

Consultancy for Contemporary Used Oil Audits in Selected Pacific Island Countries

Report for Republic of Marshall Islands

**Prepared for the Secretariat of the Pacific Regional
Environment Programme (SPREP)**

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Executive Summary

This report covers the Republic of Marshall Islands (RMI) component of a project involving used oil audits in selected Pacific Island countries. The objective of the audits is to establish volumes of lubricating, hydraulic and transmission oils imported annually into each country and the volumes of used oil produced, stored or otherwise disposed. The work has been carried out by Contract Environmental Ltd under a contract to the Secretariat of the Pacific Regional Environment Programme (SPREP), with funding provided by the Global Environment Facility. Most of the information required for the audit has been obtained in a country visit undertaken by Martyn O'Cain from 1 July to 7 July 2014 and was organised through the Office of Environmental Planning and Policy Coordination (OEPPC).

Used Oil Production

The total quantity of lubricating oils imported into RMI is about 371,600 litres per year and it is estimated that approximately 50% of that will end up as used oil. In addition small amounts of the 13 million litres of diesel imported into RMI ends up in the used oil stream. Other used oil components come from diesel waste, small amounts of hydraulic and transmission oils, brake fluid and vegetable oil. It is therefore estimated that between about 187 and 197 thousand litres of used oil is produced per year. Certainty estimates for the estimated volumes are given at the end of s4.

Used Oil Collection and Disposal

There are no private used oil recovery companies in RMI however an informal collection system is overseen by the Marshalls Energy Company. Used oil is collected at their tank farm on Majuro and stored in a tank with a capacity of around 2.8 million litres. At the time of the investigation the tank had just less than 1 million litres stored in it. Marshalls Energy Company charge US\$25.00 to dispose of a 208 litre drum.

Based on the volumes of used oil that are being generated and the figures showing what is being stored and stockpiled there is confidence that used oil is not being disposed of unlawfully in significant volumes within the Majuro atoll.

A number of private organisations have attempted to reuse used oil as a fuel source for various generators and incinerators however very little is currently being utilised for this purpose. One of the main concerns is the poor quality of the oil. If the potential reuse options cannot be coordinated and developed then the best management option is for the used oil to be collected and exported offshore.

National Instruments

The RMI Government does provide legal governance over the management of used oil through a number of laws and regulations. The most prescriptive regulation is included in the Coast Conservation Act which gives the government authority over the mismanagement of hazardous substances which include petroleum products.

Recommendations

Based on this audit of used oil in RMI the following recommendations are offered:

- The appropriate government department to enter in to discussions with MEC about formalising their storage facility as a central point for the collection of used oil from organisations and businesses within RMI. Financial implications, access, delivery requirements, service promotion etc need to be discussed;
- Review the cost/drum fee required by MEC to accept used oil. While MEC is a profit generating company and the recovery of costs and a margin of profit is not unacceptable, an inflated cost to manage used oil may be to the detriment of the RMI environment; and
- The Government to begin discussions with all the stakeholders associated with the generation and management of used oil on RMI. A number of businesses have or intend to, utilise used oil as a fuel for incinerators. Such organisations include MEC, Tobolar, PII and Waterfront Technology Ltd. The purpose of the discussions will be to encourage and coordinate the possible options for reusing used oil. Such discussions should include and ideally be led by an appropriate government department.

If the outcome of the initial approach to MEC is not favourable then:

- Discussions need to begin on exploring what is required to removing the used oil stocks offshore by a company or agent that is capable of transporting it to a country that can treat and reuse the product;
- Independent scrutiny of tendering contracts for the export of the used oil. Consideration should be given to the reputation and professionalism of the appointed contractor. Such things as ensuring they have appropriate ships for carrying the oil; they have good history within the industry; they have guaranteed contracts with an approved treatment facility and that they will guarantee stewardship of the product once it has left Pohnpei;
- Establish a specifically designed centralised collection point within RMI. This will include establishing an environmentally secure collection facility that is bunded, covered and monitored to ensure the entry and exit of used oil is correctly managed. The location should be well considered so that it complements any potential future reuse or export options that may be established;
- Establish a formal procedure for collecting, managing and disposing of used oil at the centralised collection point;
- Investigate a ‘user pay’ system for collecting used oil to help offset the costs for setting up and running the collection process. This may be coupled with leasing the collection and delivery of used oil to the private sector. A designated oil recovery company is motivated to ensure all used oil is managed correctly if the costs are realistic and provide value; and
- Consider establishing a waste to energy system within RMI. Briefly, this would involve establishing a suitably sized burner capable of being fuelled by used oil. Connect the burner to a turbine generating electricity to supply the main power grid.

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1. Introduction

1.1 Purpose

This report covers the Republic of Marshall Islands component of a project involving used oil audits in selected Pacific Island countries. The objective of the audits was to establish volumes of lubricating, hydraulic and transmission oils imported annually into each country and the volumes of used oil produced, stored or otherwise disposed. The work was carried out by Contract Environmental Ltd under a contract to the Secretariat of the Pacific Regional Environment Programme (SPREP), with funding provided by the Global Environment Facility. Most of the information required for the audit was obtained in a country visit undertaken by Martyn O'Cain from 1 July to 7 July 2014 and was organised through the Office of Environmental Planning and Policy Coordination (OEPPC).

1.2 Scope of Work

A copy of the Terms of Reference for this work is given in Appendix 1. It lists the following tasks:

- a) *Establish and document national oil import/generation volumes and rates for the last 3 years ideally 2011, 2012 and 2013;*
- b) *Establish national used oil production rates for the last 3 years ideally 2011, 2012 and 2013;*
- c) *[Prepare an] Oil Audit Balance for the last 3 years ideally 2011, 2012 and 2013;*
- d) *Document and summarise existing national used oil management procedures; and*
- e) *Document and summarise existing national used oil management instruments.*

1.3 Report Content and Layout

Section 2 of this report provides details of the annual oil imports to RMI, based on the data obtained from the Customs Department and from companies that import directly into RMI.

An estimate of used oil generation rates and volumes is set out in Section 3 and Section 4 contains the overall audit balance, including an assessment of uncertainties in the data.

Section 5 provides information on existing storage facilities for used oil and current stockpiles; current reuse or disposal methods; and an assessment of possible future alternatives. Information on the current shipping costs to the nearest main port is also covered here.

Section 6 sets out the details of the relevant national instruments for used oil management.

Section 7 provides some overall discussions and recommendations, and is followed by the following 3 appendices:

- A copy of the TOR is given in Appendix 1;
- Appendix 2 provides detailed notes on all of the people and organisations contacted during the country visit; and
- RMI Regulations and laws are attached as Appendix 3.

2.0 Oil Imports

2.1 Information Provided by Customs and Local Importers

The following data in Table 1 have been obtained from the Customs Department for 2013 and from local importers. It must be noted that the RMI Customs office do not record all their oil imports electronically. To provide a full and accurate set of data records needed to be manually retrieved from filed hard copies. For this reason, only imports for 2013 were provided. For the same reason diesel volumes were not provided by the RMI Customs Department.

Table 1 - Oil Import Data for RMI (2013) as provided by Customs Department

Organisation	2013 (litres)
Customs Department	371,392
Import Companies	371,760

Note: The data provided by Customs listed all the quantities of imported oil as engine oil.

2.2 Additional Information on Imports

Table 2 shows the data that has been collected from individual importers of oils that include but are not limited to lubricating oil, hydraulic oil, transmission fluid and two-stroke oil. The information provided is for 2013 only.

Table 2 – Lubricating Oil Import Data for RMI (2013) as Provided by Importing Companies

Import Company	2013 (litres)
Marshalls Energy Company (Majuro)	200,000
Marshalls Energy Company (Ebeye)	42,000
Pacific International Inc.	20,000
Pan Pacific Food Ltd	10,400
Marshall Island Fishing Venture	83,200
Ace Hardware	2,400
Majuro Do It Best	9,700
Elim Motors	4,060
Total	371,760

The volumes provided by the import companies and the Customs Department are very similar. The average of the two volumes will be used to determine the mass balance of used oil. The average is 371,580 L/yr.

The Marshalls Energy Company (MEC) imports 13,000,000 litres of diesel per year. MEC were the only company that would make their diesel imports available therefore this figure is likely to be an under estimation of the total diesel imports to RMI.

It is also important to note that a few of the companies that were interviewed indicated that under certain circumstances they import oil under 'bond' meaning that the product supposedly does not physically land on RMI but is transferred directly onto a ship for maintenance use or export to another location. These volumes have not been included in the oil mass balance.

2.3 Cost and Price Information

Wholesale oil prices were not available however the MEC stated that they purchase diesel for US\$0.86 - \$0.99 per litre.

3.0 Used Oil Production

The information collected on the production of used oil in RMI was obtained by visiting as many companies and operations as possible that could potentially generate used oil. Individuals at each location were asked specifically how much used oil their operation generated over a set period of time. The information was provided verbally as very few operators kept detailed written records. The information was usually provided as drums per month which was then extrapolated to litres per year. The volumes of used oil identified at each locality are included in the contacts list attached as Appendix 2.2 and a summary table is also given in section 4.2.

3.1 Used Oil Recovery by Vehicle and Machinery Servicing

Twenty one sites were visited that maintained or serviced vehicles either for their own use or for off-site customers. The businesses and organisations that were visited included auto repair shops, construction companies, oil supply depots, sea port terminals and heavy machinery operators. The servicing of generators is not included in these volumes.

The annual volume of oil generated by these businesses is estimated to be 66,577 L/yr

3.2 Used Oil Recovery from Ship and Boat Servicing

Four sites were visited that maintained, repaired or serviced engines associated with mainly commercial boats. The businesses that were visited included marine tourism companies and commercial shipping operations.

The annual volume of oil generated by these businesses is estimated to be 78,450 L/yr.

All of the individual boats or marine operations that were visited used diesel to run their engines. None of the boats used heavy fuel oil.

The Chief Technical Officer at Marshalls Energy Company, Mr Steve Wakefield, stated that they receive up to 75,600 L/yr of used oil from small boats visiting the Islands. The oil is stored in the large tank on the MEC premises. This volume is not included in the 'actual used oil' calculations to determine the mass balance (Section 4) as most of it is brought into the country as used oil and not recorded as oil that was originally imported. It is however included in the total volume of stockpiled used oil on RMI.

