



MARINE RESOURCES ACT
REPUBLIC OF THE MARSHALL
ISLANDS

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ARRANGEMENT OF SECTIONS

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**PART I.
PRELIMINARY**

1. Short Title.

This Act shall be cited as the "Marshall Islands Marine Resources Act 1997".

2. Interpretation.

(1) "Access agreement" means a treaty, agreement or arrangement entered into by the Authority pursuant to this Act in relation to access to the Fishery Waters for fishing by foreign or domestic-based fishing vessels, and includes bilateral and multilateral instruments applicable at the national, sub-regional, regional or international level.

(2) "administrator" means the director of a regional fisheries agency or any other organization or person authorized to administer an access agreement or fisheries management agreement;

(3) "agent" includes a person appointed or designated by a foreign fishing company or other entity or person to act as its legal representative within the Republic of the Marshall Islands, pursuant to section 35;

(4) "aircraft" means any craft capable of self-sustained movement through the atmosphere and includes helicopters;

(5) "artisanal fisheries" or "artisanal fishing" means in-shore fishing by citizens using vessels powered by outboard engines, and which could include commercial fishing;

(6) "atoll" means a naturally formed coral reef system forming a geographic and ecologic unit which is crowned by at least one island;

(7) "Attorney General" means the Attorney General of the Republic of the Marshall Islands;

(8) "Authority" means the Marshall Islands Marine Resources Authority established by section 3 of this Act.

(9) "authorized observer" means any person authorized in accordance with section 85 to act as an observer on fishing vessels for the purposes of this Act, including any observer authorized pursuant to the provisions of an access agreement or a fisheries management agreement;

(10) "authorized officer" means any person or category of persons designated pursuant to section 81 as an authorized officer;

(11) "based in the Republic of the Marshall Islands" means using land-based facilities in the Republic of the Marshall Islands to support fishing, including location of the home port of a vessel in the Republic of the Marshall Islands, landing or transshipping all fish harvested within the exclusive economic zone and/or operating under a joint venture arrangement in the Republic of the Marshall Islands, or under arrangements where the operator of a vessel is participating in shore based developments or is otherwise making a substantial contribution to the development of the domestic tuna industry;

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- (12) "buy" includes:
- (a) barter or attempt to barter;
 - (b) purchase or attempt to purchase;
 - (c) receive on account or consignment;
 - (d) purchase or barter for future goods or for any consideration of value;
 - (e) purchase or barter as an agent for another person,

and "buyer" shall have a corresponding meaning;

(13) "citizen" means a person who is a citizen or legal resident of the Republic of the Marshall Islands, and "non-citizen" shall have a corresponding meaning;

(14) "closed season" means a period of time during which fishing is prohibited;

(15) "commercial fishing" means any fishing resulting or intending or appearing to result in selling or trading any fish which may be taken during the fishing operation, and does not include subsistence fishing.

(16) "commercial pilot fishing" means any fishing for the purpose of testing the commercial viability of:

- (a) new fishing methods;
- (b) developing new stocks of fish; or
- (c) fishing in previously unexploited areas;

(17) "Court" means the High Court of the Republic of the Marshall Islands;

(18) "Director" means the Director of the Marshall Islands Marine Resources Authority;

(19) "domestic based fishing" means any fishing by foreign fishing vessels based in the Republic of the Marshall Islands, but not including commercial pilot fishing;

(20) "domestic based fishing vessel" means any fishing vessel based in the Republic of the Marshall Islands;

(21) "domestic fishing" means any commercial fishing by a local fishing vessel, but not including commercial pilot fishing;

(22) "driftnet" means a gillnet or other net or arrangement of nets which is more than 2.5 kilometres (1.56 miles) in length the purpose of which is to enmesh, entrap or entangle fish;

(23) "driftnet fishing activities" includes fishing with the use of a driftnet and any related activities including transporting, transshipping and processing any fish caught with the use of a driftnet, and the provisioning of food, fuel and other supplies for vessels used or outfitted for driftnet fishing;

(24) "exclusive economic zone" means the exclusive economic zone as defined in the Marine Zones (Declaration) Act 1984;

- (25) "export" means to:
- (a) send or take out of the country;
 - (b) attempt to send or take out of the country;

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- (c) receive on account or consignment for purposes of (a) or (b);
- (d) act as an agent for another person for purposes of (a) - (c);
- (e) carry or transport any thing for purposes of (a) - (d),

and "exporter" shall have a corresponding meaning;

(26) "fish" means any living marine resource;

(27) "fish aggregating device" means any man-made or partly man-made floating or semi-submerged device, whether anchored or not, intended for the purpose of aggregating fish, and includes any natural floating object on which a device has been placed to facilitate its location;

(28) "fish processing" means the producing of any substance or article from fish by any method and includes the cutting up, dismembering, cleaning, sorting, loining, freezing, canning, salting, preserving and reduction of fish;

(29) "fisheries management agreement" means any agreement, arrangement or treaty in force to which the Republic of the Marshall Islands is party which has as its purpose cooperation in or coordination of fisheries management measures in all or part of the region, or implementation of a multilateral access agreement, including but not limited to fisheries monitoring, control and surveillance and establishing criteria or requirements for fishing and fisheries access but which does not include any access agreement;

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

(31) "Fishery Waters" means the exclusive economic zone, the territorial sea and internal waters, including lagoons, as described in the Marine Zones (Declaration) Act, 1984, and any other waters within the jurisdiction of the Republic of the Marshall Islands;

(32) "fishing" means:

- (a) the actual or attempted searching for, catching, taking or harvesting of fish;
- (b) any activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
- (c) the placing, searching for or recovering of any fish aggregating device or associated electronic equipment such as radio beacons;
- (d) any operation at sea directly in support of or in preparation for any activity described in this paragraph except for operations defined as related activities in subsection (50) of this section;
- (e) the use of an aircraft in relation to any activity described in this paragraph except for flights in emergencies involving the health or safety of crew members or the safety of a vessel;

(33) "fishing gear" means any equipment, implement, or other thing that can be used in the act of fishing, including any fishing net, rope, line, float, trap, hook, winch, boat, beacon or locating device, aircraft or helicopter.

(34) "fishing trip" covers the time a vessel enters the Fishery Waters to begin fishing
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until such time as any fish which have been taken are offloaded;

(35) "fishing vessel" means any vessel, boat, ship or other craft which is used for, equipped to be used for or of a type that is normally used for fishing;

(36) "foreign fishing" means any fishing not defined as domestic fishing or domestic-based fishing, and not including commercial pilot fishing;

(37) "foreign fishing vessel" means any fishing vessel other than a local fishing vessel or a domestic based fishing vessel;

(38) "foreign party" means a party to an access agreement other than the Authority;

(39) "foreign recreational fishing" means fishing using a foreign fishing vessel for recreational or sport purposes;

(40) "Fund" means the Marshall Islands Marine Resources Authority Fund established in accordance with this Act;

(41) "Government" means the government of the Republic of the Marshall Islands;

(42) "island" means a naturally formed area of land surrounded by water, which is above water at high tide;

(43) "license" means any license issued in accordance with this Act;

(44) "local fishing vessel" means any fishing vessel registered in the Republic of the Marshall Islands and wholly owned and controlled by:

- (a) the Government of the Republic of the Marshall Islands, or any agency thereof;
- (b) one or more natural persons who are citizens and permanently domiciled in the Republic of the Marshall Islands;
- (c) any corporation, company, society, or other association of persons incorporated or established under the laws of the Republic of the Marshall Islands and which is wholly owned and controlled by one or more of the entities or persons described in paragraphs (a) or (b) of this subsection;
- (d) any combination of persons or entities described in paragraphs (a) through (c) of this subsection;

and shall exclude any fishing vessel which may be so owned and controlled which does not have a genuine and effective link with the Republic of the Marshall Islands, including where it is not based in the Republic of the Marshall Islands, and where a substantial portion of its financial and economic profits and other benefits arising from its operations in the Fishery Waters do not directly benefit the owners or the economy of the Republic of the Marshall Islands;

(45) "master", in relation to any fishing vessel, means the person in charge or apparently in charge of that vessel;

(46) "Minister" means the Minister of Resources and Development;

(47) "multilateral access agreement" means an access agreement between a foreign party and one or more States in the region, to which the Republic of the Marshall Islands is party;

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(48) "officer" means any authorized officer or national police officer, and includes any officer of a vessel or aircraft used for the enforcement of this Act in accordance with its provisions, whether or not such officer is an official of the Government or whether or not such vessel or aircraft is registered in the Republic of the Marshall Islands;

(49) "operator" means any person who is in charge of or directs or controls a fishing vessel, or for whose direct economic or financial benefit a vessel is being used, including the master, owner, and charterer;

(50) "owner" in relation to a fishing vessel means any person exercising or discharging or claiming the right or accepting the obligation to exercise or discharge any of the powers or duties of an owner whether on his own behalf or on behalf of another and includes a person who is the owner jointly with any other person or persons and any manager, director or secretary of any body corporate or company;

(51) "person" means any natural person or business enterprise and includes but is not limited to a corporation, partnership, cooperative, association, the government of the Republic of the Marshall Islands, or any subdivision or agency thereof, and any foreign government, subdivision or agency of such government or other entity;

(52) "recreational fishing" means non commercial fishing for leisure or relaxation and may include sport fishing;

(53) "region" means that area of land and ocean which falls substantially within the jurisdiction and sovereign rights of the member countries of the South Pacific Forum Fisheries Agency, whose headquarters are located in Honiara, Solomon Islands, and includes high seas areas within such area, and for the purposes of, *inter alia*, fisheries management and data collection also means that area of the Western and Central Pacific Ocean which falls within the jurisdiction and sovereign rights of the member countries of the South Pacific Commission located in Noumea, New Caledonia, and "regional" shall have a corresponding meaning;

(54) "regional access licence" means a regional access licence issued to any fishing vessel of a Party to a multilateral access agreement or fisheries management agreement, in accordance with such agreement;

(55) "regulation" or "regulations" means any regulation which may be promulgated by the Authority pursuant to this Act;

(56) "related activities" in relation to fishing means:

- (a) transshipment;
- (b) refuelling or supplying fishing boats selling or supplying fishing equipment or performing either activity in support of fishing;
- (c) on-shore storing, buying or processing fish or fish products from the time they are first landed;
- (d) attempting or preparing to do any of the above;

(57) "sell" includes exchanging any fish or fish product or other thing for cash or for anything which has value or which can be exchanged for cash, and bartering;

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(58) "sport fishing" means the use or hiring out of a fishing vessel or services thereof for recreational fishing purposes, but does not include commercial fishing;

(59) "stock of fish" means a species, subspecies or other category of fish identified on the basis of geographical, scientific, technical, recreational and economic characteristics which can be treated as a unit for purposes of conservation and management;

(60) "subsistence fishing" means fishing by a citizen substantially for personal consumption, and does not include any fishing resulting or intending or appearing to result, directly or indirectly, in selling or trading for profit any fish which may be taken during the fishing operations;

(61) "transshipment" means the transfer of any or all fish or fish products to or from any fishing vessel for the purposes of transporting such fish or fish products elsewhere, and "tranship" shall have a corresponding meaning;

(62) "transponder" means any device or machine placed on a fishing or other vessel, which is designed to transmit, whether in conjunction with other machine or machines elsewhere or not, information or data concerning the position, fishing and other activities of the vessel as may be required, and shall include any automatic location communicator;

(63) "United Nations Agreement" means the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1992 Relating to the Conservation and Management of Straddling Fish Stocks and highly Migratory Fish Stocks;

(64) "United Nations Convention" means the United Nations Convention on the Law of the Sea, 1982;

(65) "vehicle" means any car, truck, van, bus, trailer or other powered land conveyance;

(66) "vessel" means any boat, ship, canoe or other water going craft.

PART II.

MARSHALL ISLANDS MARINE RESOURCES AUTHORITY

3. Marshall Islands Marine Resources Authority.

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

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

(3) Article VII of the Constitution shall not apply to or in relation to the Authority.

4. Management of the Authority.

The powers and functions of the Authority shall be vested in and exercised by a Board of Directors ("the Board"), which shall consist of no more than five members.

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5. Board of Directors.

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

- (a) three members, consisting of the Minister of Resources and Development, the Secretary of Foreign Affairs and the Attorney General;
- (b) two other members appointed by the President, who have knowledge of and experience in the fisheries sector of the Republic of the Marshall Islands;
- (c) the Director, who shall be a member *ex officio* and shall serve as the Secretary of the Board.

(2) The Chairman shall be elected by the Board for a term of two years. The Authority shall meet at such time and place as may be designated by the Chairman or by the Authority. The Authority shall adopt its own rules of procedure and regulations by majority vote.

(3) The term of office of the members appointed under subsection (1)(b) shall be two years.

(4) Upon the expiration of the term of an appointed member, his or her rights and powers of membership shall lapse and the Director shall declare the vacancy and notify the President in writing of such vacancy. Vacancies occurring before the expiration of a member's term shall be filled in the same manner as the original appointment for the remainder of the term of office of the vacancy.

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

(6) Notwithstanding the provisions of Subsection (3) of this Section, the President may, with the concurrence of Cabinet, remove any member appointed under Subsection 1(b) of this Section.

(7) The Authority may delegate any of its powers to the Chairman or the Director.

6. Cabinet's policy direction to the Board.

The Cabinet may give to the Board in writing directions with respect to policy matters, and the Board shall give effect to such direction.

7. Meetings of the Board.

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

(2) The Board shall, by majority vote, adopt its own rules of procedure and regulations for transactions of business and for carrying out the purposes of this Act.

(3) The quorum for a meeting of the Board shall be three members.

8. Director and Staff.

(1) Subject to any direction by Cabinet, the Authority shall employ a full-time Director of Marine Resources, possessing such qualifications as may be established by the

Authority, who shall be in charge of and responsible for the management and administration of the Authority.

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

(3) The Authority may employ up to two Deputy Directors, who shall be appointed taking into account the recommendation of the Director.

(4) Except as provided in subsection (3), the Authority may delegate to the Director the power to employ such other employees, consultants and advisers as he or she may deem necessary. Any employee, consultant or adviser employed under this Section shall be exempt from Article VII of the Constitution.

9. Employment of public servants.

At the request of the Authority, the Public Service Commission may make the services of members of the Public Service available to the Authority on such terms and conditions as the Commission may determine.

