed to be such a certificate and to have been duly made.

(4) Where a certificate made under this section is served upon an accused person at least fourteen days before its production in court and the accused person 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 accused is unduly prejudiced by any failure to object, be conclusive proof of all the facts averred in it.

(5) Where an objection is notified under subsection (4), the certificate shall, unless the contrary is proved, be sufficient evidence of the facts stated in it.

(6) Any omission from or mistake made in any certificate given under this section does not render it inadmissible in evidence unless the Court considers that the omission or mistake is material to any issue in the proceedings concerned, or that the accused is unduly prejudiced by it.

(7) Notwithstanding that other matters may be contained in it, a certificate given under this section is validly made in relation to the matters which by this Act are permitted to be stated in it.

(8) Where in any proceedings a certificate made under this section 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 contained in the certificate unless the contrary is proved.

(9) The provisions of this section apply to a certificate given under this section notwithstanding anything to the contrary in the Criminal Procedure Act 1972.

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**PRESUMPTIONS**

32. (1) For the purposes of any proceedings under this Act, the act or omission of a crew member of a boat while aboard that boat or engaged in any fishing related to or in association with that boat shall be deemed to be also that of the operator of the boat.

(2) For the purposes of the prosecution of a person for an offence under this Act, where a person is charged for an act or omission done by an employee or other agent, the act or omission shall be deemed to have also been done by the person charged for the offence.

(3) 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 boat shall be deemed to be that of the operator of the boat.

(4) Where any information is given in respect of a boat under this Act or an applicable access agreement in relation to any fishing by a foreign boat, it shall be presumed, unless the contrary is proved, to have been given by the operator of the boat, whether it is given by post, telex, telephone, facsimile, radio transmission or other method of communication.

(5) All fish found on board any fishing boat or in or on any vehicle or aircraft used or involved in the commission of an offence under this Act shall be presumed, unless the contrary is proved, to have been caught unlawfully and is liable to forfeiture.

**FORFEITURE OF BOAT AND OTHER PROPERTY**

33. (1) Where a Court convicts a person of an offence under this Act, the Court may order, in addition to any pecuniary penalty or award under section 34, the forfeiture of any one or more of the following: —

- (a) any fish, boat, fishing equipment, explosive or noxious substance taken, used or otherwise involved in the commission of the offence;
- (b) where a boat was used in the commission of the offence, any fish on board the boat at the time of the offence, or where any fish referred to in paragraphs (a) or (b) has been sold under section 20, the proceeds of the sale of the fish.

(2) Where a Court convicts a person of an offence against section 22(1) or (2), 23, 24 or 26, or such other offences as may be prescribed for the purposes of this subsection, in the commission of which a foreign boat was used or otherwise involved, the Court shall, unless it finds that there are exceptional reasons for not doing so, order the forfeiture of —

- (a) the boat; and
- (b) any fishing equipment that was on the boat at the time of the offence; and
- (c) fish on board the boat at the time of the offence, or, where the fish has been sold under section 20, the proceeds of the sale of the fish.

(3) Any boat, fish, fishing equipment or other thing forfeited by order of a Court under this Act becomes the property of the Authority.

**COMPENSATION FOR LOSS OR DAMAGE**

34. A person who commits an offence under this Act is, on conviction, in addition to the penalty for the offence, liable for any loss or damage caused by the offence, and the amount of such loss or damage may be —

- (a) awarded by the court in fixing the penalty; and
- (b) recovered in the same manner as a pecuniary penalty.

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**COSTS IN FISHERIES PROSECUTIONS**

35. In respect of an offence charged under this Act and notwithstanding the provisions of any other law to the contrary, the court may award such costs and expenses incurred in relation to the prosecution of such charges as may appear to be proper.

**CANCELLATION OF LICENCE**

36. (1) When a person is convicted of an offence under this Act the Court may, in addition to any other penalty, order —

- (a) the cancellation of any licence issued to that person; and
- (b) the forfeiture of any fees paid for the licence; and
- (c) that the person be disqualified from the day of conviction from holding a licence for a period not exceeding three years.

(2) When a person is convicted of an offence under this Act in the commission of which a licensed boat was used or otherwise involved, the Court may, in addition to any other penalty, order the cancellation of the licence in respect of the boat and the forfeiture of any fees paid in respect of the licence.