3.3 Used Oil Recovery by Power Stations and Small Generators

Large power generators often use heavy fuel oil as the operating fuel. In RMI all the generators that were inspected used diesel as the fuel source however one generator on Majuro was using a diesel/used oil mix. The used oil that is being generated at these sites is from the use of lubricating oil for running and maintaining the generators.

3.3.1 Small Generators

The only site that was visited that operated an auxiliary generator for emergency purposes was the hospital. The maintenance supervisor stated that all the servicing of vehicles and their generator was outsourced therefore they do not keep any records of the amount of used oil that is generated from their operations.

3.3.2 Marshalls Energy Company

The Marshalls Energy Company operates 4 power plants within the Marshall Islands group. The power plants are on Majuro, Ebeye, Wotje and Jaluit atolls.

MEC is based in Majuro with the main office looking after the power plants on Majuro, Wotje and Jaluit. The Majuro plant operates 7 generators however 2 are about to be decommissioned. Only one of the remaining generators has regular oil changes that contribute to the oil waste stream. The other 4 generators have a recycling process that results in far less maintenance being required. Each of these generators require a top up of approximately 208 L (1 drum) per day. Mr Wakefield indicated that these generators undergo an oil change every 6 – 7 years and produce about 8,320 L each. However because of the irregular contribution these generators make to the oil waste stream the volumes have not been included as part of this audit.

The Majuro office supplies the power plants on Wotje and Jaluit with diesel and oil and collects any waste products that are generated. The amount of used oil generated by the power plants on Majuro, Wotje and Jaluit is approximately 13,000 L/yr.

The power plant on Ebeye is more independent from the parent company. They import their own oil which according to Mr Wakefield is approximately 33,000 – 50,000 L/yr. If 50% of the oil is used during the operation of the generators, the estimated amount being generated as used oil is 17,000 – 25,000 L/yr (21,000 L/yr average).

A PacWaste Inception Mission carried out in March 2014 and initiated by Secretariat of the Pacific Regional Environment Programme (SPREP) identified that Ebeye has a used oil stockpile of up to 189,000 L which they are gradually transporting to Majuro. Mr Wakefield confirmed that Ebeye is transporting used oil to their storage compound however he believes the amount currently stored on Ebeye is around 302,000 L and has been for about the last 10 years.

3.5 Used Oil Recovered from Outer Islands

Except for the used oil generation calculated for Ebeye, Jaluit and Wotje from the power plants on each of these atolls there is no formal information available regarding oil use or generation on the Marshall Islands outside of Majuro. It is accepted that used oil is being generated on the smaller islands however anecdotal evidence gathered from the main centres throughout the Micronesia

Islands indicates that used oil maybe re-used for a number of various activities unrelated to vehicle or machinery requirements.

According to the 2011 Marshall Islands Census, 52.3% of the total population (53,158) live on Majuro and 21.5% live on Kwajalein (which includes Ebeye). The balance of the population (26%) is spread over 24 separate atolls. This investigation only considered used oil generation on Majuro however almost half the population live on the outer Islands. While this is a significant percentage of the population the main producers of used oil are the power companies which have been included in the audit figures. However there will be a small number of businesses that generate used oil on these Islands that have not been included in the audit.

3.6 Survey Allowance

It would be unrealistic to assume that this audit is without inaccuracies and incomplete data. It is accepted that there are businesses and companies that generate used oil but were not visited as part of this audit. Such operations would also include individual vehicle owners that carry out their own maintenance and repair. It is unknown how many of these operations there are; therefore a 10% allowance has been added to the total volume of used oil that has been determined from visiting individual sites.

4.0 Oil Audit Balance

4.1 Theoretical Used Oil Production Rates

An estimate can be made of the quantities of used oil produced based on the information provided in the previous section.

Waste oil from lubricating oil:

The total annual quantity of lubricating oil imported is approximately 371,580 litres, based on the average 2013 figure provided by the Customs Department and the private importers. Typically about 50%¹ of this figure would be burnt or lost through spillages, and 50% would contribute to the total used oil produced. The estimate of used oil from lubricating oil is therefore **185,800 litres**.

Waste Oil from Fuel Oil from Power Stations

The generators operating in RMI use standard diesel to produce the country's power supply. No used oil is generated from the combustion process however it is generated from the lubricating oil that is required to run and maintain the engines.

Waste Oil from Ships

As a member of the International Convention for the Prevention of Pollution from Ships (MARPOL) the Republic of Marshall Islands is expected to accept used oil from visiting ships. It is our understanding that RMI is not currently able to meet its MARPOL responsibilities as it does not have the facilities at the docking port to accept, handle or dispose of such a product in the quantities that would be generated.

Waste Oil from Diesel and other Sources

Diesel and other products (e.g. solvents, mineral turpentine, grease, hydraulic oil, cooking oil etc) also contribute minor amounts to the used oil stream at say 0.01%¹ of the figures that are available from the MEC, i.e. **1,300 litres/year**.

The above figures are summarised in Table 2 below:

Table 2 – Theoretical Used Oil Production in RMI

Source of Used Oil	Estimated Quantities (litres/year)
Lubricating Oil	185,800
Waste from Diesel and Other Sources	1,300
TOTAL	187,100

¹ These figures have previously been accepted by SPREP based on earlier used oil audits

4.2 Actual Used Oil Production Rates

The used oil being collected on RMI by auto repair shops, heavy plant and machinery operators, generator operators and boat maintenance operations is generally being mixed without any record of what waste stream it is being generated from. Therefore for the purpose of this report used lubricating oil, hydraulic oil, transmission oils, grease, and diesel 'slops' are considered as the total used oil generated.

Table 3 – Actual Used Waste Oil Production in RMI

Source of Used Oil	Actual Quantities (litres/year)
Vehicle and machinery servicing	66,577
Ship and boat servicing	78,450
Marshalls Energy Company	34,000
Sub Total	179,027
Survey Allowance (10%)	17,900
TOTAL	196,930

4.3 Used Oil Balance

There is a 7.2% difference between the theoretical oil production rates and the actual oil production rates as determined from interviewing individual businesses. The 7.2% is in favour of the actual oil generation rates which may indicate:

- The theoretical assumption that 50% of the oil would be burnt during a normal life cycle may be too generous.
- That the contribution of diesel waste to the used oil stream is marginally low
- The 10% survey allowance is too high
- An over estimate by the individuals that were interviewed regarding the actual amount they expect to generate each year
- A combination of some or all of the above

Having said this, 7.2% is relatively close, so either figure could be taken as giving a reasonable reflection of what is being generated as used oil in RMI.

4.4 Certainty Assessment

The confidence levels for each component of the audit balance are summarised below:

- The data for lubricating oil imports can be taken as having a **medium to high level of confidence** as there are some potential gaps in how the oil imports are being recorded by the Customs Department. .
- The figure for total used oil produced can be taken as having a **medium level of confidence**. The data is reliant on the accuracy of the people that were interviewed at each of the locations and that most of the oil generators were visited.

5.0 Current Storage and Disposal Practices

5.1 Existing Storage Facilities and Current Stockpiles

5.1.1 Storage Facilities (Marshalls Energy Company – Majuro)

There is no specialised oil recovery company based in RMI however MEC in Majuro currently accepts used oil from the general public and stores it in one of the tanks located within its tank farm. There is no formal collection system; it is the responsibility of individual companies and businesses to arrange transportation to the site. There is a charge of US\$25.00 per 208 L drum to any company or individual wishing to dispose of used oil at the MEC compound.

The tank at the Majuro site has a capacity of approximately 2.8 million litres. At the time of the investigation Mr Wakefield stated that that there was approximately 987,500 L stored in the tank. He also stated that much of the product is of low quality having high water content.

It is worth noting that there has been some comment and natural reluctance from the local businesses and shipping companies to pay the US\$25.00 per drum for disposing of used oil at the MEC facility.

5.1.2 Current Stockpiles

Twenty six individual sites were visited as part of the used oil audit excluding MEC. At each location the volume of used oil that was being stockpiled on the site was recorded and photographed. The total volume of used oil recorded at the time of the audit was 109,860 L. This figure is likely to be a slight underestimate as it is accepted that not every container holding used oil was inspected by the project representatives. Similar to the survey allowance described for the used oil generation an increase of 10% would be considered realistic.

Therefore the total volume of used oil stockpiled on RMI, excluding the MEC stockpile is 120,850 L.

The volumes stockpiled at each location are included in the contacts list attached as Appendix 2.2.

Some of the sites that were visited had well-managed storage facilities that included bunds and weather protection, however the majority of sites were poorly managed and exposed the local environment to significant risk from the uncontrolled release of used oil.

5.2 Current Reuse or Disposal Methods

Currently there are no reliable or consistent reuse options located on RMI. The following organisations have been interviewed or identified as having potential to use used oil as fuel source.

RMI Hospital – at the time the investigation was carried out the hospital had a contract with a private company to incinerate the medical waste that was being generated. The incinerator was being fuelled by diesel. The owners would not consider using used oil or a diesel/used oil mix as this was outside the equipment's specifications.

Marshals Energy Company – During the investigations a used oil incinerator was identified at the Marshalls Energy Company however it broke down approximately 6 years ago and has not been repaired. The main reason it has not been repaired according to Mr Wakefield is that it could only process about 1,100 litres per day and was continuously requiring maintenance due to the low quality of the oil being provided. However according to the actual volumes being produced as shown in Table 3, a capacity of 1,100 L/day may be sufficient to remove a substantial amount of the used oil generated on RMI if the quality of the oil can be addressed.

The Marshalls Energy Company also has one generator that they run on 20% - 30% used oil mixed with diesel. This equates to about 11,000 L – 20,000 L per month of used oil being re-used in this manner. However this practice is likely to stop in the very near future as the energy company has recently lost two main generators therefore they need to look after their remaining 5. The use of low quality fuel on this particular generator is considered too much of a risk with regard to the engines longevity.

Mr Wakefield also indicated that there is an agreement in principal between MEC and a Korean company who will provide an incinerator that will produce energy from the burning of solid waste (waste to energy process) however there is no information available as to the fuel that will be used to operate the incinerator. This may be an opportunity to consider used oil.