10. Annual Report.

(1) The Minister shall report to the Nitijela on the Authority's activities and planned programs on an annual basis, and may provide additional reports and information from time to time.

11. Powers and Functions of the Authority.

(1) Unless otherwise provided in this Act, the Authority shall have the exclusive powers and functions to:

- (a) conserve, manage and sustainably develop all resources in the Fishery Waters and seabed and subsoil thereunder, in accordance with the principles and provisions in this Act and in sub-regional, regional and international instruments to which the Republic of the Marshall Islands is party;
- (b) establish management plans and programs to manage the resources in the Fishery Waters;
- (c) issue licenses in accordance with this Act;
- (d) issue licenses for the exploration and exploitation of the seabed and subsoil of the Fishery Waters;
- (e) negotiate and conclude access agreements and fisheries management agreements on behalf of the Government in accordance with Part VI of this Act;
- (f) implement by regulation or otherwise as appropriate access agreements or fisheries management agreements to which the Republic of the Marshall Islands is party;
- (g) coordinate and manage fisheries monitoring, control and surveillance and, in consultation with the Attorney General, enforcement of this Act;
- (h) appoint authorized officers and observers in accordance with this Act;
- (i) cooperate in the conservation and management of highly migratory fish stocks as

appropriate with other coastal States in the region and States fishing in the region and high seas area and participate in appropriate sub-regional, regional and international organizations or arrangements relating to fisheries;

- (j) participate in the planning and execution of projects, programs or other activities

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related to fisheries or fishing, or the exploration or exploitation of the nonliving resources of the Fishery Waters, seabed or subsoil thereunder, in which the Government or any agency or instrumentality that has a proprietary interest, direct or indirect, by way of stock ownership, partnership, joint venture or otherwise;

- (k) regulate the processing, marketing and export of fish and fish products;
 (l) seek technical assistance for the determination of the Fishery Waters zones and boundaries;
 (m) submit the budget and a report regarding the expenditure of its funds to the Nitijela on an annual basis;
 (n) perform such other duties and functions as may be necessary to carry out the purposes and provisions of this Act.

(2) The Authority shall, in exercising its powers and functions, cooperate with other agencies of the Government with competence, given under authority of law, in any related area.

12. Power to make regulations.

(1) Subject to the provisions of this Act, the Authority may make regulations to carry out the purposes and provisions of this Act, and in particular but without restricting the generality of the foregoing, may adopt regulations in relation to:

- (a) the conservation, management and sustainable development of fish in the Fishery Waters, including but without restricting the generality of the foregoing the catching, loading, landing, handling, transporting, possession, inspection, disposal and export of fish;
 (b) related activities in the Fishery Waters;
 (c) the operation of fishing vessels or any other vessel which may enter the Fishery Waters for any purpose which falls within this Act;
 (d) the use and protection of fishing gear and equipment, including fish aggregating devices and artificial reefs;
 (e) licensing for fishing and other activities falling within this Act;
 (f) pollution or the environmental quality of the Fishery Waters;
 (g) fisheries monitoring, control and surveillance;
 (h) prescribing the powers and duties of persons engaged in the administration or enforcement of this Act and providing for the carrying out of those powers and duties;
 (i) compliance by citizens and fishing vessels of the Republic of the Marshall Islands which engage in fishing outside the Fishery Waters with applicable laws of other States or regional fisheries management organizations or arrangements, and applicable access agreements or fisheries management agreements;
 (j) prescribing any other matter to carry out the purposes and provisions of this Act.

(2) In promulgating regulations in accordance with subsection (1), the Authority shall

comply, *mutatis mutandis*, with the procedures Cabinet is required to take in promulgating regulations under the Administrative Procedures Act, 1994.

(3) Subject to subsection (2), the requirements of the Administrative Procedures Act, 1994 for promulgation of regulations shall not be applicable to regulations promulgated by the *Marine Resources Act 1997*

Authority, which shall have full force and effect as if they had been promulgated by Cabinet.

(4) Any regulation promulgated by the Authority in accordance with this Act shall form an integral part of this Act.

13. Compensation.

(1) Members of the Board shall be compensated at such rate as may be set by decision of the Authority when actually on the business of the Authority.

(2) All members of the Board shall receive per diem and travel expenses at established Government rates while on the business of the Authority.

(3) The Director shall receive a remuneration for his or her services, the amount of which shall be fixed by the Authority.

(4) The Director shall be appointed by the Authority.

14. Finance: Marshall Islands Marine Resources Authority Fund.

(1) There shall be established a Marshall Islands Marine Resources Authority Fund.

(2) The Fund shall be a fund other than the General Fund within the meaning and for the purposes of Article VIII, Section 3 of the Constitution.

15. Payments into the Fund.

(1) There shall be deposited into the Fund:

- (a) all monies appropriated by the Nitijela for the purposes of the Authority;
- (b) all monies designated by the Compact for fisheries or related activities, including monitoring, control and surveillance;
- (c) all monies received by the Authority by way of loans, grants, aid, advances, contributions, gifts or other assistance;
- (d) all payments for fisheries access;
- (e) in the case of goods and services received under any access agreement, all monies realized on such goods and services;
- (f) all civil and criminal fines and administrative penalties and proceeds of forfeitures or settlements collected by the Government pursuant to violations of or offenses committed against this Act;
- (g) the proceeds of sale of fish seized and forfeited pursuant to violations of or offenses against this Act;
- (h) such other monies as may be generated or otherwise received by the Authority pursuant to this Act.

(2) The Secretary of Finance shall keep within a separate account all monies referred to in subsection 1(b) of this section.

16. Payments out of the Fund.

- (1) Payment may be made out of the Fund only for:
- (a) carrying out the powers and functions of the Authority, and in particular but not to
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restrict the generality of the foregoing;

- (i) fisheries monitoring, control and surveillance;
- (ii) training;
- (iii) research;
- (iv) such other activities as the Director may designate in accordance with this Act;
- (b) the costs and expenses of the Authority, including administration;
- (c) where an individual provides the necessary information leading to a civil or criminal fine or forfeiture against a commercial fishing vessel pursuant to this Act, such individual or individuals shall receive, or where more than one individual is involved, share, five percent of the amount of the fine or \$2,000 whichever is lesser, and the necessary information required for such reward and the procedures for disbursement shall be provided for by rules and regulations promulgated by the Authority;
- (d) the purposes of working capital and petty cash, and other related purposes;
- (e) giving effect to the provisions of this Act and any regulations made under this Act.
- (2) The Fund shall be administered by the Director and such Board member as the Board may designate in accordance with:
- (a) financial regulations which may be adopted by the Authority; and
- (b) a budget approved on an annual basis by the Secretary of Finance.
- (3) The Director shall make quarterly financial reports to the Board.

17. Exemptions.

- (1) The income, property and transactions of the Authority shall not be subject to any tax, rates or charges imposed under any other law.
- (2) The Consolidation of Funds Act, 1944, shall not apply to this Act.

18. Restrictions on borrowing.

Where any money is borrowed or any advance, grant, aid or other assistance is received for a specific purpose or subject to any condition, it shall be expended or used only for that purpose or subject to those conditions.

19. Accounts.

- (1) The Director shall maintain proper accounts and records of:
- (a) the Fund; and
- (b) the disposition of monies paid into or out of the Fund.
- (2) The accounts and records of the Fund shall be audited annually by such auditor as

the Authority shall appoint.

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**PART III.
FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT**

20. Management.

Exclusive management and control over living and non-living resources within the Fishery Waters is vested in the Government.

21. Conservation, management and sustainable use of the fishery resources.

(1) The Authority shall ensure the long-term conservation and sustainable use of the fishery resources, and to this end shall adopt management measures which promote the objective of optimum utilization.

(2) The Authority shall ensure that such management measures are based on the best scientific evidence available and designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, and taking into account fishing patterns, the interdependence of stocks and generally recommended international minimum standards.

(3) The Authority shall apply the precautionary approach at no less standard than set by criteria in the United Nations Agreement or any other fisheries management agreement.

(4) The Authority shall as appropriate adopt and apply the following general principles in relation to fisheries management:

- (a) assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks;
- (b) adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;
- (c) minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;
- (d) protect biodiversity in the marine environment;
- (e) take measures to prevent or eliminate overfishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;
- (f) take into account the interests of artisanal and subsistence fishers;
- (g) collect and share, in a timely manner and in accordance with fisheries management agreements and international law, complete and accurate data concerning fishing activities on, *inter alia*, vessel position, catch of target and non-target species and fishing effort, as well as information from national and international research programmes;
- (h) promote and conduct scientific research and develop appropriate technologies in

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- support of fishery conservation and management;
- (i) implement and enforce conservation and management measures through effective monitoring, control and surveillance.

22. Objectives and purposes for fisheries management and development.

The Authority shall take into account the following objectives and purposes management decisions, including the approval of fisheries management and development plans in accordance with this Act:

- (a) establish priorities for the utilisation of the fisheries resources which will provide the greatest overall benefits to the country;
- (b) ensure the proper conservation of the fishery resource through the prevention of overfishing and the taking of a precautionary approach toward harvesting when information and data about the fishery resource are lacking;
- (c) base management practices on sound management principles and the best scientific information available, to be gained through national and international research programmes;
- (d) minimise, to the extent practicable, fishing gear conflicts among users; and
- (e) develop the fisheries sector in accordance with the best interests of the country.

23. Authority may determine total level of fishing and allocations of fishing rights.

(1) The Authority may determine the total allowable level of fishing with respect to any stock of fish subject to the provisions of this Act or as provided in a fisheries management agreement, and in so doing shall take into account the requirements of sections 21 and 22.

24. Authority may determine participatory rights in fishery.

(1) The Authority may determine participatory rights in the fishery, such as allocations of allowable catch or levels of fishing effort. Allocations of such participatory rights:

- (a) shall favour domestic based fishing vessels;
- (b) may include restrictions as to vessel type, gear type, seasons of operations, areas in which the fishing can take place, or any other restriction relevant to fisheries conservation and management.

(2) In determining the allocations of participatory rights in the fishery, the Authority shall take into consideration the following in addition to requirements of subsection (2):

- (a) the extent to which there has been compliance with the laws of the Republic of the Marshall Islands and any relevant access agreements;
- (b) whether and the extent to which there has been cooperation with the Republic of the Marshall Islands in, and substantial contributions to, the conservation, management and development of fisheries and fishery research;
- (c) whether there is an undertaking to invest in the fisheries sector in such a manner as to bring significant benefit to the Republic of the Marshall Islands;
- (d) whether there has been cooperation with the Republic of the Marshall Islands in enforcement of the provisions of this Act and the regulations issued under its authority, including flag State enforcement and provision of information required for the conservation and management of fish;

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- (e) whether there has been compliance, while in the waters under national jurisdiction of any other State in the region, with the terms of any fisheries management agreement to which the Republic of the Marshall Islands is party and which is implemented in such other State; and
- (f) such other matters as it may deem appropriate.

25. Designated fisheries - fishery management and development plans.

(1) The Authority may authorise a fishery as a designated fishery where, having regard to scientific, economic, cultural, environmental and other relevant considerations, it is determined that the fishery:

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

(2) The Director shall prepare, keep under review and be responsible for the implementation of a plan for the management and development of each designated fishery in the fishery waters.

(3) The Director shall prioritise, prepare, keep under review and be responsible for the implementation of plans for the management and development of other fisheries in the fishery waters as may be practicable, with the objective of developing additional plans on an annual basis for all fisheries in the fishery waters.

- (4) Each fishery plan shall:
 - (a) identify the fishery resource and its characteristics, including its economic and social value and interrelationship with other species in the ecosystem;
 - (b) assess the present state of exploitation of the fishery resource and potential average annual yields;
 - (c) specify the objectives to be achieved in the management and development of the fishery;
 - (d) determine the maximum sustainable yield, taking into account the best information on all relevant biological, social, economic and other applicable factors;
 - (e)
 - (i) determine conservation and management measures taking into account the advice of any Local Government Council in relation to fish within five miles of the baseline from which the territorial sea is measured, and information described in the preceding subparagraphs;
 - (ii) where there is insufficient information and advice to determine conservation and management measures, identify a plan for determining such information and take appropriate interim measures, applying precautionary principles;
 - (f) specify the measures, if any, to be taken to promote the development of local fisheries;
 - (g) determine the amount of the fishery resource, if any, to be made available to licensed fishing vessels;
 - (h) specify the conservation and management measures to be enforced to protect the

fishery resource from over-exploitation;

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- (i) specify the research necessary to enhance management of the fishery;
 - (j) specify the information and other data required to be given or reported for effective management and development; and
 - (k) take into account any relevant traditional fishing methods or principles.
- (5) The Director shall, as appropriate, during the preparation of each fishery plan, carry out consultations:
- (a) with Local Government Councils, organisations, authorities and persons affected by the fishery plan; and
 - (b) wherever practicable with the appropriate fisheries management authorities of other countries in the region, and in particular with those sharing the same or interrelated stocks, with a view to ensuring the harmonisation of their respective fishery management and development plans.
- (6) In order to assess and recommend appropriate management, development and conservation measures for any fishery plan, the Director may reasonably require any person to furnish all relevant data and information, including fishing time and effort, landing, processing, sales and other related transactions.
- (7) Each fishery plan or review shall enter into force upon the written approval of the Authority.
- (8) Upon the approval of each plan, such regulations as may be necessary for its implementation shall be promulgated.

26. Conservation and management measures.

- (1) The Authority may take measures for the conservation and management of fish in the Fishery Waters. Such measures shall be based on a precautionary approach consistent with national and international standards applicable in the Republic of Marshall Islands, and shall include:
- (a) declaring an open or closed season for any specified area and for:
 - (i) any fish;
 - (ii) any period of time or all times;
 - (b) prohibiting the taking, from any area, of fish that are less or greater than a specified size or dimension;
 - (c) prohibiting the disturbance or interference with the breeding or nesting area of any fish in a specified area during any specified period of time;
 - (d) prohibiting the taking of fish from any area:
 - (i) by a specified method, gear, equipment or instrument;
 - (ii) by a specified class of persons;
 - (iii) by a specified class of vessels;
 - (e) prohibiting the landing, sale, display or offering for sale, transporting, receiving or possession of fish;
 - (f) prohibiting any fishing operation or activity related to fishing which may, in his or her opinion, have an adverse effect on the marine or aquatic resources;

- (g) declaring that any specified area is a protected area as a:

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- (i) marine park;
- (ii) marine reserve;
- (iii) site of special scientific or historic interest.