(3) Where a person who has been duly served a summons to answer a charge of a contravention of, or failure to comply with, a term or condition of a licence fails to appear in answer to the summons, the Court shall, unless it considers that there are exceptional reasons for not doing so, order the cancellation of the licence and the forfeiture of any fees paid in respect of the licence.

**BOATS AND OTHER THINGS DETAINED OR SEIZED**

37. (1) Where a boat or other thing has been detained or seized under section 17 and a person who has been properly charged with an offence in relation to it fails to appear to answer the charge within ninety days of the detention or seizure, the Chief Executive Officer may apply to the Court for the boat or thing to be forfeited and the Court shall make such order as it considers just.

(2) Where the Court fails or refuses to make an order for forfeiture under subsection (1), the Chief Executive Officer may appeal to the Supreme Court, the decision of which shall be final.

(3) Subject to subsection (4) and section 21, where a boat or other thing is detained or seized under section 17 and no person is arrested, the boat or thing shall be returned to the owner or the person having possession, care or control of it at the time of detention or seizure.

(4) Where the lawful owner of a boat or other thing detained or seized under section 17 cannot be traced within thirty days, it shall be forfeit and be disposed of as the Chief Executive Officer in his discretion considers fit.

(5) Where a boat or other thing has been detained or seized under section 17 and the Court does not order its forfeiture, it, or any proceeds realised from its disposal, shall be returned to the owner or the person having the possession, care or control of it at the time of the detention or seizure.

(6) Where the owner of a boat or other thing or the person having the possession, care or control of it at the time of its detention or seizure is convicted of an offence under this Act and a fine is imposed —



- (a) the boat or thing may be detained until all fines, orders for costs and penalties imposed under this Act have been paid; or
- (b) where payment under paragraph (a) has not been made within the time allowed, the boat or thing may be sold in satisfaction of the fine and the balance of the proceeds \*returned in accordance with section 38 after deduction of all fines, orders for costs, penalties imposed under this Act and costs of sale; or
- (c) any proceeds realised from its disposal under section 21 may be applied in payment of the fine, order for costs and costs of sale.

## **PART VI — MISCELLANEOUS**

### **APPLICATION OF BOND, SECURITY AND PROCEEDS OF SALE**

38. (1) Any bond, security or net proceeds of sale held in respect of any boat, vehicle or aircraft or other thing sold under this Act shall be applied in the following descending order —

- (a) the discharge of any forfeiture ordered under section 33;
- (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 boat, 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 boat, vehicle, aircraft or other thing;
- (d) its return as provided in section 37.

### **FEES, FORFEITED PROPERTY AND PROCEEDS OF SALE**

39. (1) Any fee, charge or expense payable under this Act shall be payable to and form part of the funds of the Authority.

- (2) Any —
  - (a) security, proceeds of sale or other moneys paid into Court under this Act and ordered forfeited by the Court; and
  - (b) proceeds of sale of a boat, vehicle, aircraft, fish or other thing remaining after the satisfaction of payments under section 38; and
  - (c) fine or other pecuniary penalty ordered by a Court for an offence under this Act, other than an award of damages under section 34,

are revenue of the Authority and shall, after deducting any costs incurred in relation to the prosecution of the case, be paid into and form part of the funds of the Authority.

(3) At the expiry of the time limited for appeal and if no appeal is lodged, any boat, vehicle, aircraft or other thing ordered to be forfeited under this Act becomes the property of the Authority and may be disposed of as the Board directs.

(4) Any fee, charge or expense payable under this Act and not paid is a debt due to the Authority and may be recovered in the District Court.

### **LIABILITY FOR LOSS, DAMAGE OR DETERIORATION OF ITEMS IN CUSTODY**

40. No claim shall lie against the Republic or the Authority —
- (a) for any failure to comply with any provision of this Act; or

- (b) for any loss, damage to or deterioration in the condition of any boat, vehicle, aircraft or other thing while it is held in custody under this Act, or
- (c) in respect of any disposal, release or destruction under section 20.