Tobolar – Tobolar is a copra processing plant based in Majuro. The company uses large kilns to dry the copra. According to Mr Jemi Nashion (General Manager) they have used waste oil in the past as an operating fuel however they have not been happy with the quality of the oil and therefore are reluctant to use it.

Both Mr Wakefield (MEC) and Mr Nashion confirmed that there is an agreement between the two companies for MEC to supply used oil to Tobolar in exchange for coconut oil. Once the agreement is in place, Tobolar will use approximately 27,600 L/yr of used oil supplied by MEC. However Mr Nashion reiterated that the used oil needs to be ‘cleaned’ better. If this was to happen then they would be more than agreeable to using the product.

Pacific International Incorporation (PII) – PII are a large construction company based in Majuro but operating throughout the Marshall Islands and North Pacific. They are the largest land based producer of used oil in Majuro and have the largest amount stockpiled outside of MEC. Mr Kenneth Krammer, the operations Manager for PII, indicated that in the past they have used recycled oil in their asphalt batching plant and blended it in to the fuel they use to run two tug boats that they own. However, they no longer use the oil for these purposes.

They would be agreeable to looking at partnering options for managing used oil on Majuro.

Waterfront Technology Ltd (WTL) – WTL are a boat and heavy machinery repair company. Their site, for reasons unknown to them, has recently become a location where the general public dump their used oil. This includes visiting pleasure craft. The management of WTL would prefer it didn’t happen however they would rather see it stored securely than disposed of indiscriminately. They also informed the project representative that they have recently purchased a centrifuge for treating used oil that they collect. The objective was to treat the oil and then re use it for their specific requirements. The centrifuge was in Majuro at the time the investigation was being carried out but

had not been commissioned. WTL could not provide details on the specifications or capacity of the centrifuge.

Shipping Companies – there are a number of shipping companies that operate out of Majuro or visit for supply purposes. A common theme determined during the interviews of these companies was the lack of used oil disposal options on Majuro. Two of the companies indicated that in the past they have had to pump used oil into drums and then off-load onto a carrier ship bound for China. They would like to see a formal disposal system established in Majuro that is cost effective.

There are a number of isolated and small scale options that have been tried on Majuro, some of which are still operational however at the time the investigation was carried out the generation of used oil on the atoll was far greater than what was being re-used. Therefore the only option currently available for the disposal of used oil from RMI is to have it taken offshore and disposed of at a facility that has the capability to treat the product to a standard where it can be reused for light and/or heavy industry purposes elsewhere.

5.3 Assessment of Possible Future Alternatives.

There is the potential on Majuro for a number of the established industries to provide options for using used oil as a fuel. MEC and Tobolar have the facilities to use used oil within their operations however the two main obstacles that have emerged are the economics of using used oil and the quality of the product. If these issues can be resolved then there may be re-use options available on Majuro.

This is supported by discussions with both PII and WTL who have identified that the management of used oil is becoming a significant issue in terms of storage, disposal and environmental risk and are agreeable to assisting if possible.

A waste to energy system would be the long term objective when discussing options with the appropriate stakeholders however it is acknowledged that this would require significant upfront capital to design and construct which would most likely be outside the means of the RMI Government or private business without offshore assistance.

5.4 Administration of Used Oil Exports

RMI is a party to the Basel Convention but is not a party to the Waigani Convention. As such, RMI may export used oil to other countries that are parties to Basel (eg. Philippines, Palau and Nauru) but may not export to a Waigani party country (unless that country is also a party to Basel; eg. FSM, but not Fiji or Vanuatu).

5.5 Current Shipping Costs

No information was available regarding the cost to export a container of used oil off Majuro. However information provided by CTSI Logistics for other Micronesia Islands estimated the cost to ship a 20 ft container to the Philippine's at \$2,500. It would be expected to be more costly to export from RMI to the Philippines therefore it may be up to US\$3,500. The estimate excludes:

- Bladder/drum costs
- Basel Convention consent costs
- Insurances
- Wharf costs
- Custom costs

6.0 Relevant National Instruments

6.1 Relevant National Legislation and Regulations

The Republic of Marshall Islands has a comprehensive set of regulations that control a number of environmental activities however there is no single section that is specific to the management of used or waste oil. However the management of hazardous substances and hazardous wastes are included in the following documents:

- National Environmental Protection Act 1984
- Marine Resources Act 1997
- Coast Conservation Act 1988
- Civil Liability for Oil Pollution Damage Act 1969

Each of these Statutes refer to the management, enforcement and applicable penalties to organisations, businesses and individuals if they are found to be mismanaging or discharging hazardous substances in a manner that contravenes the regulations. Used oil is considered a hazardous substance.

The most descriptive regulation with regard to the uncontrolled release of a hazardous substance is Section 93 – Contamination of the Fishery Waters of the Marine Resources Act:

(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.

The relevant Acts are attached as Appendix 3.

6.2 Relevant National Programmes and Policies

No information on National programmes was provided by RMI OEPPC staff.

7.0 Discussion and Recommendations

7.1 Used Oil Generation

The quantity of lubricating oil imports into Republic of Marshall Islands is about 371,580 litres per year and it is estimated that approximately half that would end up as used oil. In addition small amounts of the 13,000,000 million litres of diesel and other oil based products imported into RMI would end up in the used oil stream.

All the oil generated is collected from the maintenance of vehicles, boats or generators. RMI does not have the facilities to collect and purify used fuel oil from visiting ships.

There are no established companies in RMI that recover used oil from the businesses and companies that generate the used oil as part of their day-to-day operations. However there is an informal understanding that MEC will accept used oil for storage within their tank farm. They charge US\$25.00 per drum.

The amount being generated is calculated at around 187,000 and 197,000 L/year while at the time the investigation was undertaken about 1.1 million litres of used oil was currently stored on RMI. An estimated 120,850 L is being stockpiled on individual sites and 987,500 L is stored in the tank at the MEC compound. These figures indicate that there is over 5 years of generated used oil currently stockpiled in RMI.

7.2 Used Oil Collection

As discussed in Section 5.1.1 there is no established oil recovery company operating in RMI. There is an informal understanding with MEC that they will accept used oil from private organisations however there is a charge of US\$25.00 per drum. Some organisations are reluctant to dispose of their used oil stocks at the MEC compound due to the cost.

Currently there is almost 121,000 L stockpiled at various locations around RMI and 987,500 L stored in the large tank within the MEC compound. While only 12% of the used oil stocks are stored in drums at various locations around RMI the volume still poses a significant environmental risk given that most of the storage facilities are not bunded and exposed to the natural elements.

7.3 Used Oil Management

The volumes of used oil that are being generated and those that have been identified in stockpiles do indicate that businesses on Majuro that produce used oil are collecting and storing it. It does not appear to be being mismanaged or disposed of indiscriminately on a significant scale. However it has been identified that a considerable amount of used oil is generated by ships that operate in the area and have expressed that in the past they have sent used oil offshore for disposal. The fate of this oil cannot be confirmed.

There are two issues that require addressing with regard to the management of used oil on the atoll:

- Very few sites that were visited had suitable facilities for storing significant volumes of used oil in drums. Many sites were not bunded nor covered to provide the level of environmental

protection that should be expected. Figures 1 – 2 provide examples of how some used oil drums are being managed; and

- The US\$25.00/drum fee introduced by MEC has resulted in businesses stockpiling more used oil in areas that are not designed for hazardous substance storage. It has also raised concern that illegal dumping might start to occur given some companies will either refuse to pay the fee or simply cannot afford to do so.

The local RMI Environmental Protection Agency do have the authority within their regulations to monitor, enforce and prosecute organisations and individuals that store used oil if there is an actual or potential discharge however the issue will be one of resources both human and financial to ensure suitable implementation.

Figure 1 – Used oil storage under a makeshift shelter



Figure 2 – multiple drums stored outside unprotected



With regard to the management of used oil at a national level, the findings of this report do indicate that even with the current volume of used oil stockpiled on RMI (1.4 million litres) there is still over 7 years storage in the tank at MEC based on an annual generation rate of 190,000 L/yr.

While 7 years appears to be a significant time period in which to establish a sustainable system for managing used oil on RMI the options available to achieve this will take time and financial resources to establish therefore working towards such an outcome should be given priority now.

Discussions on the re-use of used oil on RMI did highlight that a number of options have been previously tried or talked about but never really formalised. There is an ad hoc element to how used oil has been re-used on RMI based loosely on convenience and financial outcomes. Various companies at various times have re-used oil but it does not appear to have been coordinated or supported, particularly by the relevant government departments.

The following table provides a summary of the key information collected in the survey:

Table 4: Summary of Key Information on Waste Oil for RMI

AVERAGE ANNUAL OIL IMPORT VOLUME (LITRES/YEAR)	ANNUAL WASTE VOLUME ESTIMATE (LITRES/YEAR)	CURRENT STOCKPILE OF WASTE OIL ESTIMATE	ORGANISED COLLECTION BY?
371,580 litres/year	186,000 - 197,000 litres/year	1.4 Million litres	Nil
DIRECT CONTAINER SHIPPING ROUTE TO PHILIPINES?	SHIPPING COSTS (APPROX. FOR A 20FT CONTAINER)	CURRENT REGULATORY DRIVERS?	PARTY TO BASEL/WAIGANI?
Yes	US\$2,500 - \$3,500	Yes (various statutes)	Yes/No

7.4 Marshalls Terminal & Stevedore Ltd

The Marshalls Terminal and Stevedore Company raised concerns as to the management of the used oil that they were producing. The company runs, operates and maintains a fleet of heavy vehicles and machinery. They generate approximately 1,700 L of mixed hydraulic and lube oil per year. When asked how they store the used oil, one of the head mechanics indicated that it is poured into an underground tank. When asked how big and/or how full the tank was no information was available.

The inlet to the tank is via an open pipe located within a vehicle inspection pit (Figure 3). The mechanic also indicated that this disposal/collection procedure had been going on for sometime. On inspection of the area where the tank is supposedly located there was no evidence within the concrete surface of a manhole or inspection lid to an underground tank. Two attempts were made to meet with the manager of the company to try and obtain

further information however the manager was unavailable for the first meeting and failed to show to the second.