(2) The Director shall by written notice inform the relevant Local Government Council about any prohibition issued in respect of its waters.

(3) No person shall store or otherwise keep any fish taken in contravention of subsection (1) paragraphs (a), (b), (d) or (f) unless:

- (a) that person is in possession of a permit issued by the Director allowing such storage; or
- (b) a period of 5 days has not yet elapsed from the end of an open season or start of a closed season.

27. Protection of certain species.

(1) The Minister may, by proclamation, declare any fish as protected which are designated as endangered by international agreement on advice from the Director.

(2) The Authority may make regulations regarding the management of the species protected under this section.

28. Protection and promotion of artisanal fisheries.

The Authority may, in the implementation of this Act and after consultation with the appropriate Local Government Council, take such action as it deems necessary to protect and promote artisanal fisheries, including:

- (a) exempting indefinitely, or for such period of time as it may specify, such fisheries from any requirement concerning licensing and the payment of fees under this Act;
- (b) promoting the establishment and development of fishing, processing or marketing cooperative societies;
- (c) establishing reserved areas for artisanal fishing;
- (d) giving priority to artisanal fisheries in the allocation of fishing licences or quotas; and
- (e) such other action as it deems necessary for the protection and promotion of such fisheries.

29. Fisheries Exclusion Zone.

(1) The Authority may declare by regulation Fisheries Exclusion Zones for the purposes of designating an area for the exclusive or predominant use for subsistence artisanal and/or sport fishing.

(2) In declaring a Fisheries Exclusion Zone under subsection (1), the Authority shall have regard to the:

- (a) state of the resource;
- (b) sustainable use of the fishery;

- (c) benefits to the peoples of the Republic of the Marshall Islands; and
- (d) regional and international commitments.

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(3) Any person who engages in prohibited fishing in a fisheries exclusive zone commits an offense and upon conviction shall be fined not more than \$100,000.

30. Cooperation on high seas fishing for highly migratory fish stocks.

The Authority shall, in respect of highly migratory fish stocks which occur both in the Fishery Waters and in the high seas, and without prejudice to the sovereign rights of the Republic of the Marshall Islands within its Fishery Waters, have authority to cooperate with States fishing on the high seas in respect of such stocks for the purpose of achieving compatible conservation and management measures in accordance with the United Nations Agreement, and in so doing shall take into account:

- (a) the conservation and management measures adopted and applied in the Fishery Waters, and ensure that measures established in respect of such stocks for the high seas do not undermine the effectiveness of such measures;
- (b) previously agreed measures established and applied for the high seas in accordance with the United Nations Convention in respect of the same stocks by the Republic of the Marshall Islands and States fishing on the high seas;
- (c) previously agreed measures established and applied in accordance with the United Nations Convention in respect of the same stocks by a subregional or regional fisheries management organization or arrangement;
- (d) the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and the geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction;
- (e) the respective dependence of the Republic of the Marshall Islands and the States fishing on the high seas on the stocks concerned;
- (f) that such measures do not result in harmful impact on the living marine resources as a whole.

31. Consultation on international fisheries management.

(1) The Minister shall consult, as appropriate, with foreign governments and in particular with governments of countries sharing the same or interrelated stocks with a view to:

- (a) ensuring the closest practicable harmonisation or coordination of their respective fisheries management and development plans and regulations;
- (b) ensuring harmonisation in the collection of statistics, the carrying out of surveys and procedures for assessing the state of the fisheries resource in the region;
- (c) providing, as appropriate, for the formulation of regional fisheries management and development plans including monitoring, control and surveillance, for the allocation of fishing effort and catch among states sharing the same stocks, and for taking regional or joint conservation measures;
- (d) establishing, on a bilateral or regional level as appropriate, arrangements regarding fishing rights with other States in accordance with the provisions of the relevant Fisheries Management and Development Plan.

(2) Consultations under this section may be undertaken either directly with the Governments or persons concerned, or through existing appropriate regional or sub-regional
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organisations, or international agencies.

32. Fishing with poisons or explosives.

(1) No person shall:

(a) use, permit to be used or attempt to use any:

(i) chemical, poison or noxious substance or material whether of manufactured or natural origin;

(ii) dynamite or explosive substance or device,

for the purpose of killing, taking, stunning, stupefying or disabling fish or in any way rendering fish more easily caught;

(b) carry, permit to be carried, possess or control any:

(i) chemical, poison or noxious substance or material whether of manufactured or natural origin;

(ii) dynamite or explosive substance or device,

in circumstances which indicate the intention of its use for any of the purposes referred to in paragraph (a);

(c) place in the water or assist in placing in the water any:

(i) chemical, poison or noxious substance or material whether of manufactured or natural origin;

(ii) dynamite, or any explosive substance or device,

for any of the purposes referred to in paragraph (a).

(2) No person shall:

(a) land, display for sale, sell, deal in, transport, receive or possess any fish or fish product taken by any means which contravenes this section;

(b) knowing or having reasonable cause to believe that any fish or fish product has been taken in contravention of this section, fail or refuse to give, on request, to any authorized officer information regarding:

(i) any activity described in subsection (1), or any support of or contribution to such activity;

(ii) the source of his supply of any fish or fish product referred to in subparagraph (a) of this subsection.

(3) For the purposes of this section, the terms "poisonous", "chemicals" and "substance" include but are not limited to hypochlorous acid or any of its salts, including bleaches commonly sold under various trade names such as Clorox and Purex, and bleaching powders, preparations containing rotenone, tephrosin or plant material from *Barrington asiatica*, *coculus ferrandianus*, *hura crepitans*, *piscidia erythrina*, *tephrosia purpurea* and *wikstremia*.

(4) A person who contravenes subsection (1) or (2) commits an offense and upon conviction:

(a) in respect of subsection (1)-(a)(i), (b)(i) and (c)(i) and subsection (2):

(i) in respect of a citizen, shall be fined not more than \$10,000 or may be

- imprisoned up to three months, or both;
- (ii) in respect of a non-citizen or a citizen acting on behalf of a corporate
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entity, shall be fined not more than \$250,000 or may be imprisoned up to six months, or both;

- (b) in respect of subsection (1)-(a)(ii), (b)(ii) and (c)(ii):
 - (i) in respect of a citizen, shall be fined not more than \$20,000 or may be imprisoned up to six months, or both;
 - (ii) in respect of a non-citizen or a citizen acting on behalf of a corporate entity, shall be fined not more than \$500,000 or may be imprisoned up to six months, or both.

(5) In any proceedings for any offense against this section, a certificate in writing, issued under section 106, stating the cause of death or injury of any fish, shall be *prima facie* evidence of that fact.

(6) For the purposes of this section, any explosive, poison or other noxious substance found on board any fishing vessel shall be presumed to be intended for the purposes referred to in subsection (1)(a) of this section.

(7) All fish or fish products seized under this section shall be confiscated, and any vessel or vehicle used to transport such fish or fish products may be confiscated, and disposed of in such manner as the Director determines.

33. Limitations on taking turtles.

(1) No hawksbill turtles or sea turtles shall be taken or intentionally killed while on shore, nor shall their eggs be taken.

(2) No hawksbill turtle shall be taken or killed except for subsistence fishing and where its shell is at least twenty-seven inches when measured over the top of the carapace shell lengthwise.

(3) No green turtle shall be taken or killed except for subsistence fishing and where its shell is at least thirty-four inches when measured over the top of the carapace shell lengthwise.

(4) Notwithstanding any provisions of this section, the taking of sea turtles and their eggs shall be allowed for scientific purposes when specifically authorized by the Authority.

(5) No person shall buy, sell, display for sale, offer for sale or otherwise market any turtle or turtle product.

(6) Any person who contravenes subsections (1), (2), (3) or (5) commits an offense and upon conviction shall be fined not more than \$10,000 or may be imprisoned up to six months, or both.

34. Control of sponges.

(1) No sponges artificially planted or cultivated shall be taken or molested, except by permission of the Authority.

(2) Any person who contravenes subsection (1) commits an offense and upon

conviction shall be fined not more than \$10,000 or may be imprisoned up to six months, or both.

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35. Control of *pinctada margaritifera* (black-lip mother of pearl oyster shell).

(1) No *pinctada margaritifera*, commonly known as black-lip mother of pearl oyster shell, shall be taken from the first day of August to the thirty-first day of December inclusive; provided that at no time may any such shell be taken which is less than four inches in minimum diameter as measured across the nacre; and provided further that such shells of any size may be taken at any time for scientific purposes when specifically authorized by the Authority.

(2) Any person who contravenes subsection (1) commits an offense and upon conviction shall be fined not more than \$10,000 or may be imprisoned up to six months, or both.

36. Prohibition of harvesting trochus except during open season.

(1) Except as permitted by or under this Act, the taking or harvesting of trochus, or any intentional or reckless interference with the growth of trochus in the Fishery Waters is prohibited.

(2) The Authority may from time to time declare, in relation to any part of the Fishery Waters, an open season for trochus.

(3) A declaration under subsection (2) of this section shall be published widely in such ways as the Authority may direct.

(4) An open season with respect to any part of the Fishery Waters shall not exceed three months in any period of twelve months.

(5) The taking or harvesting of trochus is permitted in an open season only:

- (a) by a citizen living in an area in which he or she has, in accordance with customary law, a right to fish;
- (b) under a fishing licence issued by the Authority that specifically authorizes the taking or harvesting of trochus;
- (c) in respect of trochus whose shell is greater than three inches in diameter at the base, or such larger dimension as the Authority may require.

(6) The Director may at any time grant to any person a permit to remove and transport trochus from an area for the purpose of its introduction, transplanting or propagation in any other area, and no person shall remove or transport trochus for such purpose without a permit.

(7) If the Authority determines that any underwater operations, or proposed underwater operations, that will or may interfere with a trochus bed are in the public interest, the Director may grant a permit for the removal and transplanting of the bed at the expense of the person conducting or desiring to conduct the underwater operations.

(8) No person shall acquire, accumulate or hold trochus or any part thereof for the purpose of sale, marketing or export without a permit issued by the Director which states the maximum tonnage to be sold or exported and the period of time during which such export is permitted.

(9) Any person who contravenes subsection (1), (5), (6), or (8) commits an offense

and upon conviction shall be fined not more than \$10,000 or may be imprisoned up to six months, or both, and in addition shall be liable for the market value of any trochus or part thereof held at

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the time of seizure, and such trochus or part thereof shall be forfeited.

37. Introduction of fish into Fishery Waters.

(1) No person shall introduce any live fish into the Fishery Waters without a permit issued by the Director which includes quarantine approval.

(2) Any person who contravenes subsection (1) commits an offense and upon conviction shall be fined not more than \$10,000 or may be imprisoned up to six months, or both, and in addition shall be liable for the extent of damage which may be caused by diseases in the Fishery Waters as a result of the introduction of live fish.

38. Prohibition of removal of fish from nets, traps, etc.

(1) No person shall, within the Fishery Waters, remove a fish from a net, trap, pond, enclosure or storage device, unless he or she is the owner or is acting with the authority of the owner of such net, trap, pond, enclosure or storage device.

(2) No person shall destroy, damage or knowingly or intentionally impair the functioning of any net, trap, pond, enclosure or storage device which belongs to another person.

(3) A person who contravenes subsection (1) or (2) commits an offense and upon conviction shall be fined not more than \$5,000, or be imprisoned up to 3 months, or both, and in addition a person who contravenes subsection (2) shall be ordered to compensate the owner for the full amount of any such knowing or intentional impairment and lost fishing opportunity.

39. Protection of fish aggregating devices, artificial reefs, mooring buoys, floats, trays, etc.

(1) No person shall destroy, damage or take any part of a fish aggregating device, artificial reef, mooring buoy, float, tray or other device which belongs to another person or has been installed by the Authority or a Local Government Council.

(2) No person shall anchor or otherwise connect their vessel to a fish aggregating device, mooring buoy or float which belongs to another person or has been installed by the Government or a Local Government Council.

(3) No person shall, within the Fishery Waters, engage in fishing within 150 feet of a fish aggregating device or artificial reef belonging to another person unless he or she is a citizen resident in the area in which the fish aggregating device or artificial reef is deployed or located.

(4) Any person who contravenes subsection (1) (2) or (3) commits an offense and upon conviction shall be fined not more than \$5,000 or be imprisoned up to three months, or both, and in addition may be ordered to pay full compensation for the destruction, damage or theft of a fish aggregating device, artificial reef, mooring buoy, float, tray or any part thereof.

40. Protection of fishing vessel or gear.

(1) No person shall recklessly , knowingly or intentionally take, damage or destroy any fish, fishing vessel or fishing gear belonging to another person.

(2) Any person who contravenes subsection (1) commits an offense and upon con-
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viction shall be fined not more than \$5,000 or be imprisoned up to three months, or both, and in addition may be ordered to pay full compensation for the theft, damage to or destruction of such fishing vessel or gear.

41. Use or possession of prohibited fishing gear.

(1) No person shall use for fishing or have on board a vessel in the Fishery Waters:

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

(2) Any person who contravenes subsection (1) commits an offense and upon conviction shall be fined not more than \$250,000, except in the case of a driftnet where the fine shall be not more than \$1,000,000.

42. Prohibition of driftnet fishing activities.

(1) No vessel shall be used for driftnet fishing activities in the Fishery Waters.

(2) No vessel which holds a valid registration issued pursuant to the laws of the Republic of the Marshall Islands shall engage in driftnet fishing activities any place inside or outside the Fishery Waters.

(3) Where any fishing vessel is used in contravention of subsection (1) or (2) the owner, charterer and master each commits an offense and upon conviction shall be fined not more than \$1,000,000.

(4) The operator of any vessel which contravenes subsection (1) commits an offense and upon conviction shall be subject to a fine not exceeding \$500,000.

PART IV.

MANAGEMENT AND DEVELOPMENT OF LOCAL FISHERIES

43. Management and development of local fisheries.

(1) The Authority may take measures for the management and development of local fisheries including in internal waters and within five miles of the baseline from which the territorial sea of any atoll or island is measured.