### **IMMUNITY OF PERSONS ACTING IN PURSUANCE OF POWERS**

41. An authorised officer, an observer, or a person lawfully acting under an authorised officer's orders or in his aid shall not be subject to any civil or criminal liability in respect of any act or omission done in pursuance or intended pursuance of any power or function conferred on him by or under this Act, whether on the ground of want of jurisdiction, mistake of law or fact, or on any other ground, unless the act or omission was done in bad faith without reasonable cause.

### **REGULATIONS**

42. (1) The Cabinet may make regulations prescribing matters which by this Act are required or permitted to be prescribed, or which it considers are necessary or convenient to be prescribed, for carrying out or giving effect to this Act and in particular prescribing matters providing for and in relation to —

- (a) the means of determining the total allowable catch either generally or in respect of an individual fishery, the maximum sustainable yield of fish, precautionary reference points, fishing quotas, fishery areas, licence priorities and quotas and related matters, and determining those matters; and
- (b) the grant, conditions, suspension and cancellation of licences, permits and other authorisations to engage in or use a boat for fishing or a fisheries activity; and
- (c) the registration and marking of boats used for fishing and fishing equipment; and
- (d) regulating the conduct of fishing and fisheries activities; and
- (e) regulating, controlling and managing research, surveys, study and education regarding fish, fisheries resources and the marine environment; and
- (f) the identification of officers authorised to perform duties under this Act; and
- (g) the monitoring and surveillance of fishing and fishing activities and the gathering, storing and use of information regarding boats, fishing and fisheries activities, including its use as evidence in proceedings under this Act; and
- (h) the seizure, custody, dealing with and disposal of any boat, fish or other thing under this Act; and
- (i) service in actions, the giving of evidence in proceedings, presumptions which may arise in or in relation to proceedings, and any other procedural matters, in any proceedings under this Act; and
- (j) the sale or disposal of unclaimed fishing equipment found in any waters; and
- (k) the furnishing of returns containing information in relation to fishing, fisheries activities; and
- (l) any fees, charges, taxes, royalties, bonds or securities payable in respect of any matter under this Act; and
- (m) prescribing penalties of fines not exceeding \$100,000 for offences against the regulations; or offences against any provision of the Act for which no penalty is provided.

(2) Regulations made under this Act —

- (a) may make different provisions in relation to different areas of fisheries waters, different species of fish or different fishing methods; and

- (b) may empower such authorities or persons as are specified in the Regulations to make orders or notices or to give instructions, authorisations and permissions for any of the purposes for which the Regulations are authorised by this Act to be made, and may contain such incidental and supplementary provisions as are necessary or expedient.

## **PART VII — REPEAL, SAVINGS AND TRANSITIONAL**

### **REPEAL OF THE MARINE RESOURCES ACT 1978**

43. The Marine Resources Act 1978 is repealed.

### **SAVING OF EXISTING LICENCES AND AGREEMENTS**

44. (1) All licences granted under the Marine Resources Act 1978 (*repealed*) which were valid and in force immediately before the coming into operation of this Act shall continue, on that coming into operation, to have full force and effect for the term for which they were granted or made or until they sooner expire or are revoked according to law as if the Marine Resources Act 1978 (*repealed*) had not been repealed.

(2) Any access agreement made under or in relation to the Marine Resources Act 1978 (*repealed*) which is substantially at variance with the provisions of this Act shall nevertheless continue in full force and effect until the earliest possible date of its renegotiation or renewal according to its terms, at which time it shall be renegotiated so as to ensure compliance with the provisions of this Act.

### **APPLICATION OF OTHER ACTS AND INSTRUMENTS**

45. Where —

- (a) any Act or subordinate enactment other than this Act; or
- (b) any document or instrument wherever made or executed,

contains a reference, express or implied, to the Marine Resources Act 1978 (*repealed*) or to a provision of that Act, that reference shall, on the coming into operation of this Act, except where the context otherwise requires, be read and construed and have effect as a reference to this Act or the corresponding provision of it.

(2) Where any document, agreement or instrument wherever made or executed contains a reference, express or implied, to the exclusive fisheries zone established by section 3 of the Marine Resources Act 1978 (*repealed*), that reference shall, on the coming into operation of this Act, except where the context otherwise requires, be read and construed and have effect as a reference to the exclusive economic zone.