It is suggested that further investigations are carried out by the local EPA office to determine where the tank is located, how big it is and how much used oil is currently stored in it.

Figure 3 – The inspection pit showing the open pipe connected to an underground storage tank



7.5 Recommendations

Based on this audit of used oil in RMI the following recommendations are offered:

Short term

- The appropriate government department to enter in to discussions with MEC about formalising their storage facility as a central point for the collection of used oil from organisations and businesses within RMI. Financial implications, access, delivery requirements and service promotion etc need to be discussed;
- Review the cost/drum fee required by MEC to accept used oil. While MEC is a profit generating company and the recovery of costs and a margin of profit is not unacceptable, an inflated cost to manage used oil may be to the detriment of the RMI environment; and
- Begin discussions with all the stakeholders associated with the generation and management of used oil on RMI. A number of businesses have or intend to utilise used oil as a fuel for incinerators. Such organisations include MEC, Tobolar, PII, and Waterfront Technology Ltd. The purpose of the discussions will be to encourage and coordinate the possible options for reusing used oil. Such discussions should include and ideally be led by an appropriate government department.

Medium Term

If the outcome of the initial approach to MEC is not favourable then:

- Discussions need to begin on exploring what is required to removing the used oil stocks offshore by a company or agent that is capable of transporting it to a country that can treat and reuse the product;
- Independent scrutiny of tendering contracts for the export of the used oil. Consideration should be given to the reputation and professionalism of the appointed contractor. Such things as ensuring they have appropriate ships for carrying the oil; they have good history within the industry; they have guaranteed contracts with an approved treatment facility and that they will guarantee stewardship of the product once it has left Pohnpei;
- Establish a specifically designed centralised collection point within RMI. This will include establishing an environmentally secure collection facility that is bunded, covered and monitored to ensure the entry and exit of used oil is correctly managed. The location should be well considered so that it complements any potential future reuse or export options that may be established;
- Establish a formal procedure for collecting, managing and disposing of used oil at the centralised collection point; and
- Investigate a 'user pay' system for collecting used oil to help off set the costs for setting up and running the collection process. This may be coupled with leasing the collection and delivery of used oil to the private sector. A designated oil recovery company is motivated to ensure all used oil is managed correctly if the costs are realistic and provide value.

Long term

- Consider establishing a waste to energy system within RMI. Briefly, this would involve establishing a suitably sized burner capable of being fuelled by used oil. Connect the burner to a turbine generating electricity to supply the main power grid.

It is acknowledged that the implementation of some of these recommendations will require significant financial capital that is unlikely to be readily available. Funding from or partnering with an outside agency would more than likely be required. It is also acknowledged that these systems are reasonably 'high tech' and carry significant risk if not managed or used correctly. Assistance in training and maintaining such equipment would have to accompany any reuse initiatives.

Appendix 1: Copy of the Terms of Reference

Summary

Completion of contemporary used oil audits in Cook Islands, FSM, Kiribati, Marshall Islands, Nauru, Niue, Palau, PNG, Solomon Islands, Tonga, and Tuvalu

Objective

Completion of contemporary used oil audits in Cook Islands, FSM, Kiribati, Marshall Islands, Nauru, Niue, Palau, PNG, Solomon Islands, Tonga, and Tuvalu to establish volumes of lubricating, hydraulic and transmissions oils imported into each country and the volume of used oil produced, and stored or otherwise disposed of.

Location of Work

- Sub-region A: PNG
- Sub-region B: FSM, Marshall Islands and Palau
- Sub-region C: Kiribati, Nauru, Solomon Islands and Tuvalu
- Sub-region D: Tonga, Cook Islands, and Niue

Tasks

For each nominated sub-region (A, B, C & D), the Consultant will visit each country and spend as much time as is necessary to collect the information required to:

- a. Establish and document national oil import/generation volumes and rates for the last 3 years ideally 2011, 2012 and 2013:
 - i. Document by major suppliers, the annual volume of lubricating, hydraulic and transmission oils imported into each country for internal use;
 - ii. Document quantities of each oil distributed to outlying islands from main port(s) of entry;
 - iii. Obtain retail and wholesale purchase costs for: a 205litre and 20litre drum; and 5 litre, 4 litre and a 1 litre containers of lubricating oils; and
 - iv. Identify prices for fuels in particular the cost of diesel fuel purchased by power generators.
- b. Establish national used oil production rates for the last 3 years ideally 2011, 2012 and 2013:
 - i. Document used oil volumes recovered from outlying islands;
 - ii. Visit large and small vehicle service centres to establish actual recovery rates;
 - iii. Visit bus, haulage and construction companies to establish actual recovery rates;
 - iv. Visit the port authority, operators of fishing/private vessel and international vessels, shipping agents and shipping companies to establish actual recovery rates;

- v. Visit electricity generators using diesel powered generators to establish recovery rates; and
- vi. Document volumes of used oil generated by any other major users.
- c. Oil Audit Balance for the last 3 years ideally 2011, 2012 and 2013:
 - i. Prepare an audit balance of new oils and used oils.
- d. Document and summarise existing national used oil management procedures:
 - i. Identify existing storage facilities and stored oil volumes;
 - ii. Identify where possible, current used oil disposal locations;
 - iii. Provide photographic records of existing collection and storage facilities;
 - iv. Identify possible end users in country or within the relevant distribution network for the used oil, either using the used oil as a diesel extender, a supplementary furnace fuel etc;
 - v. Review the paperwork pertaining to the transportation of any used oil from each country; and
 - vi. Document shipping costs of containerised or tank-tainers of used oil to the nearest main port with adjacent used oil recycling facilities (e.g. Australia, Fiji, India, Japan, New Zealand, Philippines, Singapore). Shipping costs shall include documentation costs, port handling costs and any insurance costs.
- e. Document and summarise existing national used oil management instruments:
 - i. Document used oil provisions in national legislations by identifying relevant national waste management legislation, regulations and policies that manage used oil, and provide an overview of any national used oil management regulatory considerations.

Project Deliverables

Provide comprehensive draft audit reports (individual reports for each country) including the methodology used and associated confidence levels for the reported data for each country by the 29th August 2014 and final reports by the 30th September 2014 or other date subsequently agreed with SPREP.

Timeframes

All final reports completed and submitted to SPREP within twenty six (26) weeks from the date of contract signature.

Appendix 2: Organisational Details and List of Contacts

A2.1 Organisational Details

The visit to RMI took place from 1 to 7 July 2014. The consultant was Martyn O'Cain.

The primary agency for liaison was the Office of Environmental Policy and Planning Coordination (OEPPC), and the following personnel were involved:

Joseph Cain, Acting Director

Douglas Henry, RMI PACC Communication Coordinator

These officers were very helpful and provided considerable support during the visit.

Numerous other people were visited and considerable assistance was willingly provided. Full contact details are given below.

A2.2. List of Contacts

Company	Date	Location	Type	Category	Contact	ULO Generated (litre/year)	Stockpiled (litres)
Marshalls Energy Co	1/07/2014	Majuro	Power Station	Generator	Steve Wakefield	9,400	986,580
Marshalls Energy Co	1/07/2014	Ebeye	Power Station	Generator	Romeo Alfred		302,000
Marshalls Energy Co	1/07/2014	Wotje	Power Station	Generator		2,000	0
Marshalls Energy Co	1/07/2014	Jaluit	Power Station	Generator		2,000	0
RMI Port Authority	1/07/2014	Uliga	Sea Port	Vehicle		285	400
Pacific International Incorp (PII)	1/07/2014	Long Island	Construction	Vehicle	Kenneth Krammer	23,000	73,400
Majuro Motors	1/07/2014	Delap	Engine Service	Vehicle	Anoop	2,500	1,700
Ministry Transport & Communications	1/07/2014	Uliga	Engine Service	Vehicle	Wally Milne	340	0
Elim Motors	2/07/2014	Delap	Engine Service	Vehicle	Ray	10,000	1,985
The Brothers Auto Shop	2/07/2014	Uliga	Engine Service	Vehicle	Byung Dae Youn	5,000	2,300
Pan Pacific Food ltd	2/07/2014	Delap	Fishing Co.	Boat	Young	13,500	0
Marshall Islnd. Fishing Venture	2/07/2014	Delap	Fishing Co.	Boat	Gin	10,200	0
Koos Fishing Co	2/07/2014	Delap	Fishing Co.	Boat		51,000	0

Marshall Airlines	2/07/2014	Airport	Airline	Vehicle	Dan Fitzpatrick	50	130
Marshall Water treatment	2/07/2014	Delap	Utility	Generator		4	10
Majuro Atoll Waste Co	2/04/2017	Batkan	Landfill	Vehicle	Joaquin Otom	410	6,250
Majuro Water & Sewer Co	2/07/2014	Delap	Utility	Vehicle		830	100
Anil Construction Site 1	3/07/2014	Small Island	Construction	Vehicle	Carlos	1,530	5,600
Anil Construction Site 2	3/07/2014	Batkan	Construction	Vehicle		0	4,000
MFD Garage	3/07/2014	Delap	Engine Service	Vehicle	Lee	1,600	620
Indies Trader Marine Ventures	3/07/2014	Uliga	Tourism	Boat	Brian Kirk	3,750	19
Waterfront Technology	3/07/2014	Uliga	Engine Service	Vehicle	Rubert Reimers	8,300	10,700
Mobil	3/07/2014	Uliga	Oil Company	Vehicle	Garret	300	0
College of Marshall Islands	3/07/2014	Uliga	College	Vehicle		400	150
Joemar Developments	3/07/2014	Lubar Curve	Construction	Vehicle	Scott	150	0
Marshall Terminal & Stevedore	3/07/2014	Delap	Port Activity	Vehicle		1,700	Unknown
MK Garage	7/07/2014	Delap	Engine Service	Vehicle	Simon	832	208
National Telecom Agency	7/07/2014	Delap	Engine Service	Vehicle	Loney	1,660	1,660
MALGOV	7/07/2014	Delap	Engine Service	Vehicle	Reim Lornnij	1,250	420
Ministry of Public Works	7/07/2014	Delap	Engine Service	Vehicle	Xavier	6,440	208

Appendix 3: RMI Regulations and Laws

National Environmental Protection Act 1984

MARSHALL ISLANDS REVISED CODE 2004

TITLE 35. – ENVIRONMENT

CHAPTER 1.