(2) A Local Government Council may take measures for the management and development of local fisheries in its internal waters and within its waters up to five miles seaward of the baseline from which the territorial sea is measured, in accordance with this Act.

(3) Before any measures are taken pursuant to subsection (1), the Director shall

ensure that consultations are held with any Local Government Council affected by the proposed measures, and as appropriate convene public hearings.

(4) Each Local Government Council shall, as much as possible, cooperate in the development of local fisheries for the proper management and development of the fisheries resources for the benefit of the people of the Republic of the Marshall Islands.

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lopment of local fisheries for the proper management and development of the fisheries resources for the benefit of the people of the Republic of the Marshall Islands.

(5) Subject to subsections (1) and (3), each Local Government Council shall be responsible for the management, development and sustainable use, in accordance with this Act, of the reef and inshore fisheries within its waters, extending up to five miles seaward from the baseline from which the territorial sea is measured.

44. Duties of Local Government Councils in the management and development of fisheries.

(1) Each Local Government Council, in managing, developing and ensuring sustainable use of its waters, shall have the following duties;

- (a) preparation of fishery management plans, with the assistance and advice of the Authority, for any fishery in the municipal waters, consistent with any overall management plan or objective of the Authority;
- (b) recommend that the Authority promulgate regulations regarding:
 - (i) fishing operations;
 - (ii) the issuance of fishing licences or permits for the designated fishery;
- (c) adopt Ordinances, in accordance with this Act, for the management, development and sustainable use of the marine resources within its waters;
- (d) perform such other functions as may be delegated by the Authority.

45. Powers of a Local Government Council in the management and development of fisheries.

(1) A Local Government Council shall have the following powers in respect of its waters, and shall exercise them consistently with fisheries management and development measures or policy adopted by the Authority, and in accordance with this Act and relevant laws:

- (a) fisheries management, development and sustainable use, including the establishment of marine protected areas;
- (b) recommend to the Authority the declaration of a designated local fishery in accordance with section 47;
- (c) adopt Ordinances for fisheries management and development in accordance with sections 49 and 50;
- (d) issue fishing licenses for species which may also be licensed by the Authority in accordance with section 49;

(2) In exercising any of its powers, the Local Government Council shall first consult with the Director, who shall advise the Local Government Council if its proposed action is inconsistent with overall fisheries management or relevant laws or will be detrimental to any marine resource.

- (3) If any Local Government Council in exercising any of its powers:
 - (a) does not consult with the Director in accordance with subsection (2);
 - (b) consults with the Director in accordance with subsection (2), who advises the Local Government Council that its proposed action is inconsistent with overall fisheries management or relevant laws or will be detrimental to any marine resource, and the Local Government Council does not take such advice into account,

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source, and the Local Government Council does not take such advice into account,

any action taken by a Local Government Council in the exercise of such power shall have no force in law, and any Ordinance or other legal instrument applicable to or promulgated by a Local Government Council as the result of the exercise of such power shall be null and void.

46. Establishment of a local fisheries committee.

A Local Government Council may establish such local fisheries committee or other body as may be necessary to assist in carrying out its responsibilities under this Act.

47. Designated local fishery.

(1) A designated local fishery may be declared within the waters of a Local Government Council for purposes of delegating management responsibility to a Local Government Council in accordance with this Act.

(2) A fishery may, with the concurrence of the Local Government Council and the Authority, be declared a designated fishery in accordance with the following procedures.

- (a) (i) The Local Government Council may propose a designated fishery to the Director, who shall, after consultations as appropriate with persons who may be affected by such designation and others he may think fit, advise the Local Government Council in writing whether the proposal for a designated local fishery is approved by the Authority.
- (ii) Upon notification of the Director's approval, the Local Government Council shall proclaim by notice the designated local fishery.
- (b) (i) The Director may, after consultations as appropriate with the relevant Local Government Council, persons who may be affected and others he may think fit, request the Authority to proclaim a designated local fishery.
- (ii) Upon receiving such request from the Director and an indication of consensus pursuant to consultations, the Authority shall proclaim the designated fishery.

(3) Notice of designation shall include, but is not limited to:

- (a) a description of the fishery;
- (b) where appropriate, a description of the boundaries of the fishery or fishery area by reference to geographical coordinates, boundary markers or natural features;
- (c) the Local Government Council responsible for the management of the fishery;
- (d) where appropriate, the species or class of fish which is to be managed;
- (e) the date the designated local fishery takes effect.

48. Fishery management plan.

(1) A fishery management plan shall be prepared, with the assistance and advice of the Authority, for each designated local fishery and may be prepared for any other fishery in its waters by the relevant Local Government Council.

(2) A management plan shall include:

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- (a) a description of the fishery by reference to area, fish species, fishing methods and the present state of exploitation;
- (b) the objectives to be achieved;
- (c) an outline of the strategy to achieve these objectives;
- (d) a method for evaluating the effectiveness of the management plan;
- (e) a date to review the performance of the Local Government Council by the Authority.

(3) In addition to the requirements in subsection (2), a management plan may also include:

- (a) provision for permits or registration which may include but is not limited to boats, gear, fishermen or any other means of managing fishing;
- (b) provision for issuing permits for sport fishing or diving;
- (c) limitations to be applied to fishing operations;
- (d) allocation of permit fees, resource rent, catch or other benefit accruing from the use of the fishery.

(4) In preparing a review of a management plan, the Local Government Council has a duty to consult with all those who may be directly affected including traditional leaders, fishers and holders of traditional rights.

(5) Each management plan, and each review, shall be submitted for approval to the Authority, and shall be implemented upon such approval in writing.

49. Local Government Council Fisheries Management Ordinance.

(1) A Local Government Council may adopt an Ordinance for management, development or sustainable use of a fishery in its waters, hereafter "Fisheries Management Ordinance".

(2) A Fisheries Management Ordinance may:

- (a) provide for licenses to be required and issued in accordance with this Act and procedures described in section 50 for:
 - (i) fishing or any form of fishing operation;
 - (ii) fish cultivation or culture;
 - (iii) sport fishing;
 - (iv) diving;
- (b) prescribe the conditions and fees, if any, to be attached to any license issued by the Local Government Council;
- (c) prescribe requirements for license issuance, suspension or denial;
- (d) regulate or limit fishing operations and the conduct of fishing operations;
- (e) require the registration of fishers, boats and fishing gear;

- (f) allow closed or open seasons to be declared by resolution, indicating the requirements for adopting such a resolution and publication procedures;
- (g) provide for other matters consistent with the management plan.

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50. Procedures for Fisheries Management Ordinances.

(1) A Local Government Council intending to introduce a Fisheries Management Ordinance shall first consult with the Director or his designee and the Attorney General or his designee to determine whether it is consistent with fisheries management of the Authority, and appropriate for the fishery and marine environment.

(2) The Director and the Attorney General or their respective designees shall be invited to any public hearings which may be held by the Local Government Council prior to its deliberations.

(3) The proposed Ordinance and recommendations of the Director and Attorney General shall be submitted to the Local Government Council for approval, which shall only be given upon the recommendation of the Attorney General and Director.

51. Appeal to Mayor.

(1) Any person who is affected by any decision of a Local Government Council may appeal to the Mayor in writing within 30 days of the date of that decision.

(2) The Mayor shall, after consultation with the Local Government Council:

- (a) confirm, alter or reverse such decision;
- (b) inform, in writing, the Local Government Council of his decision and the effective date of that decision within 30 days of receiving the appeal.

52. Director's participation in Local Government Council meetings.

(1) The Director or his designee, or any Fisheries Officer shall be entitled to advise any Local Government Council and address any meeting of a Local Government Council.

(2) The Director may require a Local Government Council to convene a meeting of any of its members in order that he or his designee may address the members at a place, time and date as he may specify.

(3) Each Local Government Council shall:

- (a) ensure that the Director is informed of its actions and decisions in relation to fisheries management and development;
- (b) transmit to the Director copies of any resolutions, notices, declarations or other decisions taken in relation to fisheries management and development. Agencies.

PART V.

TRADE, COMMERCIAL SALE, EXPORT

53. Prohibition of trade in fish, fish products, or other marine resources.

(1) No person shall buy, sell, knowingly possess or otherwise trade in fish, fish products, or other marine resources obtained in contravention of this Act.

(2) Any person who contravenes subsection (1) commits an offense and upon conviction shall be fined not more than \$20,000, and in addition an amount equivalent to the current retail value of the fish, fish product or marine resource in the market for which it is

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destined, or be imprisoned up to six months, or both.

54. Commercial sale of endangered species.

(1) The Minister may, by proclamation, declare as endangered any fish which are designated as endangered by international agreement or by advice from the Board.

(2) No person shall land, display for sale, sell, deal in, transport, receive, buy or possess any fish declared as endangered in accordance with this section.

(3) Any person who contravenes subsection (2) commits an offense and upon conviction shall be fined not less than \$1,000 or not more than \$20,000, and in addition an amount equivalent to the current retail value of the fish or fish product in the market for which it is destined, or be imprisoned up to 6 months, or both.

55. Export of live fish, fish product or other marine resources.

(1) No person shall:

- (a) export any live fish, live rock or viable fish eggs or spawn taken from the Fishery Waters;
- (b) export any fish or fish product caught in the Fishery Waters, unless it is exported for personal consumption by immediate family members, does not exceed a total of 100 pounds and is not intended for commercial resale;

without prior written permission of the Authority, or as may be otherwise required by the Authority or prescribed by regulation.

(2) Any person undertaking activities in contravention of subsection (1) without written permission commits an offense and shall be fined not more than \$20,000, to which fine shall be added an amount equivalent to the current retail value of the fish or fish product in the market for which it is destined, or be imprisoned up to 6 months, or both.

PART VI.

FOREIGN AND DOMESTIC BASED FISHING AND RELATED ACTIVITIES

56. General Requirements.

(1) No person shall use a vessel for entering or remaining within the Fishery Waters in violation of any provision of this Act, any other law of the Republic of the Marshall Islands or an applicable access agreement unless the vessel is entering for innocent passage or *force majeure* in accordance with international law.

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

(3) Where any vessel is used in the contravention of subsection (1), the operator of that vessel commits an offence and upon conviction shall be fined not more than \$1,000,000.

(4) Where any person contravenes subsection (2), the operator of that vessel commits an offence, and shall be fined not more than \$500,000.

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57. Access agreement - required.

(1) No foreign or domestic-based fishing vessel shall be issued a license to fish in the Fishery Waters unless an applicable access agreement is in force, duly entered into by the Authority in accordance with this Act.

58. Fees for licenses for foreign fishing vessels and domestic based fishing vessels.

(1) Fees and other forms of compensation for the right to engage in fishing within the Fishery Waters by foreign and domestic based fishing vessels shall be established in access agreements entered into pursuant to section 57 of this Act.

(2) The Authority may accept all or a portion of the fee paid under an access agreement pending rebate under such conditions as the Authority may determine in writing or as may be prescribed by regulation, and when the Authority is satisfied that all conditions have been met.

(3) That portion of a fee that is subject to rebate shall be held in a separate trust account maintained by the Authority until the Authority determines whether the conditions have been met for rebate.

59. Access Agreement - term of validity.

(1) The term of validity of an access agreement shall not exceed ten years, and the length of the term shall be established taking into account the:

- (a) likely compliance with the access agreement and this Act;
- (b) potential economic benefits for the Republic of the Marshall Islands.

and such term may be renewable subject to the approval of the Authority based on the performance of the other party based on the above criteria and such other requirements as the Authority may determine.

(2) Any access agreement whose validity exceeds one year shall include provision for annual review by the Authority.

(3) Any access agreement may be terminated by the Authority, according to its terms or upon substantial non-compliance by the other party with any requirement of the access agreement or this Act.

(4) Fishing under any access agreement may be suspended by the Authority upon a determination by the Authority, based on the best scientific information in the region, that continued fishing at current levels would seriously threaten the fish stocks.

(5) If fishing is suspended under subsection (4), the Authority shall make every effort to accommodate the long-term interests of the party to the access agreement and shall rebate proportionately any fees paid for fishing during such suspension.

60. Access agreement - minimum terms.

All access agreements shall have the following minimum terms:

(1) The sovereign rights and exclusive fishery management authority of the Republic of the Marshall Islands within the Fishery Waters shall be recognized.

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- (2) The operator and each member of the crew shall comply with the applicable access agreement, this Act and all other applicable laws and regulations;
- (3) The operator shall:
 - (a) provide an authorized observer, while on board the vessel, at no expense, with officer level accommodation, food and medical facilities;
 - (b) meet the following costs of the authorized observer:
 - (i) full travel costs to and from the vessel;
 - (ii) salary; and
 - (iii) full insurance coverage;
 - (c) display any license or license number issued for any such vessel pursuant to this Act or any other documentation as required by the Authority to be displayed under any access agreement in the wheelhouse of such vessel;
 - (d) ensure that such position-fixing and identification equipment as may be required by the Authority shall be installed and maintained in working order on each vessel;
 - (e) ensure that the vessel is marked and identified in accordance with the Food and Agriculture Organization of the United Nations (FAO) approved Standard Specifications for the Marking and Identification of Fishing Vessels;
 - (f) ensure the continuous monitoring of the international distress and calling frequency 2182 khz (HF), or the international safety and calling frequency 156.8 Mhz (channel 16, VHF-FM) to facilitate communication with the fisheries management, surveillance and enforcement authorities;
 - (g) ensure that a recent and up to date copy of the International Code of Signals (INTERCO) is on board and accessible at all times;
 - (h) ensure that the vessel is seaworthy and contains adequate life safety equipment and survival gear for each passenger and member of the crew;
 - (i) ensure that, promptly upon direction by the Authority, each vessel will have installed, maintained and fully operational at all times on board a vessel a transponder in accordance with section 89 of this Act, and shall be responsible for all operational and maintenance costs of the transponder and cooperate fully with the Authority in their utilization;
- (4) The party to the access agreement shall:
 - (a) for the duration of the access agreement, appoint and maintain an agent resident in the Republic of the Marshall Islands or establish and maintain a company registered in accordance with the laws of the Republic of the Marshall Islands, authorized to receive and respond to any legal process issued in the Republic of the Marshall Islands with respect to the owner or operator of the vessel, and shall notify the Republic of the Marshall Islands of the name and address of such agent, and any communication, information, document, direction, request or response to or from that agent or company shall be deemed to have been sent to, or received from such owner or operator;
 - (b) not exceed any allocation which may be established in any given licensing period in accordance with this Act;

- (c) ensure compliance by each fishing vessel, its operator and crew members with the *Marine Resources Act 1997*

access agreement, all laws of the Republic of the Marshall Islands and the terms of the license;

- (d) ensure compliance by each fishing vessel, its operator and crew members with subregional and regional conservation and management measures for highly migratory fish stocks;
- (e) apply and enforce the relevant terms of any fisheries management agreement to which the Republic of Marshall Islands is party.