ENVIRONMENTAL PROTECTION

ARRANGEMENT OF SECTIONS

Section

PART I- PRELIMINARY

§101. Short title.

§102. Application.

§103. Interpretation.

PART II- NATIONAL ENVIRONMENTAL PROTECTION AUTHORITY

§104. Establishment of the Authority.

§105. Inapplicability of the Corporations, Partnership and Associations Act.

§106. Members and their appointment.

§107. Compensation.

§108. Vacation of office.

§109. Delegation by the Authority.

§110. Procedure.

§111. Disclosure of, and disqualifications for, interest

§112. Misconduct in public office.

§113. Bylaws.

§114. Staff of the Authority.

§115. Application of bribery laws.

§116. Protection for action taken under this Act, or on the direction of the Authority.

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PART III - OBJECTS, POLICIES, POWERS, FUNCTIONS AND DUTIES

Division 1 - Objects, Policies and Powers

§119. Objects.

§120. Policies of the Authority.

- §121.** Powers of the Authority.
- §122 .** Primary drinking water regulations.
- §123.** Pollutants.
- §124.** Pesticides, etc
- §125.** Nuclear and radioactive waste, etc.

Division 2 - Functions and Duties

- §126.** Functions and duties of the Authority.
- §127.** Environmental management.
- §128.** Land Use Scheme.
- §129.** Natural resources.
- §130.** Fisheries.
- §131.** Soil conservation.
- §132.** Studies, research, etc.

PART IV - GENERAL RULES AS TO GOVERNMENTAL ACTION

- §133.** Environmental Impact.
- §134.** Environmental impact statements.

PART V – FINANCE

- §135.** National Environmental Protection Authority Fund.
- §136.** Bank accounts.
- §137.** Accounts and records.
- §138.** Minister may require report.
- §139.** Exemption from tax, etc.

PART VI- ENVIRONMENTAL ADVISORY COUNCIL

- §140.** Constitution.
- §141.** Compensation.
- §142.** Applicability of certain Sections.
- §143.** Meetings.
- §144.** Functions.

PART VII – ENFORCEMENT

Division 1 – General

- §145.** Enforcement action generally.
- §146.** Discharges of waste.
- §147.** Pollutants.

Division 2 - Cease and Desist Orders

§148. Application of administrative procedure laws.

§149. Issuing, etc, of cease and desist order.

§150. Public hearings.

Division 3 - Judicial Proceedings, etc.

§151. Declaratory and equitable relief

§152. Defenses

§153. Relief.

§154. Remission for administrative proceeding, etc.

§155. Administrative proceeding, etc., subject to Judicial review

Division 4 Fines, Penalties, etc

§156. Violation.

§157. Civil penalties.

§158. Damages.

§159. Criminal violations generally.

§160. Falsifying monitoring systems, etc.

§161. False statements.

PART VIII- MISCELLANEOUS

§162. Local authorities.

§163. Validity of regulations and by-laws.

§164. Applicability to the Government.

§165. Exception.

§166. Repeal and savings.

An Act to provide for the establishment of a National Environmental Protection Authority for the protection and management of the environment, and for matters connected therewith or incidental thereto.

[Section numbering style modified to conform to new Code format (Rev.2003)]

Commencement: December 19, 1984

Source: P.L. 1984-31

P.L. 1987-2

P.L. 2002-55

PART I - PRELIMINARY

§101. Short title.

This Act may be cited as the 'National Environmental Protection Act 1984'. [P.L. 1984-31, § 1.]

§102. Application.

This Act shall have effect subject to Title I, Article VI of the Compact of Free Association by and between the Government of the United States of America and the Government of the Marshall Islands. [P.L. 1984-31, §2.]

§103. Interpretation.

In this Act unless the context otherwise requires:

- (a) 'the Authority' means the National Environmental Protection Authority established under Section 104 of this Act;
- (b) 'beneficial uses' means a use of the environment that is conducive to public benefit, welfare, safety or health and which requires protection from the effects of wastes, discharges, emissions and deposits;
- (c) 'the Council' means the Environmental Advisory Council established under Section 140 of this Act;
- (d) 'environment' means the physical factors of the surroundings of human beings and includes the land, soil, water, atmosphere, climate, sound, odors, tastes and the biological factors of animals and plants of every description situated within the territorial limits of the Republic including the exclusive economic zone;
- (e) 'exclusive economic zone' means the zone declared to be the exclusive economic zone under Section 108 of the Marine Zones (Declaration) Act 1984;
- (f) 'the Fund' means the National Environmental Protection Authority Fund established under Section 135 of this Act;
- (g) 'land' includes messuages, buildings and any easements relating thereto;
- (h) 'local authority' means any Local Government Council and includes any authority created and established by or under any law to exercise, perform and discharge powers, duties and functions corresponding or similar to the powers, duties and functions exercised, performed and discharged by any such Council;
- (i) 'the President' means the President of the Republic of the Marshall Islands;
- (j) 'pollution' means any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any part of the environment by the discharge, emission or deposit of wastes so as to affect any beneficial use adversely or to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare,

or to animals, birds, wildlife, aquatic life or to plants of every description;

(k) 'protection and management' includes all rules, regulations, methods and measures that:

(i) are required to build, restore or maintain, or are useful in building, restoring or maintaining the environment; and

(ii) are designed to ensure that:

(A) beneficial uses may be made on a continuing basis;

(B) irreversible or long-term ill effects on the environment are avoided; and,

(C) there will be a multiplicity and variety of options available with respect to uses of the environment;

(l) 'public water system' means a system for the provision of pipe-borne water for human consumption that has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals, including:

(i) any collection, treatment, storage and distribution facilities under the control of the operator of the system, which are used primarily in connection with that system; and

(ii) any collection or pretreatment storage facilities whether or not under the control of such system, which are used primarily in connection with such system;

(m) 'waste' includes any matter prescribed by regulation to be waste, and any matter whether liquid, solid, gaseous, or radioactive which is discharged, emitted or deposited in the environment in such volume, component or manner as to cause an alteration of the environment. **[P.L. 1984-31, § 3.]****[paragraph (i) amended by P.L. 2002-55]**

PART II- NATIONAL ENVIRONMENTAL PROTECTION AUTHORITY

§104. Establishment of the Authority.

(1) For the purposes of this Act, there shall be established an Authority called the National Environmental Protection Authority (in this Act referred to as the 'Authority').

(2) The Authority:

(a) shall be a body corporate with perpetual succession;

(b) shall have a common seal;

(c) may acquire, hold, charge or dispose of property; and

(d) may sue or be sued in its corporate name.

(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to any document and shall presume that it was duly affixed.

(4) The common seal of the Authority shall be in the custody of the Authority and may be altered in such manner as may be determined by the Authority.

(5) The common seal of the Authority shall not be affixed to any document except in the presence of the Chairman of the Authority or a member of the Authority authorized by the Authority to sign on his behalf, and the General Manager of the Authority or an officer of the Authority authorized by the Authority to sign on his behalf. [P.L. 1984-31, §4.]

§105. Inapplicability of the Corporations, Partnership and Associations Act.

The provisions of the Corporations, Partnership and Associations Act shall not apply or relate to the Authority. [P.L. 1984-31, §5.]

§106. Members and their appointments.

(1) The Authority shall consist of a Chairman and four (4) other members:

(a) two (2) of whom shall be persons with adequate qualifications and experience in the subject of the environment;

(b) one of whom shall be a person with adequate skill and experience in environmental management; and

(c) one of whom shall be a person representing the general public.

(2) The President shall appoint the Chairman and other members of the Authority.

(3) Every member of the Authority shall, subject to Section 108 of this Act, hold office for a term of four (4) years and shall, unless removed from office, be eligible for reappointment. [P.L. 1984-31, §6][2] amended by P.L. 2002-55]

§107. Compensation.

(1) The Chairman and other members of the Authority, except a member who otherwise holds a salaried office under the Government of the Marshall Islands, shall be entitled to receive such compensation for their services as the Cabinet may determine.

(2) All members of the Authority shall be entitled to receive travel expenses and per diem

allowances at such rates and upon such terms and conditions as may be determined by the Authority; provided, however, that such rates shall in no event exceed rates paid to employees of the Government of the Marshall Islands. [P.L. 1984-31, §7.]

§108. Vacation of office.

(1) A member of the Authority vacates his office:

- (a) upon death;
- (b) subject to Subsection (2) of this Section, if he resigns his office by letter addressed to the President; or
- (c) if he is removed from office under Subsection (3) or (4) of this Section.

(2) A resignation under Subsection (1) of this Section shall take effect when it is received by the President or on such later date as may be agreed upon between the President and the member resigning.

(3) The President may for cause remove the Chairman or any other member of the Authority from office.

(4) The President may suspend the Chairman or any other member of the Authority from office pending a decision under Subsection (3) of this Section.

(5) In the event of the vacation of office by the Chairman or any other member of the Authority the President may appoint another person in his place. Any person so appointed shall hold office during the period of the unexpired term of the member whom he succeeds.

(6) If the Chairman or any other member of the Authority is unable to discharge the duties of his office on account of ill health or absence from the Republic or any other cause, the President may, appoint another person to act in his place.

(7) Any appointment made by the President under this Section or Section 105 of this Act whether permanent, temporary or following a vacation of office, shall be published in the Government Gazette.

(8) Any decision by the President to remove or suspend the Chairman or any other member of the Authority from office shall be final and conclusive and shall not be questioned in any court of law in any manner whatsoever.

(9) No act or proceeding of the Authority shall be invalid by reason only of the existence of any vacancy among its members or any irregularity in the appointment of a member thereof. [P.L. 1984-31, §8.][subsections (5) and (6) amended by P.L. 2002-55]

§109. Delegation by the Authority.

(1) The Authority may, by written instrument, delegate any of its powers and functions to any person or body of persons, except the power to make by-laws under Section 113 of this Act and regulations under Section 121 of this Act.

(2) A delegation under Subsection (1) of this Section may relate:

- (a) to the whole of the territory of the Republic or any part thereof specified in the instrument of delegation; or
- (b) to any or all of the activities conducted by the Authority as specified in the instrument of delegation.

(3) A delegation under Subsection (2) of this Section may be made subject to limitations and conditions.

(4) Any delegation under this Section may be varied or revoked by written instrument, and no such delegation shall prevent the exercise or performance of any power or function by the Authority. [P.L. 1984-31, §9.]

§110. Procedure.

Subject to this Act and to the by-laws made under Section 113 of this Act the Authority shall determine its own procedures. [P.L. 1984-31, §10.]

§111. Disclosure of, and disqualification for, interest.

(1) If a member of the Authority has any personal interest in the subject matter of any question before a meeting of the Authority:

- (a) he shall disclose such interest at the meeting; and
- (b) he shall not participate in the deliberations (except as directed by the Authority) or in the decision of the Authority on the question.

(2) A disclosure under Subsection (1) of this Section shall be recorded in the minutes.

(3) Unless the President directs otherwise, failure to comply with the requirements of Subsection (1) or (2) of this Section shall not invalidate any act or proceeding of the Authority. [P.L. 1984-31, §11.]

§112. Misconduct in public office.

A failure to comply with Section 111 of this Act shall be deemed to be misconduct in public office within the meaning of Section 146 of the Criminal Code. [P.L. 1984-31, §12, modified.]

§113. Bylaws.

(1) Subject to this Act and any regulations made under Section 121 of this Act, the Authority may make bylaws to govern and regulate the operations of the Authority.

(2) The by-laws shall provide for:

- (a) the quorum at and the conduct of the meeting of the Authority;
- (b) the appointment and duties of a Secretary to the Authority; and
- (c) any other matters relating to the Authority and the operations of the Authority which the Authority may think appropriate. [P.L. 1984-31, §13.]

§114. Staff of the Authority.

(1) Subject to the directions of the President, the Authority:

- (a) shall employ an executive officer called the General Manager of the Authority who shall be a person with adequate skill and experience in administration; and
- (b) may employ such other officers, servants, agents, consultants and advisers as may be necessary for the performance of the duties and functions of the Authority.

(2) Persons referred to in Subsection (1) of this Section shall be employed on such terms and conditions as may be determined by the Authority in consultation with the Public Service Commission.

(3) At the request of the President, the Public Service Commission may make available to the Authority services of any members of the Public Service on such terms and conditions as that Commission may determine.

(4) Where pursuant to Subsection (3) of this Section a member of the Public Service is appointed to serve the Authority he shall be subject to the disciplinary control of the Public Service Commission.

(5) Except as provided in this Section, Article VII of the Constitution of the Marshall Islands shall not apply or relate to the Authority. [P.L. 1984-31, §14][P.L. 2002-55 amending (1) and (3)]

§115. Application of bribery laws.

Every member and employee of the Authority shall be subject to the provisions of Section 118 of the Criminal Code with respect to every act in the performance of his duties under the Authority, and any such act shall be deemed to be an official act within the meaning of Section 118 of the Criminal Code herein referred to. [P.L. 1984-31, §15.]

§116. Protection for action taken under this Act, or on the direction of the Authority.

(1) No suit or prosecution shall lie:

- (a) against the Authority for any act which in good faith is done or purported to be done by the Authority under this Act or any regulation made under this Act; or
- (b) against any member, officer, servant or agent of the Authority for any act which in good faith is done or purported to be done by him under this Act or any regulation made under this Act or on the direction of the Authority.

(2) Any expenses incurred by the Authority in any suit or prosecution brought by or against the Authority before any court shall be paid out of the Fund of the Authority; and any costs, fines or damages paid to or recovered by the Authority in any such suit or prosecution shall be credited to the Fund of the Authority.

(3) Any expenses incurred by any such person referred to in Subsection(1)(b) of this Section in any suit or prosecution brought against him before any court with respect to any act which is done or purported to be done by him under this Act, or any regulation made under this Act, or on the direction of the Authority shall, if the court holds that such act was done in good faith, be paid out of the Fund of the Authority unless such expenses are recovered by him in such suit or prosecution. [P.L. 1984-31, §16.]

§117. Immunity.

No writ against person or property shall be issued against a member of the Authority in any action brought against the Authority. [P.L. 1984-31, §17.]

§118. Attorney-General.

The Attorney-General shall provide legal assistance and representation to the Authority in any suit or prosecution brought by or against the Authority or against any member, officer, servant or agent of the Authority, and shall advise the Authority on matters of law whenever thereto requested. [P.L. 1984-31, §18.]

PART III - OBJECTS, POLICIES, POWERS, FUNCTIONS AND DUTIES

Division 1 - Objects, Policies and Powers.

§119. Objects.

The primary purpose of the Authority shall be to preserve and improve the quality of the environment, and to that end, the following shall be the objectives of the Authority:

- (a) to study the impact of human activity including population growth and redistribution,

cultural change, exploitation of resources and technological advances on the environment:

- (b) to restore and maintain the quality of the environment;
- (c) to use all practicable means including financial and technical assistance to foster and promote the general welfare of the people by creating conditions under which mankind and nature can coexist in productive harmony;
- (d) to improve and coordinate consistently with other essential considerations of national policy, governmental plans, functions, and programs and resources, so as to prevent, as far as practicable, any degradation or impairment of the environment;
- (e) to regulate individual and collective human activity in such manner as will ensure to the people safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
- (f) to attain the widest possible range of beneficial uses of the environment without degradation or impairment thereof and other undesirable consequences to the health and safety of the people; and
- (g) to preserve important historical, cultural and natural aspects of the nation's culture and heritage, maintaining at the same time an environment which supports multiplicity and variety of individual choice. [P.L. 1984-31, §19.]

§120. Policies of the Authority.

- (1) Subject to this Act, the Authority shall be responsible for determining its own policies for carrying out its objectives, duties and functions.
- (2) The Authority shall keep the President informed of the policies of the Authority and of any major plans, programs and measures for the protection, improvement and management of the environment or any aspects thereof in which the Authority proposes to engage.
- (3) The President may at any time give to the Authority directions as to policy, and in particular as to its priorities.
- (4) If the Authority considers that a policy direction under Subsection (3) of this Section:
 - (a) is not in the best interest of the performance of its function;
 - (b) is not reasonably within the financial capabilities of the Authority; or
 - (c) would unduly strain the resources of the Authority;

the Authority may so advise the Cabinet in writing, but until the Cabinet otherwise directs the

Authority shall carry out such policy direction.

(5) A copy of any direction given under Subsection (3) of this Section, and of any advice or direction under Subsection (4) of this Section, shall be presented, as soon as practicable, by the President to the Nitijela. **[P.L. 1984-31, §20][P.L. 2002-55, substituting 'Minister' with 'President' under (2) (3) and (5)]**

§121. Powers of the Authority.

(1) Subject to this Act and any other law, the Authority shall have all such powers as are necessary or convenient for carrying out its objects, duties and functions.

(2) Without prejudice to the generality of the powers conferred by Subsection(1) of this Section, the Authority may in consultation with the Council and any other person or organization in the Republic or abroad, make regulations with respect to the following:

- (a) primary drinking water;
- (b) secondary drinking water;
- (c) pollutants;
- (d) use or application of pesticides, fungicides, insecticides, rodenticides and other chemicals which have a deleterious or harmful effect on the environment or any aspect thereof or human health and safety;
- (e) discharge or hazardous waste; and
- (f) the preservation of important historical, cultural and natural aspects of the nation's heritage, and other aspects of the environment which, in the opinion of the Authority, require regulation.

(3) In addition to the powers conferred by Subsection (2) of this Section the Authority may:

- (a) acquire by purchase, lease, sublease, easement or otherwise, any land or interest in land, with or without any building, for the purpose of its own use, conservation or rehabilitation;
- (b) acquire by purchase, lease, hire or otherwise, any land vehicle, sea craft, aircraft or other machinery or equipment for the purpose of carrying out its duties and functions;
- (c) requisition any land vehicle, sea craft, aircraft or other machinery or equipment as an emergency measure to prevent any threatened damage or repair any actual damage to the environment caused by any natural or human agency;
- (d) obtain the advice and services of any person or organization in the Republic or abroad,

with or without payment of a fee, wage or salary;

- (e) make contracts and other instruments for the supply of goods and services which the Authority may consider necessary or convenient for the effective and efficient discharge of its duties and performance of its functions;
- (f) expend monies out of its funds for the purpose of carrying out its duties and functions;
- (g) borrow money with the approval of the President (or in accordance with the terms of any general authority given by him) from the Government of the Marshall Islands, any person, bank or other lending institution, in such sum as the Authority may require for its purposes generally or for any particular purpose;
- (h) accept grants, advances, contributions, gifts or other assistance in money, materials or services from any source in the Republic or abroad;
- (i) detect, prosecute or cause the prosecution of, any offenses committed in contravention of the provisions of this Act and the regulations made under this Act, or take such other action as is therein prescribed; and
- (j) whenever it is necessary for the purpose of this Act or any regulation made thereunder, the Authority, any member, servant or agent of the Authority when duly authorized in that behalf by the Authority or by order of court, may, at reasonable times, enter any establishment, building or other premises or upon any land, public or private, for the purpose of obtaining information, making inspections, obtaining samples, inspecting or copying records required to be maintained under the provisions of this Act or any regulation made thereunder, or conducting surveys or investigations or detecting any offenses committed in contravention of the provisions of this Act or any regulation made under this Act. **[P.L. 1984-31, §21][P.L. 2002-55 amending para (g) by inserting 'President' in place of 'Minister']**

§122. Primary drinking water regulations.

(1) The regulations made for the purposes of Section 121(2)(a) of this Act shall:

- (a) apply to public water systems;
- (b) specify contaminants which, in the opinion of the Authority, may have an adverse effect on human health;
- (c) specify for each contaminant:
 - (i) a maximum permissible contaminant level, if, in the opinion of the Authority, it is economically and technologically feasible to ascertain the level of that contaminant in water in a public water system; or

(ii) if, in the opinion of the Authority, the ascertainment of the level of a certain contaminant is not economically and technologically feasible, each treatment technique known to the Authority which leads to a reduction in the level of that contaminant sufficient to meet the standards set by the Authority; and

(d) specify criteria and procedures to ensure a supply of drinking water which dependably complies with maximum permissible contaminant levels, including:

(i) quality control and testing procedures to ensure compliance with those levels and the proper operation and maintenance of any public water system, functions, contravention of the provisions of this Act and the regulations made under surveys or investigations or detecting any offenses committed in contravention of the provisions of this Act or any regulation made under this Act.