(5) Where the party to the access agreement is an association or other entity or person representing or otherwise acting on behalf of members or other persons, such association or entity or person shall be liable for the undischarged liabilities of its members or other persons arising out of:

- (a) operations in the Fishery Waters under the access agreement; and
- (b) the access agreement, including fees.

61. Fisheries management agreements.

(1) Fisheries management agreements may, at the Authority's discretion, include the following provisions, *inter alia*:

- (a) authorization of a person, body or organization to perform functions required by a multilateral access agreement, including but not limited to the allocation, issuance and denial of fishing licenses valid in the region or part thereof, including the exclusive economic zone;
- (b) an observer program;
- (c) fisheries monitoring, control and surveillance;
- (d) any other matter relating to fisheries management.

62. Implementation of multilateral access agreements, fisheries management agreements.

(1) For the purpose of implementing a multilateral access agreement or fisheries management agreement the Authority may in writing:

- (a) exempt any fishing vessel or class of fishing vessels holding a valid fishing license issued pursuant to a multilateral access agreement or fisheries management agreement from any requirement of this Act which is inconsistent with the terms of such agreement.
- (b) implement the establishment of closed areas, closed seasons and such other management measures as may be agreed pursuant to a fisheries management agreement;
- (c) authorize officers or observers designated pursuant to a fisheries management agreement to:
 - (i) enforce the provisions of this Act and any fisheries access agreement or fisheries management agreement on behalf of the Republic of the Marshall Islands; and
 - (ii) perform such duties and responsibilities as may be required by such agreement;

- (d) prescribe or otherwise require the conditions to be observed by operators of
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fishing vessels exempted under paragraph (a) of this subsection;

- (e) prescribe or otherwise require the conditions to be observed by citizens and operators of fishing vessels registered in the Republic of the Marshall Islands for fishing outside the exclusive economic zone, in accordance with any access agreement or fisheries management agreement to which the Republic of the Marshall Islands may be party;

(3) Standing in the High Court of the Republic of the Marshall Islands shall be afforded to any authorized officer or authorized observer designated under a fisheries management agreement entered into pursuant to subsection (1)(b) or (c) of this section to bring action against any person or fishing vessel for any act or offense that is actionable under the law of the Republic of the Marshall Islands is a violation of an access agreement or fisheries management agreement pursuant to which the officer or observer was authorized which has occurred in the Fishery Waters or the high seas, notwithstanding the nationality of the authorized officer or authorized observer.

63. Transhipment.

(1) The operator of a fishing vessel shall:

- (a) not tranship at sea under any circumstances;
- (b) provide 72 hours notice to the Authority of a request to tranship any or all of the fish on board and shall provide the name of the vessel, its international radio call sign, its position, the catch on board by species, the time and port where such transhipment is requested to occur and an undertaking to pay all fees required under the laws of the Republic of the Marshall Islands;
- (c) only tranship at the time and port authorized by the Director for transhipment; and
- (d) submit full reports on transshipping on such forms as may be required by the Authority or prescribed by regulation.

(2) During transhipment in the Fishery Waters the foreign party and operator of each vessel shall comply with all applicable laws relating to protection of the environment, including without limitation, sewage holding tank requirements.

**PART VII.
LICENSES, REGISTRATION**

64. Licenses may be required.

(1) The Authority may require by decision of the Board or by regulation any person or class of persons or vessel, fishing vessel or class of fishing vessels to hold a license issued by the Authority for activities described in section 65, in addition to the requirements in section 66 , but shall exempt from such requirement:

- (a) any fishing vessel which holds a valid and applicable license issued pursuant to a multilateral access agreement to which the Republic of the Marshall Islands is party and which designates a licensing authority outside the Republic of the Marshall Islands;

- (b) any citizen engaging in subsistence fishing.

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(2) The Director shall by written notice inform a Local Government Council if a regulation promulgated pursuant to subsection (1) applies to its waters.

(3) Any person who uses a vessel for which a license is required by the Authority under subsection (1) without a valid and applicable license or in contravention of its terms or conditions, commits an offense and upon conviction shall be fined not more than \$100,000 or be imprisoned up to six months, or both.

65. Activities subject to licences, authorization.

(1) The Director may issue licenses, in accordance with this Act, for the following activities in or associated with the Fishery Waters:

- (a) fishing;
- (b) transshipment, and other related activities;
- (c) mariculture or aquaculture;
- (d) the marketing and/or export of any fish or fish product taken from the Fishery Waters;
- (e) fish processing;
- (f) sport fishing;
- (g) commercial pilot fishing;
- (h) marine scientific research;
- (i) exploration and exploitation of non-living marine resources.

(2) The Director may issue licenses for fishing outside the Fishery Waters in respect of fishing vessels registered in the Republic of the Marshall Islands, in accordance with this Act, international law and any international convention or other instrument having legal force to which the Republic of the Marshall Islands is party.

66. Fishing licenses required for domestic-based and foreign fishing vessels.

(1) No person may use a domestic-based or foreign fishing vessel for fishing in the Fishery Waters without a valid and applicable license issued in accordance with this Act.

(2) The operator or any fishing vessel which is used in the contravention of subsection (1) commits an offense and upon conviction shall be liable to a fine not exceeding \$1,000,000.

67. License approval and issuance.

(1) The Authority shall be responsible for approving guidelines and/or promulgating regulations governing the issuance of licenses or authorizations pursuant to this Act.

(2) The Director or his designee shall be responsible for issuing all licenses or authorizations in accordance with this Act and guidelines issued under subsection (1), except for licenses which may be required by a Local Government Council unless so requested in writing by such Council.

- (3) The Director or his designee shall review each application submitted pursuant to

this Act, and may, in his discretion, solicit views from appropriate persons in the Local Government Councils and other stakeholders in the fisheries sector, and hold public hearings

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where necessary.

(4) Applications for licenses shall be in such form as the Authority may require or as may be prescribed, and shall specify, *inter alia*:

- (a) the name, call sign, country of registration number, regional register number, name and address of the operator, name of the vessel master, bank reference number;
- (b) the tonnage, capacity, gear type, processing equipment and such other pertinent information with respect to the characteristics of each vessel as the Authority may require;
- (c) if applicable, the access agreement under which such license is sought;

and such additional information as the Authority may require or as may be prescribed to implement and enforce the provisions of this Act.

(5) Licenses may be issued after application is made in accordance with this Act, and the required fee is paid.

(6) The Director may attach such conditions to a license as he thinks fit, and shall attach such terms and conditions as may be prescribed.

(7) The Authority may, by decision or regulation, require, *inter alia*:

- (a) a form and procedures for application for a license;
- (b) any conditions which may or shall be attached to a license;
- (c) criteria for renewal, refusal, suspension or cancellation of a license;
- (d) fees, royalties and other forms of payment for licenses;
- (e) period of validity of licenses;
- (f) requirements for the transfer of licenses;
- (g) offenses, fines and penalties.

68. License Denial.

(1) The Director shall notify the applicant of the decision to issue or deny a license within a reasonable time of the date of receipt of the application.

(2) The Director may approve the application on such terms and conditions and with such restrictions as he or she deems appropriate.

(3) A license, or its renewal, may be denied where:

- (a) the application is not in accordance with the requirements of this Act;
- (b) the Director is satisfied that information required to be given or reported under this title is false, incomplete or misleading;
- (c) the owner or charterer is the subject of proceedings under the bankruptcy laws of any jurisdiction or on reasonable grounds appears unable to meet any financial obligations which could arise from fishing activities and reasonable financial assurances determined by the Authority have not been provided;
- (d) the fishing vessel does not meet required safety standards;

- (e) the fishing vessel does not bear the required markings;
- (f) an operator of the vessel has contravened, or the vessel has been used for contravention of an access agreement, or has committed an offense against the

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- laws of the Republic of the Marshall Islands;
- (g) the Director determines that the issuance of a license would not be in the best interests of the Republic of the Marshall Islands.

(4) A license shall be denied:

- (a) where the application is made in respect of a foreign fishing vessel, and such vessel does not have good standing on the Regional Register of Foreign Fishing Vessels maintained by the South Pacific Forum Fisheries Agency;
- (b) where there has been a failure to satisfy a judgment or other final determination for breach of this Act or an access or fisheries management agreement entered into pursuant to this Act by the operator of the vessel in respect of which application for a license has been made, until such time as the judgment or other determination is satisfied, and provided that a subsequent change in ownership of a vessel shall not affect the application of this provision;
- (c) where the Director determines it would be inconsistent with management measures implemented in accordance with this Act;
- (d) where the required fees, royalties or other forms of compensation have not been paid in accordance with this Act and an applicable access agreement;
- (e) where the Director determines that insurance requirements of this Act and/or any applicable access agreement are not fulfilled;

(5) No license shall be issued:

- (a) authorizing fishing by foreign or domestic based vessels on, over or within one nautical mile of the edge of a coral reef that is wholly submerged at mean high tide within the Fishery Waters;
- (b) authorizing fishing using a driftnet or other substantially similar method of catching fish;
- (c) authorizing driftnet fishing activities.

(6) If the Director denies an application submitted by an applicant, he shall notify such applicant of the denial and the reasons therefor. The applicant may then submit a revised application taking into consideration the reasons for disapproval. The decision of the Director will then be final and binding.

69. Suspension, revocation or imposition of conditions or restrictions on a license.

If any fishing vessel for which a license has been issued pursuant to this Act has been used in the commission of any act prohibited by this Act or other applicable law, an applicable access agreement, or any license issued in accordance with this Act, or if any fee or civil penalty, criminal fine or other determination imposed under this Act has not been paid within 30 days of the due date, the Director shall:

- (a) revoke such license with or without prejudice to the right of any party involved to be issued a license for such vessel in any subsequent licensing period;
- (b) suspend such license for a period of time it may deem appropriate; or

- (c) impose additional conditions or restrictions on any such license.

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70. Licenses - Period of Validity.

(1) Subject to subsection (2) and unless otherwise prescribed in accordance with this Act, every license issued or renewed under this Act shall, unless previously terminated, revoked or suspended in accordance with this Act, be valid for a period of one year, or such lesser period as may be specified, and shall not extend beyond the period of validity of an applicable charter agreement or access agreement.

(2) A license issued or renewed under this Act shall only be valid for the species of fish, the type of fishing gear or method of fishing, or such other activity in accordance with this Act, as may be specified in the license.

(3) Where a fishing vessel which is issued a license as a local fishing vessel or a domestic based fishing vessel becomes a foreign fishing vessel, the license shall automatically terminate.

(4) A license issued under this Act may be transferred in accordance with such conditions as may be prescribed by regulation or otherwise required by the Authority.

71. Licensing Period.

(1) The Authority shall establish an annual licensing period.

(2) The Authority shall determine the procedures for issuing and renewing licenses during such licensing period.

72. Fees and charges.

(1) There shall be payable in respect of every license issued under this Act fees, royalties or other forms of compensation, and a registration charge may also be payable upon application.

(2) The Authority shall determine the fees, royalties or other forms of compensation for licenses issued pursuant to this Act, and other charges it may require in relation to license administration.

(3) In determining the level of fees, royalties or other forms of compensation for licenses for fishing and related activities, the Board shall take the following, inter alia, into account:

- (a) the value of the fish species being sought;
- (b) the quantity of the species sought;
- (c) the efficiency of the gear;
- (d) alternative uses of the fishery resources;
- (e) the cost of fishery management and development;
- (f) the cost of observers;
- (g) the development of the local fishery sector; and
- (h) the cost of fisheries research, administration and enforcement.

(4) Licence fees may be classified, inter alia, according to the value of species sought, and the length overall, gross tonnage, type of gear or other method related to the harvesting potential of the vessel or fishing gear.

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(5) In determining the fees for marine scientific research, the Authority shall take into account a research plan submitted by the applicant, and the long term value of such research to the management and development of any fishery in the exclusive economic zone.

(6) No license shall be issued pursuant to this Act unless the requisite fees, royalties, charges and other forms of compensation have been paid in accordance with this Act and an applicable access agreement.

73. Observation of laws.

(1) Any license issued or authorization given under this Act shall not exempt a person from any legitimate requirement of a Local Government Council, or from any other law in force in the Republic of the Marshall Islands.

74. Reporting requirements.

(1) The operator of each foreign and domestic based fishing vessel issued a permit or which is permitted to fish pursuant to an access agreement, and such other fishing vessels as the Authority may require, shall make such reports which may be required by the Authority, which shall include:

- (a) at all times while the vessel is in the Fishery Waters, causing to be maintained in the English language in ink a fishing log in a form supplied or approved by the Authority, and shall enter the following information relating to the activities of the vessel on a daily basis:
 - (i) the gear type used;
 - (ii) the noon position of the vessel and, where applicable, the set position and time or the number of hooks and sea surface temperature;
 - (iii) the species of fish taken and the size and quantity of each species by weight or number as may be specified in the form;
 - (iv) the species of fish returned from the vessel to the sea, the reason for discard, the quantity of each species by weight or number as may be specified in the form;
 - (v) such other information as the Authority may require or prescribe by regulation, or as may be required by an applicable access agreement or fisheries management agreement;
- (b) reporting information in a format approved or supplied by the Authority, by telex or facsimile relating to the position of, and catch on board, the vessel at the following times:
 - (i) at least 24 hours prior to the estimated time of entry into and departure from the exclusive economic zone;
 - (ii) each Wednesday while in the exclusive economic zone;
 - (iii) at least 24 hours prior to the estimated time of entry into or departure from port; and
 - (iv) upon entry and departure from a closed area;
- (c) ensuring that any information or data which may be required to be transmitted by a transponder is transmitted continuously, accurately and effectively to the designated receiver;

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- (d) providing such daily information relating to high seas fishing during the course of a fishing trip involving fishing in the Fishery Waters as and in the form the Authority may require pursuant to any fisheries management agreement and to give effect to the duty in international law to cooperate in the conservation and management of highly migratory fish stocks;
 - (e) certifying that information provided pursuant to subparagraphs (a) - (c) is true, complete and accurate.
- (2) The operator referred to in subsection (1) shall provide reports required under subparagraphs (a) and (d) and post the requisite forms to the Authority by registered airmail within fourteen days following the date of completion of the off-loading operation.
- (3) The Authority may require, by written notice or regulation, such other reports in respect of any vessel as may be necessary:
- (a) for the conservation and management of marine resources, including for related activities;
 - (b) to implement or enforce the provisions of this Act and any access agreement or fisheries management agreement.
- (4) Any person who contravenes subsection (1) or (2) commits an offense and upon conviction shall be fined not more than \$10,000 or be imprisoned up to six months, or both.

75. Marine scientific research.

- (1) No person shall, without a license issued by the Director:
 - (a) undertake marine scientific research in the Fishery Waters;
 - (b) take samples from the Fishery Waters for the purposes of marine scientific research.
- (2) A license for purposes described in subsection (1) shall only be issued to a person or persons engaged in bona fide scientific research as demonstrated by their employment by, affiliation with or sponsorship by a duly constituted governmental agency, an accredited educational organization or other recognized scientific research institution.
- (3) Any person or entity undertaking marine scientific research in the Fishery Waters shall:
 - (a) submit such information to the Director or his designee as may be requested or as may be prescribed by regulation, including a copy of all records and reports of activities of the vessel in the Fishery Waters, and a final report including full conclusions upon completion of the research;
 - (b) be accompanied by and train such observer, fisheries officer or other person or persons the Director may assign during the research at no expense to the Government.
- (4) The harvest of any marine life from the Fishery Waters not required for further research purposes shall be donated to the Authority for distribution to government institutions or charitable organizations or otherwise disposed of pursuant to the terms of the license.
- (5) Any person who contravenes subsections (1), (3) or (4) commits an offense and

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upon conviction shall be fined not more than \$250,000.

76. Fishing plans.

(1) The Authority may require fishing plans to be attached to the application for a license, and shall require plans in respect of applications for mariculture, exploratory fishing and marine scientific research licenses, including but not limited to the information required in subsections (2), (3) and (4).

- (2) The plan for mariculture or aquaculture shall include the following:
 - (a) a description of the site by reference to area, fish species and cultivation methods;
 - (b) the objectives to be achieved in the plan;
 - (c) the means by which these objectives are to be achieved by outlining the strategy to be followed;
 - (d) performance criteria or other means of evaluating the effectiveness of the plan;
 - (e) an Environmental Impact Assessment of the proposed development;
 - (f) evidence of consultation with all those who may be directly affected including the Local Government Council exercising jurisdiction over the area of the designated fishery;
 - (g) any applicable evidence of entitlement to the intended site, including ownership, a lease or the agreement of any resource owner, for the area to be used for mariculture;
 - (h) any applicable evidence of a license or agreement of any Local Government Council for mariculture or aquaculture within the area of its fishery.
- (3) The plan for commercial pilot fishing shall include the following:
 - (a) a description of the fishery by reference to area, fish species, fishing methods and the present state of exploitation;
 - (b) the objectives to be achieved in the commercial pilot fishing or research plan;
 - (c) the means by which these objectives are to be achieved by outlining the strategy to be followed;
 - (d) performance criteria or other means of evaluating the effectiveness of the plan;
 - (e) the limitations, if any, to be applied to fishing operations;
 - (f) the schedule for regularly reporting its findings to the Director.
- (4) The plan for marine scientific research shall include the following:
 - (a) a description of the marine scientific research to be undertaken, qualifications of each person involved and a description of the equipment to be used;
 - (b) the objectives to be achieved;
 - (c) performance criteria or other means of evaluating the effectiveness of the research plan;
 - (d) any effect the marine scientific research may have on the waters of a Local Government Council and resources therein, including any resources which may be taken during the course of the research;
 - (e) the limitations, if any, to be applied to the scope of the research;
 - (f) the schedule for regularly reporting its findings to the Director.

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77. Mariculture and aquaculture.

(1) Mariculture and aquaculture operations shall be carried out in accordance with such conditions as may be required by the Director or otherwise prescribed, including those relating to:

- (a) the quality, control and use of water;
- (b) land or marine use and siting of aquaculture or mariculture facilities;
- (c) fish species to cultivate;
- (d) construction of ponds;
- (e) pollution and related matters;
- (f) importation of live fish;
- (g) protection against poaching;
- (h) dangerous chemicals.

78. Registration of fishers and fishing vessels.

(1) The Authority may, by regulation, require that any fisher or class of fishers, or any vessel or class of vessels be registered with the Authority.

(2) Where a regulation has been issued under subsection (1), the Director shall maintain a register.

79. Fishing or other activity without or in contravention of a license prohibited.

(1) Where a person or vessel engages in fishing or any other activity described in this Chapter for which a license is required, without a license or in contravention of any of its terms or conditions, that person, or, in the case of a vessel, the operator commits an offense and upon conviction shall be fined:

- (a) in respect of a citizen not acting on behalf of a business enterprise, not less than \$500 and not more than \$10,000, or imprisonment up to 3 months, or both;
- (b) in respect of all others, or a person or persons acting for a business enterprise, not less than \$5,000 and not more than \$750,000,

and such person shall not be permitted to engage in fishing or the relevant activity, or if a license has been issued it will be suspended, for a period of at least three months from the date of conviction.

(2) Each day of a continuing violation under this section shall be considered a separate offense.

(3) Where an offense against this Act has been committed by any person or board or employed on a fishing vessel, the master of the fishing vessel shall also be guilty of the same offense and shall be subject to applicable fines and penalties.

(4) The provisions of this section shall not apply to a person who is exempt from obtaining a license under this Act.

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**PART VIII.
MONITORING, CONTROL AND SURVEILLANCE**

80. Enforcement Responsibility.

(1) The Authority shall have primary responsibility for fisheries enforcement, including:

- (a) monitoring, control and surveillance of all fishing operations within the Fishery Waters; and
- (b) the enforcement of this Act.

(2) The Authority shall, as appropriate, involve participation by relevant Government departments or offices in fisheries enforcement.

(3) The Authority may authorize other entities, officials or persons to perform fisheries enforcement functions.

81. Appointment of Authorized Officers.

(1) The Authority may, after consultation with the Attorney General, appoint in writing any person or class of persons as authorized officer for the purposes of enforcing this Act and such persons shall exercise all powers and privileges accorded by this Act.

(2) For all surveillance and enforcement duties and obligations provided under this Act and all other duties provided under this Act, except any duties arising from the licensing and reporting requirements of this Act, police officers of the Department of Public Safety are deemed to be authorized officers;

(3) Any person or class of persons appointed as authorized officer in accordance with an access agreement, a fisheries management agreement or similar cooperative arrangement to which the Republic of the Marshall Islands is party, who is not a citizen or has not been appointed in accordance with subsection (1), shall have such rights and privileges of a citizen as may be necessary for the performance of his or her duties, and all provisions of this Act relating to authorized officers shall be applicable to such persons.

(4) Any person or class of persons appointed as authorized officers pursuant to subsection (2) may perform duties which include:

- (a) for an authorized officer of the Republic of the Marshall Islands, to perform fisheries surveillance and law enforcement functions on behalf of the Republic of the Marshall Islands while on board a vessel or aircraft of another party; and
- (b) for an authorized officer of another party to such agreement, to perform fisheries surveillance and law enforcement functions on behalf of the Republic of the Marshall Islands while on board the vessel or aircraft of that other party,

and all provisions of this Act relating to authorized officers shall be applicable to such persons carrying out their duties in the areas of national jurisdiction of the Republic of the Marshall Islands.

- (5) Any authorized officer is deemed to be an authorized inspector for purposes of the

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United Nations Agreement.

82. Powers of Authorized Officers.

- (1) For the purposes of enforcing this Act, any authorized officer may:
 - (a) stop, board, remain on board and search any vessel in the Fishery Waters he or she reasonably believes is a fishing vessel, and any fishing vessel registered under the laws of the Republic of the Marshall Islands outside the Fishery Waters, and stop and search any vessel, vehicle or aircraft he or she reasonably believes may be transporting fish or engaging in other activities relating to fishing;
 - (b) require the master or any crew member or other person aboard to inform him of the name, call sign and country of registration of the vessel and the name of the master, owner, charterer and crew members;
 - (c) examine the master or any crew member or other person aboard about the cargo, contents of holds and storage spaces, voyage and activities of the vessel;
 - (d) make such examination and inquiry as may appear necessary to him concerning any vessel, vehicle or aircraft in relation to which any of the powers conferred by this subsection have been or may be exercised and take samples of any fish or fish product found therein;
 - (e) require to be produced, examine and take copies of any license, logbook, record or other document required under this Act or concerning the operation of any vessel, vehicle or aircraft;
 - (f) make an entry dated and signed by him or her in the logbook of such vessel, vehicle or aircraft;
 - (g) require to be produced and examine any fish, fishing gear or appliance or explosive, poison or other noxious substance;
 - (h) give directions to the master and any crew member of any vessel, vehicle or aircraft stopped, boarded or searched as may be necessary or reasonably expedient for any purpose specified in this Act or to provide for the compliance of the vessel, vehicle or aircraft, or master or any crew member with the conditions of any license;
 - (i) endorse any license; and
 - (j) arrest any person who assaults him or her in the exercise of his or her duties under this Act.
- (2) Where an authorized officer has reasonable grounds to believe an offense against this Act is being or has been committed, he or she may without a warrant:
 - (a) enter, inspect and search any premises, other than premises used exclusively as a dwelling-house, in which he or she has reasonable grounds to believe an offense has been or is being committed or fish taken illegally are being stored;
 - (b) stop, enter and search and stay in or on any vehicle or aircraft which he or she reasonably suspects of transporting fish or fish products;
 - (c) take samples of any fish found in any vessel or vehicle inspected or any premises searched under this Act;

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- (d) following hot pursuit in accordance with international law and commenced within the fishery waters, stop, board and search outside the Fishery Waters any fishing vessel which he or she has reasonable grounds to believe has been used in the commission of such offense, exercise any powers conferred by this Act in accordance with international law, and bring such vessel and all persons and things on board within the Fishery Waters;
 - (e) seize:
 - (i) any vessel (including its fishing gear, equipment, stores and cargo), vehicle, fishing gear, nets or other fishing appliances or aircraft which he or she has reasonable grounds to believe has been or is being used in the commission of such offense or in respect of which the offense has been committed;
 - (ii) any fish or fish products which he has reasonable grounds to believe have been caught in the commission of an offense or are possessed in contravention of this Act;
 - (iii) any logs, charts or other documents required to be maintained by this Act or under the terms of any licence or other authorisation or which he or she has reasonable grounds to believe show or tend to show, with or without other evidence, the commission of an offense against this Act; and
 - (iv) any thing which he or she has reasonable grounds to believe might be used as evidence in any proceedings under this Act;
 - (f) arrest any person whom he or she has reasonable grounds to believe has committed an offense against this Act.
- (3) An authorized officer may, in arresting any person or fishing vessel which he or she has reasonable grounds to believe has done any act in contravention of this Act:
- (a) use such force as is reasonably necessary in the circumstances to effect the arrest;
 - (b) call upon such person or persons as may be necessary to render assistance in enforcement activities for such time as he may require, and duties owed to authorized officers under this Act shall be owed to such person or persons while acting at the request and under the instructions of such authorized officer.
- (4) A written receipt shall be given for any article or thing seized under this section and the grounds for such seizure shall be stated in such receipt.
- (5) Any person arrested without a warrant under this section shall be taken to a police station and dealt with in accordance with law.
- (6) An authorized officer may, for the purposes of enforcing this Act, with or without a warrant or other process:
- (a) execute any warrant or other process issued by any court of competent jurisdiction; and
 - (b) exercise any other lawful authority.

83. Requirements for seized vessels, etc.

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

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

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

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

(5) The authority which seized the vessel shall be responsible for its custody until final judgment or other determination, unless the Attorney General directs otherwise.

84. Removal of parts from seized vessels, etc.

(1) An authorized officer may remove any part or parts from any seized vessel, vehicle or aircraft held in the custody of the Government for the purpose of immobilising that vessel, vehicle or aircraft.

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

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

(4) Any person who contravenes subsection (3) commits an offense and shall be fined not more than \$20,000 or may be imprisoned up to six months, or both.

85. Appointment of authorized observers

(1) The Director may appoint in writing any person to be an authorized observer for the purposes of this Act.

(2) Any observer authorized pursuant to an access agreement or fisheries management agreement to which the Republic of the Marshall Islands is party, who is not a citizen or has not been appointed in accordance with subsection (1), shall have such rights and privileges of a citizen as may be required for the performance of his or her duties, and all provisions of this Act relating to authorized observers shall be applicable to such persons.

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86. Duties to authorized observers.

(1) Any person on board any vessel with a valid and applicable license issued or recognized pursuant to this Act shall permit any authorized observer to board and remain on such vessel for the purposes of carrying out his or her duties and functions.

(2) The operator and each member of the crew of such vessel shall allow and assist any authorized observer to carry out all his or her duties and functions, including to:

- (a) board such vessel for scientific, compliance monitoring and other functions, at such time and place as the Director may require;
- (b) have full access to and the use of facilities and equipment on board the vessel which the authorized observer may determine is necessary to carry out his or her duties, including:
 - (i) full access to the bridge, navigation charts, fish on board and areas which may be used to hold, process, weigh and store fish;
 - (ii) full access to the vessel's records, including its logbooks and documentation for the purposes of records inspection and copying;
 - (iii) full access to fishing gear on board;
 - (iv) reasonable access to navigation equipment and radios;
- (c) take and remove from the vessel reasonable samples for the purposes of scientific investigation, and other relevant information;
- (d) take photographs of the fishing operations, including fish, fishing gear, equipment, charts and records, and remove from the vessel such photographs or film as he or she may have taken or used on board the vessel;
- (e) send or receive messages by means of the vessel's communications equipment;
- (f) carry out all duties safely;
- (g) disembark at such time and place as the Director may require or in accordance with an applicable access agreement.