(ii) requirements as to the minimum quality of water which may be taken into any public water system; and

(iii) requirements as to the siting of new facilities for public water systems.

(2) The regulations made for the purposes of Section 121(2)(b) of this Act shall:

(a) apply to public water systems; and

(b) specify the maximum contamination levels which, in the opinion of the Authority, are necessary to protect the public welfare.

(3) The regulations referred to in Subsection (2) of this Section may apply to any contaminant in drinking water which may:

(a) adversely affect the odor or appearance of such water and consequently may cause a substantial number of persons served by a public water system to discontinue its use; or

(b) otherwise adversely affect the public welfare and may vary according to geographic and other circumstances. [P.L. 1984-31, §22.]

§123. Pollutants.

The regulations made under Section 121(2)(c) of this Act shall provide for:

(a) a permit system under which a permit is required for:

(i) the discharge of a pollutant into the air or water, or on land; or

(ii) the conduct of any activity (including the operation, construction, expansion or alteration of any installation) which results in the discharge of a pollutant into the air or water, or on land;

- (b) the issuance, modification, suspension, revocation and termination of any such permits; and
- (c) the posting of appropriate bonds or other securities for compliance. [P.L. 1984-31, §23.]

§124. Pesticides, etc.

The regulations made under Section 121(2)(d) of this Act shall provide for:

- (a) the certification of applicators of pesticides and such other chemical products;
- (b) the issuance of experimental use permits for pesticides and such other chemical products; and
- (c) plans to meet local needs with respect to pesticides and such other chemical products. [P.L. 1984-31, §24.]

§125. Nuclear and radioactive waste, etc.

Subject to any law dealing with nuclear and radioactive waste, the regulations made under Section 121 (2)(e) of this Act shall regulate the storage and disposal of nuclear, radioactive and other hazardous waste. [P.L. 1984-31, §25.]

Division 2 - Functions and Duties

§126. Functions and duties of the Authority.

The functions and duties of the Authority shall be:

- (a) to administer the provisions of this Act and the regulations made thereunder;
- (b) to recommend to the President, national environmental policy and criteria for the protection of any aspect of the environment with respect to the uses and values, whether tangible or intangible, to be protected, the quality to be maintained, the extent to which the discharge of wastes may be permitted without detriment to the quality of the environment, and long-range development uses and planning and any other factors relating to the protection and management of the environment;
- (c) to undertake and carry out surveys and investigations as to the causes, nature, extent and prevention of pollution, and to assist and cooperate with other persons or bodies carrying out similar surveys or investigations;
- (d) to conduct, promote and coordinate research in relation to any aspect of environmental degradation or the prevention thereof, and to develop criteria for the

protection and improvement of the environment;

- (e) to specify standards, norms and criteria for the protection of beneficial uses and for maintaining the quality of the environment;
- (f) to publish reports and information with respect to any aspects of environmental protection and management;
- (g) to collect information and to establish record keeping, monitoring and reporting requirements as necessary to carry out the principles and objectives of this Act;
- (h) to undertake and carry out investigations and inspections to ensure compliance with this Act and the regulations made thereunder and to investigate complaints relating to noncompliance with any of such provisions;
- (i) to specify methods to be adopted in taking samples and carrying out tests for the purposes of this Act and the regulations made thereunder;
- (j) to provide information and education to the public regarding the protection and improvement of the environment;
- (k) to establish and maintain liaison with other countries and international organizations with respect to environmental protection and management;
- (l) to report to the President upon matters concerning the protection and management of the environment and to advise the Minister as to the need for any new legislation or amendment to existing legislation concerning any aspect of the environment, and upon any matters referred to the Authority by the Minister;
- (m) to promote, encourage, coordinate and carry out long-range planning in environmental protection and management;
- (n) to promote, encourage and give effect to methods of converting and utilizing residues; and
- (o) to classify land, water and air according to present and future uses. **[P.L. 1984-31, §26][P.L. 2002-55 substituting 'Minister' with 'President']**

§127. Environmental management.

The Authority shall, in consultation with the Council and with the assistance of the Ministry of Internal Affairs¹, formulate and recommend to the Minister a Land Use Scheme consistent with the following objectives:

- (a) to provide a rational, orderly and efficient system of acquisition, utilization and disposition of land and its resources in order to derive therefrom maximum benefits; and

(b) to encourage the prudent use and conservation of land resources in order to prevent an imbalance between the needs of the nation and such resources. [P.L. 1984-31, §27.]

¹ [Correct name (of the Ministry) inserted]

§128. Land Use Scheme.

The Land Use Scheme formulated under Section 127 of this Act may include:

- (a) a scientifically adequate land inventory and classification system;
- (b) a determination of present land uses, the extent to which land is utilized, under-utilized or rendered idle or abandoned;
- (c) a comprehensive and accurate determination of the adaptability of land for community development, agriculture, industry or commerce;
- (d) identification of areas having important historic, cultural or aesthetic value where uncontrolled development or exploitation could result in irreparable damage;
- (e) a method for exercising control by the Government of the Marshall Islands over the use of land in areas where environmental control is deemed necessary; and
- (f) a policy for influencing the location of new areas for the resettlement of persons and the methods for assuring appropriate controls over the use of land in and around such areas. [P.L. 1984-31, §28.]

§129. Natural resources.

The Authority shall, in consultation with the Council and with the assistance of the Ministry of Resources and Development, recommend to the President the basic policy on the management and conservation of the country's natural resources in order to obtain the optimum benefits therefrom and to preserve the same for future generations, and the general measure through which such policy may be carried out effectively. [P.L. 1984-31, §29][P.L. 2002-55 inserting 'President in place of 'Minister']

§130. Fisheries.

- (1) The Authority shall, in consultation with the Council and with the assistance of the Ministry in charge of the subject of fisheries, recommend to the Minister a system of rational exploitation of fisheries and of the aquatic resources within the territorial waters of the Republic including its exclusive economic zone, and shall encourage citizen participation therein to maintain and enhance the optimum and continuous productivity of such waters.
- (2) Measures for the rational exploitation of fisheries and other aquatic resources may include the regulation of the harvesting and marketing of threatened species of fish or other aquatic life.

[P.L. 1984-31, §30.]

§131. Soil conservation.

The Authority shall, in consultation with the Council and with the assistance of the Ministry of Internal Affairs², recommend soil conservation programs, including therein encouragement of scientific farming techniques, physical and biological means of soil conservation, and short-term and long-term research and technology for effective soil conservation. **[P.L. 1984-31, §31.]**

² [see footnote 1 above]

§132. Studies, research, etc.

The Authority may undertake and promote continuing studies and research programs on environmental management and shall from time to time, determine priority areas of environmental research. **[P.L. 1984-31, §32.]**

PART IV - GENERAL RULES AS TO GOVERNMENTAL ACTION

§133. Environmental impact.

All Ministries, Departments, offices and agencies of the Government of the Marshall Islands shall, in all matters in which there is or may be an environmental impact:

- (a) utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences, traditional wisdom and the environmental design arts in planning and decision-making;
- (b) identify and develop, in consultation with the Authority, methods and procedures which will ensure that presently un-quantified environmental amenities and values are given appropriate consideration in decision making along with economic and technical considerations;
- (c) include in every recommendation or report on proposals for legislation and other major governmental action significantly affecting the human environment, an environmental impact statement in accordance with Section 134 of this Act;
- (d) study, develop and describe appropriate alternatives to recommended courses of action in any proposal which contains unresolved conflicts concerning alternative uses of available resources;
- (e) recognize the worldwide and long-range character of environmental problems, and give appropriate support to initiatives, resolutions, programs and other proposals or activities designed to increase international cooperation in foreseeing and preventing a decline in the quality of the world environment of mankind;
- (f) make available to institutions and individuals, advice and information useful in

restoring, maintaining and enhancing the quality of the environment;

(g) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(h) assist the Authority. **[P.L. 1984-31, §33.]**

§134. Environmental impact statements.

(1) For the purposes of Section 133(c) of this Act an environmental impact statement is a detailed statement by the responsible official on:

(a) the environmental and cultural impact of the proposed action;

(b) any adverse environmental effects which cannot be avoided if the proposal is carried out;

(c) alternatives to the proposed action;

(d) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and

(e) any irreversible and irretrievable commitment of resources which the proposed action will necessitate if it is carried out.

(2) Before making an environmental impact statement, the responsible official shall consult and obtain the comments of the interested public and any Ministry, Department, office or agency of the Government of the Marshall Islands which has jurisdiction bylaw, or expertise with respect to any environmental impact of the proposed action.

(3) Copies of an environmental impact statement and of the comments and views of the appropriate Ministries, Departments, offices and agencies of the Government of the Marshall Islands shall be made available to the Authority, and to the public for inspection and copying, and the public shall be notified of the existence and availability of the statement a reasonable time before the completion of the Government of the Marshall Islands decision making process.

(4) The environmental impact statement shall accompany the proposal through the review process, and the decision shall be explained in a statement of basis and purpose which shall include findings by the responsible official body that:

(a) the environmental impact of the proposed action has been studied and considered by the responsible Ministry, Department, office or agency of the Government of the Marshall Islands;

(b) alternatives to the proposed action have been given consideration;

- (c) any adverse environmental effects which cannot be avoided by adopting reasonable alternatives are justified by other stated considerations of national policy; and
- (d) any short-term uses of the environment are consistent with maintaining and enhancing long-term productivity or usefulness, or if not, why it is proposed that the action proceed regardless. [P.L. 1984-31, §34.]

PART V - FINANCE

§135. National Environmental Protection Authority Fund.