(3) The operator shall provide the authorized observer, and any authorized officer forced by circumstances to stay on board the vessel for a prolonged period of time, while on board the vessel, at no expense, with food, accommodation and medical facilities equivalent to that accorded to officers.

(4) In addition to the requirements of subsection (3), the Authority may require the operator to pay in full the following costs of the authorized observer:

- (a) travel costs to and from the vessel;
- (b) such salary as may be notified by the Director, being the full amount of such salary;
- (c) full insurance coverage.

(5) Any operator of any vessel with a valid license issued under this Act shall allow and assist any authorized observer to have full access to any place within the Republic of the Marshall Islands where fish taken in the fishery waters is unloaded or transhipped, to remove reasonable samples for scientific purposes and to gather any information relating to fisheries in the fishery waters.

(6) Any person who contravenes subsection (1), (2), (3) or (5) commits an offense and

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upon conviction the shall be fined not more than \$50,000 or be imprisoned for up to six months, or both.

87. Duties to Authorized Officers and Authorized Observers.

(1) The master and each crew member of any fishing vessel, the driver of any vehicle and the pilot and crew of any aircraft shall immediately comply with every instruction or direction given by an authorized officer or authorized observer as appropriate, and facilitate safe boarding, entry and inspection of the vessel, vehicle or aircraft and any fishing gear, equipment, records, fish and fish products.

- (2) Every person commits an offense who:
- (a) assaults, obstructs, resists, delays, refuses boarding to, intimidates or fails to take all reasonable measures to ensure the safety of or otherwise interferes with an authorized officer, or authorized observer in the performance of his or her duties;
 - (b) incites or encourages any other person to assault, resist or obstruct any authorized officer or authorized observer while carrying out his or her powers or duties, or any person lawfully acting under the authorized officer's orders or in his or her aid;
 - (c) uses threatening language or behaves in a threatening or insulting manner or uses abusive language or insulting gestures towards any authorized officer or authorized observer while in the execution of his or her powers of duties, or any person lawfully acting under an authorized officer's orders or in his or her aid;
 - (d) fails to comply with the lawful requirements of any authorized officer or observer;
 - (e) fails to take all reasonable measures to ensure the safety of an authorized officer or authorized observer as appropriate in the performance of his or her duties.
 - (f) furnishes to any authorized officer or authorized observer any particulars which, to his knowledge are false or misleading in any respect;
 - (g) personates or falsely represents himself or herself to be an authorized officer or authorized observer or who falsely represents himself or herself to be a person lawfully acting under an authorized officer's orders or in his or her aid;
 - (h) personates or falsely represents himself or herself to be the master or other officer of a fishing vessel;
 - (i) resists lawful arrest for any act prohibited by this Act;
 - (j) interferes with, delays or prevents by any means, the apprehension or arrest of another person having reasonable grounds to believe that such person has committed an act prohibited by this Act;
 - (k) is in breach of any other duty to an authorized officer or authorized observer required under this Act;

and upon conviction shall be fined not more than \$100,000 and may be imprisoned up to six months, or both.

(4) For the purposes of subsection (2), any person who does not allow any authorized officer, or any person acting under his or her orders or in his assistance, or an authorized observer

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

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(5) Every person who, being a master, owner, charterer, agent or company established under the laws of the Republic of the Marshall Islands of a fishing vessel which transports an authorized officer, inspector or observer outside the fishery waters and causes him or her to disembark outside the territory or jurisdiction of Republic of the Marshall Islands, commits an offense and shall be jointly and severally liable on conviction to a fine not exceeding \$50,000 plus all costs of repatriation including board and lodging while out of Republic of the Marshall Islands and direct transportation to Republic of the Marshall Islands.

88. Identification of authorized officers and authorized observers.

An authorized officer or authorized observer, when exercising any of the powers conferred by this Act, shall on request produce identification to show he or she is an authorized officer or authorized observer under this Act.

89. Transponders may be required.

(1) The Authority may require as a condition of fishing in the Fishery Waters that the operator of any vessel:

- (a) installs on such vessel at its own expense a transponder designated by the Authority;
- (b) maintains such transponder in good working order at all times while in the fishery waters or such other area as may be agreed or designated.

(2) Any machine:

- (a) aboard a vessel automatically feeding or inputting position fixing information or data into a transponder shall be judicially recognised as notoriously accurate;
- (b) used in conjunction with a transponder for the purpose of ascertaining or obtaining information or data need not be judicially recognised as notoriously accurate.

(3) All information or data obtained or ascertained by the use of a transponder, shall be presumed, unless the contrary is proved, to:

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

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

(4) The presumption in subsection (3) shall apply whether or not the information was stored before or after any transmission or transfer.

(5) Any person may give a certificate stating:

- (a) his or her name, address and official position;
- (b) he or she is competent to read the printout or visual display unit of any machine capable of obtaining or ascertaining information from a transponder;

- (c) the date and time the information was obtained or ascertained from the transponder and the details thereof;
- (d) the name and call sign of the vessel on which the transponder is or was located as known to him or her or as ascertained from any official register, record or other *Marine Resources Act 1997*

document; and

- (e) a declaration that there appeared to be no malfunction in the transponder, its transmissions or other machines used in obtaining or ascertaining the information.

(6) Section 107 shall apply to a certificate given under this section as if it had been a certificate given under section 106 and any reference therein to section 106 shall be read as a reference to this section.

(7) Any person who intentionally, recklessly or unintentionally destroys, damages, renders inoperative or otherwise interferes with a machine aboard a vessel which automatically feeds or inputs information or data into a transponder, or who intentionally feeds or inputs information or data into a transponder which is not officially required or is meaningless commits an offense and upon conviction shall be fined not more than \$100,000 or may be imprisoned up to six months, or both.

PART IX. MISCELLANEOUS

90. Information and documentation to be true, complete and accurate.

(1) Every person shall promptly give any information required under this title, including records of any kind and information requested by an authorized officer or other officer or official carrying out duties under this title.

(2) Any information required under this title shall be true, complete and accurate, and the Director shall be notified immediately of any change in circumstances which has the effect of rendering any such information or documentation false, incomplete or misleading.

(3) Any permit, registration or other document required to be obtained under this title shall be obtained and held in its original, complete and accurate form as required under this title, and no such document shall be altered after its issuance or used by any person other than its legal holder.

(4) Any person who contravenes subsections (1) (2) or (3) commits an offense and upon conviction shall be fined not more than \$10,000, or be imprisoned up to six months, or both.

91. Stowage of Gear.

(1) All fishing gear on board any fishing vessel in any place the Fishery Waters where it is not permitted to fish or which has taken its allocation of fish, shall be stowed in such a manner as it shall not be readily available for use for fishing or as may be prescribed.

(2) The operator of any fishing vessel used in contravention of subsection (1) commits an offense and upon conviction shall be fined not more than \$100,000.

92. Fish samples.

(1) Any person in possession or apparent possession of any fish or fish products shall, when requested by any authorized officer or authorized observer to take fish samples, immediately give such reasonable samples as may be required for the purposes of this Act without payment of any kind for such samples.

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(2) Any person who contravenes subsection (1) commits an offense and upon conviction shall be fined up to \$5,000 or be imprisoned up to three months, or both.

93. Contamination of the Fishery Waters.

(1) No person shall directly or indirectly contaminate the Fishery Waters in any way, including by the discharge of any substance or by any act or omission that is likely to cause damage to or deterioration in the quality of the marine resources.

(2) For the purposes of this section, the following is presumed to cause damage to or deterioration in the quality of the marine resources:

- (a) non-biodegradable trash or debris;
- (b) the discharge of a poison, chemical or noxious substance, including but not limited to oil, petroleum, solvents, metals or sewage;
- (c) the introduction of disease to the Fishery Waters.

(3) Any person who contravenes subsection (1) commits an offense and upon conviction shall be fined up to \$500,000 and in addition the Court may order that such person shall be liable for the costs of any clean-up or damage arising from such contamination.

94. Liability of Operator.

In any proceedings under this title, the act or omission of any crew member of a fishing vessel or in association with a fishing vessel shall be deemed to be that of the operator of that fishing vessel.

95. Civil liability of officers of companies.

(1) Except as further provided in this section, each officer of a partnership, corporation, firm, company or any other business enterprise engaged in activities governed by this title shall be personally liable for any violation of or offense committed under this title by any member or employee.

(2) It shall be an affirmative defense to liability under this section for the officer to prove by a preponderance of the evidence that he or she used due diligence to secure compliance with the title or that the violation or offense was committed without that officer's knowledge, consent, collusion or collaboration.

96. Application of other laws.

No permit issued under this title shall relieve any fishing vessel or its operator or crew of any obligation or requirement imposed by other laws, including those concerning navigation, customs, immigration or health, unless so indicated in those laws.

97. Application of laws of other States.

(1) It shall be unlawful for any person to import, export, transport, sell, receive, acquire or purchase any fish or fish product taken, possessed, transported or sold in violation of any law or regulation of another State upon implementation, on a reciprocal basis, of a fisheries management agreement between the Government and such other State or States, in which such activities are agreed to be unlawful.

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(2) The Authority shall implement the fisheries management agreement described in subsection (1) by regulation, and may require, *inter alia*, record keeping and reporting for each day of fishing activity, whether the fishing took place in the jurisdiction of the Fishery Waters or not.

98. Subsequent offenses.

Any person who commits the same offense against this Act more than once shall:

- (a) be required to pay the maximum fine required under this Act for the second and any subsequent offenses;
- (b) have any applicable license or permit suspended for a period up to six months.

99. Banning Order.

In addition to any other fine or penalty provided under this Act, the Court may order any person to be banned from fishing in the Fishery Waters for a period up to three years if that person has committed multiple offenses against this Act.

**PART X.
JURISDICTION, LEGAL PROCEEDINGS AND EVIDENCE**

100. Jurisdiction of the Court.

(1) Any act or omission in contravention of any of the provisions of this Act committed:

- (a) by any person within the Fishery Waters;
- (b) outside the Fishery Waters by any citizen or person ordinarily resident in Republic of the Marshall Islands; or
- (c) by any person on board any fishing vessel registered in the Republic of the Marshall Islands;

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

(2) Where an authorized officer is exercising any powers conferred on him outside the fishery waters in accordance with this Act, any act or omission of any person in contravention of any of the provisions of this Act, shall be deemed to have been committed within the Fishery Waters.

(3) Notwithstanding any provision of any other law of Republic of the Marshall Islands, an information or complaint in respect of any offense against this Act may be filed at any time within two years of the commission of the offense.

(4) The Court may at any time enter restraining orders or prohibitions; issue warrants, process in rem or other processes; prescribe and accept satisfactory bonds or other security; and take such other actions as are in the interests of justice.

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101. Civil Proceedings.

(1) Any person who contravenes this Act shall be liable for a civil penalty if the Attorney General determines in writing that no criminal proceedings have been or will be instituted for the same contravention.

(2) The amount of the civil penalty shall not exceed the maximum amount of the fine prescribed in this Act, and each day of a continuing violation shall be considered a separate offense.

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

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

102. Adjudication Proceedings.

(1) The Director may, after consultation with and the consent of the Attorney General, proceed administratively against any person or business enterprise in violation of this Act.

(2) The decision to proceed administratively for any violation of this Act shall be made within 48 hours of the issuance of a notice of violation by the Director or his designee in consultation with the Attorney General.

(3) If the person or business enterprise admits in writing to the violation, the Director may handle this matter under the Summary Administrative Proceedings provisions in section 103.

(4) If the person or business enterprise denies the violation, the Director shall, after consultation with and the consent of the Attorney General, proceed to determine the violation in an adjudicatory administrative procedure, provided that if the Attorney General denies consent to the administrative handling of the violation the Director shall refer the matter for prosecution.

(5) If there is a decision to handle the matter in an adjudicatory administrative procedure, the person upon whom the notice of violation is served shall be given the notice of the adjudicatory hearing and shall have right to appear, be heard, produce evidence and to counsel retained at his or her own expense.

(6) The Director shall set an adjudicatory administrative hearing for the violation within 48 hours of the decision to proceed administratively.

(7) The Authority may promulgate regulations regarding the conduct of the proceedings.

103. Summary Administrative Proceedings.

- (1) Subject to subsection (4) the Director may, where:
 - (a) he or she has determined that any person has violated this Act; and
 - (b) such person has, in writing:

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- (i) admitted to having committed such violation; and
- (ii) consented to summary administrative proceedings after being fully informed about these proceedings,

dispose of such violation by accepting on behalf of the Government from such person an Administrative Penalty, the amount of which shall not exceed the maximum fine or penalty required under this Act, plus the fair market value of any fish caught illegally.

(2) Where Summary Administrative Proceedings have been initiated under this Act, the person who admits to having committed the offense under subsection (1)(b), shall:

- (a) not engage in fishing or carry out any other activity in the fishery waters until the amount of the penalty has been paid in full;
- (b) be deemed to have consented to any seizure which took place in accordance with this Act in relation to the offense subject to the Summary Administrative Proceedings, and to have waived any right to a probable cause hearing.

(3) Summary Administrative Proceedings shall be null and void if the full amount of the penalty as determined by the Director under subsection (1) or (2) is not paid within 3 days of notification of such penalty assessment to the person subject to the proceedings, and the matter shall immediately revert to a court of competent jurisdiction.

(4) In Summary Administrative Proceedings for any violation, the Director shall take into account any report which may be prepared by the Attorney General as to the details of the offense or offenses and applicable fine or penalty levels.

(5) On payment of the penalty in full under this section, the Director may order the release of any article seized under this Act or the proceeds of sale of such article on such conditions as he or she may determine.

(6) Summary Administrative Proceedings for any violation shall, except as provided in this Act for subsequent offenses, be satisfied upon the payment of one half of the maximum fine set for such violation, and notified in writing, under the signature of all parties, to the Court.

(7) The Director may order that any item used or involved in respect of the offense be seized, confiscated or forfeited, but shall not impose a term of imprisonment in Summary Administrative Proceedings.

(8) Any decision taken or order given by the Director pursuant to this section is final and binding.

(9) Any person who engages in fishing or other activity proscribed by subsection (2) while prohibited from so doing commits an offense.

(10) Any person who violates a valid order pursuant to the terms of this Chapter

commits an offense.

104. Liability for non-payment of penalties.

All pecuniary penalties not specifically designated as fines and all forfeitures incurred under or imposed pursuant to this Act, and the liability to forfeiture of any article seized under the

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authority thereof, and all rents, charges, expenses and duties and all other sums of money payable under this Act may be sued for, determined, enforced and recovered by suit or other appropriate civil proceedings in the name of the Director as the nominal plaintiff; and all such proceedings shall be deemed to be civil proceedings; and the fact that a bond or other security has been paid shall not be pleaded or made use of in answer to or in stay of any such proceedings.

105. Liability for loss or damage.

A person who commits an offense against this Act may, upon conviction, be liable for any loss or damage caused by the offense and the amount of the loss of such damage may be awarded by the court as restitution in addition to, and recovered in the same manner as a fine.

106. Certificate evidence.

The Director or any person designated in writing by him may give a certificate stating that:

- (a) a specified vessel was or was not on a specified date or dates a local fishing vessel or a foreign fishing vessel;
- (b) a specified vessel or person was or was not on a specified date or dates the holder of any specified license, authorisation or certificate of registration;
- (c) an appended document is a true copy of the license or certificate of registration for a specified vessel or person and that specified conditions were attached to such document;
- (d) a particular location or area of water was on a specified date or dates within the fishery waters, or within a closed, limited, restricted or in any other way controlled area of the fishery waters, or an area of the fishery waters subject to specified conditions;
- (e) an appended chart shows the boundaries on a specified date or dates of the fishery waters, territorial sea, closed or limited areas or other areas or zones delineated for any specified purpose;
- (f) a particular item or piece of equipment is fishing gear;
- (g) the cause and manner of death of or injury to any fish;
- (h) an appended document is a true copy of an approved charter agreement, an access agreement or fisheries management agreement;
- (i) a call sign, name or number is that of or allotted under any system of naming or numbering of vessels to a particular vessel;
- (j) a particular position or catch report, a copy of which is appended, was given in respect of a specified vessel.

107. Validity and procedures for certificates.

(1) Unless the contrary is proved, a document purporting to be a certificate given under section 106 shall be deemed to be such a certificate and to have been duly given.

(2) Where a certificate issued under section 106 is served upon a defendant seven or more days before its production in court in any proceedings under this Act, the certificate shall, unless the contrary is proved, be sufficient evidence of all the facts averred in it.

(3) Where a certificate issued under section 106 is served upon a defendant fourteen or more days
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before its production in court and the defendant does not, within seven days of the date of service, serve notice of objection in writing upon the prosecutor, then the certificate shall, unless the court finds the defendant is unduly prejudiced by any failure to object, be conclusive proof of all the facts averred in it.

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

(5) Any certificate issued under section 106 shall be titled "Certificate Made Under section 106, Marine Resources Act".

(6) Any omission from or mistake made in any certificate issued under section 606 shall not render it invalid unless the Court considers such omission or mistake is material to any issue in the proceedings concerned, or the defendant is unduly prejudiced thereby.

(7) Where in any proceedings a certificate made under section 106 is produced to the Court, the prosecution shall not be obliged to call the maker of the certificate and the Court shall, where material, rely on the facts therein unless the contrary is proved.

108. Certificate as to the location of a vessel.

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

(2) An authorized officer shall in any certificate made in subsection (1) state -

- (a) his or her name, address, official position, country of appointment and provision under which he or she is appointed;
- (b) the name and, if known, call sign of the fishing vessel concerned;
- (c) the date and time or period of time the vessel was in the place or area;
- (d) the place or area in which it is alleged the vessel was located;
- (e) the position fixing instruments used to fix the place or area stated in (d) and their accuracy within specified limits;
- (f) a declaration that he checked the position fixing instruments a reasonable time before and after they were used to fix the position and they appeared to be working correctly; and
- (g) if a position fixing instrument which is not judicially recognised as notoriously accurate or a designated machine is used, a declaration that he checked the instrument as soon as possible after the time concerned against such instrument.

(3) Section 107 shall apply to a certificate given under this section as if it had been a certificate given under section 106 and any reference therein to section 106 shall be read as a reference to this section.

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

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109. Photographic Evidence.

(1) Where a photograph is taken of any fishing or related activity and simultaneously the date and time and position from which the photograph is taken are superimposed upon the photograph, or the date, time and position are certified on the photograph by an authorized officer and observer, then it shall be presumed unless the contrary is proved that the photograph was taken on the date, at the time and in the position so appearing.

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

- (a) the camera taking the photograph is connected directly to the instruments which provide the date, time and position concerned; and
- (b) the photograph was taken by an authorized officer or an authorized observer.

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

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

(4) Section 107 shall apply to a certificate given under this section as if it had been a certificate given under section 106 and any reference therein to section 106 shall be read as a reference to this section.

110. Presumptions.

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

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

presumed to be the place in which the event took place, unless the contrary is proved.

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

(3) Where in any legal proceedings relating to an offense under this Act:

- (a) an authorized officer gives evidence of reasonable grounds to believe any fish to
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which the charge relates were taken in a specified area of the fishery waters;

- (b) the Court considers that, having regard to that evidence the grounds are reasonable;

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

(4) Where in any legal proceedings for an offense under this Act:

- (a) an authorized officer gives evidence of reasonable grounds to believe that any fish to which the charge relates were taken by the use of a driftnet;
- (b) the Court considers that, having regard to the evidence, the grounds are reasonable;

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

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

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

- (7) (a) Any position fixing instrument on board a vessel or aircraft used for the enforcement of this Act shall be presumed to be accurate.
- (b) For the purposes of this section, a position fixing instrument shall be deemed to be any device which indicates the location of a vessel, including but not limited to any satellite navigation system or global positioning system.

111. Burden of Proof.

(1) Where, in any proceedings under this Act, a person is charged with having committed an offense involving an act for which a license or other permission is required, the burden shall be on that person to prove that at the relevant time the requisite license or permission was held.

(2) Where a person is charged with the contravention of section 90, the burden shall be on that person to prove that the information given was true, complete and correct.

112. Destruction of Evidence.

(1) No person shall destroy, throw overboard, conceal or abandon any fish, fish product, fishing gear, net or other fish appliance, record, document, electric shock device, explosive, poison or other noxious substance, or any other thing with intent to avoid seizure or the detection of an offense against this Act.

(2) Any person who contravenes subsection (1) commits an offense and upon conviction shall be fined not more than \$50,000 or may be imprisoned up to six months, or both.

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**PART XI.
FORFEITURE AND DISPOSITION
OF SEIZED OR CONFISCATED PROPERTY**

113. Forfeiture of property.

(1) Any fishing vessel including its fishing gear, furniture, appurtenances, stores, cargo and aircraft, and all or part all or part of any fish, fish products, fishing gear, vehicle or aircraft used in or connected with the commission of any act prohibited by this Act, and where any fish seized in connection with the offense have been sold, the proceeds of the sale of the fish, shall be subject to forfeiture to the Government of the Republic of the Marshall Islands pursuant to a civil proceeding under this section.

(2) The High Court of the Republic of the Marshall Islands shall have jurisdiction, upon application by the Attorney General or the Director on behalf of the Republic of the Marshall Islands to order any forfeiture authorized under subsection (1).

(3) If a judgment is entered for the Government of the Republic of the Marshall Islands in a civil forfeiture proceeding under this section, the Attorney General shall seize any property or other interest declared forfeited to the Government of the Republic of the Marshall Islands, which has not previously been seized pursuant to this Act.

(4) The forfeited item or items may be sold and the proceeds deposited in the Fisheries Enforcement and Development Fund in accordance with this Act, and any remainder may be deposited into the General Fund of the Republic of the Marshall Islands and distributed in accordance with subsection (5).

(5) Fifty percent of the revenues from fines and forfeitures shall be distributed to the local government council affected.

(6) Pending completion of the civil forfeiture proceeding, the item or items subject to forfeiture, or any part thereof, may be released at the discretion of the court upon deposit with the court of a satisfactory bond, surety or other security at least equal to the fair market value of the seized property. Exoneration of such bond, surety or other security shall be conditional upon return of the released property to the appropriate court upon order, without any impairment of its value, or by paying the monetary value of the released property upon order of the Court. Such bond, surety or other security shall be forfeited in the event that any condition is breached as shall be determined by the Court, and judgment shall be recoverable by the Court against the principal of any surety for any such breach.

(7) In the event there is an appeal from an order for forfeiture, the Court may continue any such bond, surety or other security deposited in accordance with subsection (6) during the pendency of the appeal and any retrial or rehearing on remand or may require additional security to be deposited with the Court.

114. Disposition of seized or confiscated fish or fish products.

(1) The Director or his designee may sell any perishable fish or fish products which

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have been seized or confiscated pursuant to this Act. If he or she made all reasonable efforts to sell them but was unable to do so, or where they are unfit to be sold, he or she may dispose of them as he or she may think fit. The proceeds of any sale shall be deposited in trust with the Court pending the final disposition of any civil forfeiture proceeding.

(2) The Director shall notify the owner or apparent owner of the perishable goods seized of the sale, and such owner or his or her nominee may be present at the sale.

115. Disposition of forfeited or seized goods.

(1) Notwithstanding any other provision of this Act, any vessel, vehicle, aircraft or other item ordered to be forfeited under this Act may be disposed of in such manner as the Director may decide after the expiration of the time provided for the filing of a Notice of Appeal.

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

116. Unlawful removal of item in custody.

(1) When any vessel, vehicle, aircraft or other item held or forfeited under this Act has been unlawfully removed from the custody of the Republic of the Marshall Islands, it shall be liable to seizure at any time within the jurisdiction of the Republic of the Marshall Islands.

(2) No person shall remove any vessel, vehicle, aircraft or other item held under this Act in custody whether or not he or she knew that the vessel, vehicle, aircraft or other item was held in custody.

(3) Any person who contravenes subsection (2) commits an offense and upon conviction shall be fined not more than \$100,000 and shall be liable for the full market value of the vessel, vehicle, aircraft or other item.

117. Liability for property in custody.

(1) The Government shall not be liable to any person for any loss, damage or deterioration in the condition of any vessel, vehicle, aircraft, fishing gear or other property which is in its custody under this Act, and all costs of maintaining such property while in custody including full insurance coverage shall, unless otherwise provided, be borne by the operator upon a finding pursuant to this Act that such property was used in or connected with a violation of this Act.

(2) Any person who does not maintain properly in accordance with subsection (1) commits an offense and upon conviction shall be fined not more than \$500,000.

118. Release of Seized Goods.

(1) The Court may, on application, order the release of any fishing vessel, vehicle, aircraft or other items seized under this Act on receipt of such bond or other form of security as it

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may determine.

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

(3) Notwithstanding the provisions of subsection (2), the amount determined by the Court under this section shall not be less than the fair market value of the property to be released or the aggregate minimum fine or penalty for each offense charged, whichever is greater.

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

(5) The release of any bond or other form of security under this section shall be conditional upon:

- (a) a finding by the Court that the vessel, vehicle, aircraft or other item has not been used in or connected with in the commission of an offense under this Act; or
- (b) where the Court finds that the vessel, vehicle, aircraft or other item has been used in or connected with the commission of an offense under this Act:
 - (i) payment in full within 30 days of the judgment of the Court of any fine imposed by the Court and any costs ordered to be paid by the Court; and
 - (ii) where the Court so orders, delivery to the Court of the vessel, including its fishing gear, furniture, appurtenances, stores and cargo, and of any fish ordered to be forfeited without any impairment of their value, or payment of the monetary value thereof as determined by the Court.

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

119. Holding of seized goods.

(1) Any vessel, vehicle, aircraft or other item seized under this Act or any bond or other security or net proceeds of any sale in respect thereof shall be held by the Government pending the outcome of any legal proceedings under this Act or until it is decided not to file an information or complaint, and any penalties imposed under this Act have been fully paid.

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

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

fixes

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a smaller sum, operate as an order for forfeiture of the bond or security.

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

120. Application of bond, etc.

(1) Any bond, security or net proceeds of sale held in respect of any vessel, vehicle or aircraft or other item shall be applied as follows and in this order:

- (a) the discharge of any forfeiture ordered under this Act;
- (b) the payment of all fines or penalties for offenses against this Act or penalties imposed under this Act arising out of the use of or in connection with the vessel, vehicle, aircraft or other item;
- (c) the full satisfaction of all costs involved in maintaining and keeping secure the vessel and its equipment during legal proceedings;
- (d) the discharge of all orders for costs in proceedings under this Act arising out of the use of or in connection with the vessel, vehicle, aircraft or other item;
- (e) return as provided in this Act.

**PART XII.
GENERAL**

121. Immunities.

No civil or criminal action shall lie against any member of the Board, the Director, any employee of the Authority, any authorized officer or authorized observer or any other person appointed pursuant to this Act with respect to anything done or omitted to be done by him or her in pursuance or intended pursuance of the powers or functions conferred on him or her by or under this Act, whether on the ground of want of jurisdiction, mistake of law or fact, or on any other ground, unless he or she has acted, or omitted to act, in bad faith without reasonable cause.

122. Severability.

If any provision of this Act or amendments or additions thereto, or the application thereof to any person, thing or circumstance is held invalid, the invalidity does not affect the provisions, application, amendments or additions that can be given effect without the invalid provisions or application, and to this end the provisions of this Act and the amendments or additions thereto are severable.

123. Exclusion of Administrative Procedures Act.

The provisions of the Marshall Islands Administrative Procedures Act 1979 shall not apply to this Act or to any actions taken or required to be taken under this Act.

124. Repeals.

The following Acts are repealed in their entirety:

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- (a) The Marshall Islands Marine Resources Authority Act 1988;
- (b) The Marine Resources (Trochus) Act 1983;
- (c) The Marshall Islands Marine Resources Act 1966;

125. Transitional.

(1) All assets, liabilities, rights and obligations of the Marshall islands Marine Resources Authority established under the Marshall Islands Marine Resources Authority Act, 1988 in evidence immediately before the effective date of this Act shall stand transferred and vest in the Authority created under this Act.

(2) All regulations, orders and notices made or given under the Marshall Islands Marine Resources Authority Act, 1988 and agreements issued or made thereunder shall, except so far as they are inconsistent with this Act continue to have effect as though made, given or issued under this Act.