- (1) There shall be established a fund called the National Environmental Protection Authority Fund, hereinafter referred to as 'the Fund.'
- (2) The Fund shall be a fund other than the Marshall Islands General Fund within the meaning and for the purposes of Article VIII, Section 3 of the Constitution of the Marshall Islands.
- (3) There shall be paid into the Fund:
 - (a) any monies appropriated by the Nitijela for the purposes of the Authority either generally or in relation to any particular purpose;
 - (b) any monies recovered by the Authority by way of fines, penalties, fees, and monies awarded to the Authority by way of costs, penalties, fines, or damages in any suit, prosecution or other proceeding under this Act or any other law; and
 - (c) any monies received by the Authority by way of loans, grants, advances, contributions, gifts or other assistance.
- (4) The Authority shall keep within the Fund a separate account with respect to each of such matters as are referred to in Subsection (3) of this Section.
- (5) Where any money is borrowed or any advance, grant, contribution, gift or assistance is received for a specific purpose or subject to any conditions, it may be expended or used only for that purpose or subject to those conditions. [P.L. 1984-31, §35.]

§136. Bank accounts.

The Authority shall open a bank account or accounts with a bank approved by the Minister of Finance for the purpose. [P.L. 1984-31, §36]

§137. Accounts and records.

- (1) The Authority shall maintain proper accounts and records, to the satisfaction of the Secretary of Finance, of:

- (a) the National Environmental Protection Authority Fund;
- (b) the disposition of monies made out of the Fund; and
- (c) the property and financial transactions of the Authority generally.

(2) The accounts to be laid before the Nitijela by the Minister of Finance under Article VIII, Section 5(4) of the Constitution of the Marshall Islands shall include accounts relating to the Authority.

(3) The accounts and records referred to in Section 136 of this Act and Subsections (1) and (2) of this Section shall be audited by the Auditor-General as provided for in Article VIII, Section 15 of the Constitution of the Marshall Islands.

(4) Before the end of the month of June each year, the Authority shall submit to the President a report of the work of the Authority including its property and financial transactions during the previous financial year.

(5) Before submitting the report (referred to in Subsection (4) of this Section) to the President, the Authority shall submit it to the Auditor-General who shall report to the Minister:

- (a) whether the financial statements in the report are based on proper accounts and records;
- (b) whether the statements in the report are in agreement with the accounts and records and show fairly the financial operation and the state of the affairs of the Authority;
- (c) whether the receipt and expenditure of monies, the acquisition and disposal of assets, and the operations of the Authority during the financial year have been in accordance with this Act;
- (d) as to such other matters arising out of the report as the Auditor-General considers should be reported to the President; and
- (e) the President shall cause the report and financial statements of the Authority together with the report of the Auditor-General and his own comments to be laid before the Nitijela within fifteen (15) days after their receipt by him, or if the Nitijela is not in session, within fifteen (15) days after the commencement of the next session of the Nitijela. **[P.L. 1984-31, §37][P.L. 2002-55 substituting 'President' in the place of 'Minister']**

§138. President may require report.

Notwithstanding the provisions of Section 137 of this Act the President may at any time require the Authority to submit to him a report in such form and as to such matters as he thinks necessary. **[P.L. 1984-31, §38.][PL2002-55]**

§139. Exemption from tax, etc.

The income, property and transactions of the Authority shall not be subject to any tax, rate, charge or impost under any other law. [P.L. 1984-31, §39.]

PART VI- ENVIRONMENTAL ADVISORY COUNCIL

§140. Constitution.

(1) There shall be established a Council called the Environmental Advisory Council which shall consist of a Chairman and ten (10) other members composed as follows:

- (a) a senior officer of the Ministry of Finance nominated by the Minister of Finance;
- (b) a senior officer of the Ministry of Foreign Affairs nominated by the Minister of Foreign Affairs;
- (c) a senior officer of the Ministry of Public Works nominated by the Minister of Public Works;
- (d) a senior officer of the Ministry of Transportation and Communication nominated by the Minister of Transportation and Communication;
- (e) a senior officer of the Ministry of Education nominated by the Minister of Education;
- (f) a senior officer of the Ministry of Interior and Outer Islands Affairs nominated by the Minister of Interior and Outer Islands Affairs;
- (g) a senior officer of the Ministry of Resources and Development nominated by the Minister of Resources and Development;
- (h) a senior officer of the Ministry of Social Services nominated by the Minister of Social Services;
- (i) a senior officer of the Ministry of Health Services nominated by the Minister of Health Services;
- (j) one representative of private industry; and
- (k) one representative of the general public.

(2) The President shall appoint the members of the Council and shall appoint one of the members to be the Chairman of the Council.

(3) The Chairman and other members of the Council shall hold office for a period of four (4)

years and shall, unless removed from office, be eligible for reappointment.

(4) No member of the Authority shall be a member of the Council. [P.L. 1984-31] [P.L. 2002-55]

§141. Compensation.

(1) The Chairman and other members of the Council shall not be entitled to receive any compensation except the members referred to in Section 40(1)(j) and (k) of this Act who may be paid such allowance per sitting and at such rates and upon such terms and conditions as the Cabinet may determine.

(2) All members of the Council shall be entitled to receive travel expenses and per diem allowances at such rates and upon such terms and conditions as may be determined by the Authority; provided, however, that such rates shall in no event exceed rates paid to employees of the Government of the Marshall Islands. [P.L. 1984-31, §41.]

§142. Applicability of certain Sections.

The provisions of Sections 108, 111, 112, 115, 116, 117 and 118 of this Act shall apply mutatis mutandis and relate to the Council and its members. [P.L. 1984-31, §42.]

§143. Meetings.

The Council may regulate the procedures in regard to its meetings and the transaction of its business, provided, however, that the Council shall meet at least four (4) times a year. [P.L. 1984-31, §43]

§144. Functions,

The functions of the Council shall be:

- (a) generally to advise the Authority on matters pertaining to its responsibilities, powers, duties and functions; and
- (b) to advise the Authority on any matters referred to the Council by the Authority.
[P.L. 1984-31, §44.]

PART VII- ENFORCEMENT

Division 1 - General

§145. Enforcement action generally.

(1) A person who violates any provision of this Act or the regulations made under this Act shall be subject to enforcement action by the Authority.

(2) The enforcement action may be:

- (a) the making of a cease and desist order in relation to the subject matter of the violation;
- (b) the imposition of a civil penalty in accordance with Section 157 of this Act;
- (c) the institution of civil proceedings to restrain the violation; or
- (d) any other action authorized by or under this Act or any other law. [P.L. 1984-31, §45.]

§146. Discharges of waste.

(1) When the Authority finds that:

- (a) a discharge of waste is taking place, or is threatening to take place, in violation of legal requirements as to discharges; or
- (b) the waste collection, treatment or disposal facilities of a discharger are approaching capacity, the Authority shall require the discharger to submit for approval by the Authority a detailed time schedule of specific action to be taken by the discharger to prevent a violation of the requirements as to discharges, and the Authority may approve the schedule subject to such modifications as it considers reasonably necessary.

(2) When the Authority finds that a discharge of waste is taking place, or is threatening to take place, in violation of the requirements as to discharges, the Authority shall issue a cease and desist order, and direct that the discharger:

- (a) comply forthwith with those requirements;
- (b) comply with those requirements in accordance with a time schedule set by the Authority; or
- (c) in the event of a threatened violation, take appropriate remedial or preventive action.

(3) Where an existing or threatened violation of legal requirements as to discharges is in the operation of a community system, a cease and desist order under Subsection (2) of this Section may restrict or prohibit the volume, type or concentration of waste that may be added to the system by dischargers who did not discharge into the system before the issuing of the order. [P.L. 1984-31, §46]

§147. Pollutants.

Any person who:

(a) discharges any pollutant into the air or water, or on land in violation of this Act or of any permit, requirement or order issued or made by the Authority under this Act; or

(b) intentionally or negligently causes or permits any pollutant to be deposited where it is discharged into the air or water, or on land, shall, on the order of the Authority, clean up the pollutant or abate its effects. [P.L. 1984-31, §47.]

Division 2 - Cease and Desist Orders Application of administrative procedure laws.

§148. Application of administrative procedure laws.

The provisions of this Division are subject to the provisions of any law concerning administrative procedure, and in the event of any inconsistency the latter provisions shall prevail. [P.L 1984-31, §48.]

§149. Issuing, etc., of cease and desist order.

(1) A cease and desist order made under Division 1 of this Part is effective on being issued, and final when the Authority, after a public hearing in accordance with Section 150 of this Act, issues a finding to that effect.

(2) A copy of a cease and desist order, and of a finding referred to in Subsection (1) of this Section, shall forthwith be served:

(a) on the violator; and

(b) on any person affected who appears at the public hearing and requests a copy. [P.L. 1984-31, §49]

§150. Public hearings.

(1) When a cease and desist order is made under Division I of this Part, a public hearing shall be conducted by the Authority to determine the authenticity of the facts upon which the order was made.

(2) Adequate notice of the hearing, and an adequate opportunity to appear and be heard at the hearing, shall be given to all interested persons. [P.L 1984-31, §50.]

Division 3 - Judicial Proceedings, etc.

§151. Declaratory and equitable relief.

(1) The Attorney-General, any agency or instrumentality of the Government of the Marshall Islands, a local government or any other person or body may maintain an action in the High Court for declaratory or equitable relief against any person or body for the protection of the air, land, water or other aspect of the environment from pollution, impairment or destruction.

(2) Any person or body of persons may maintain an action in the High Court for declaratory relief against the Government of the Marshall Islands, or any agency or instrumentality of the Government of the Marshall Islands for the protection of the air, land, water or other aspect of the environment from pollution, impairment or destruction.

(3) Subject to Subsection (4) of this Section, if in an action under Subsection (1) or (2) of this Section, the High Court finds that any relevant standard or requirement fixed or made by the Authority or any other instrumentality or agency of the Government of the Marshall Islands is unreasonable, either generally or in the particular circumstances, the Court may apply, and may order the adoption of, a reasonable standard or requirement.

(4) Subsection (2) of this Section does not apply with respect to a standard or requirement fixed or made by an Act, or by the Cabinet by virtue of powers conferred on it by an Act. [P.L. 1984-31, §51.]

§152. Defenses.

(1) It shall be a defense to an action under Section 151 of this Act if the defendant proves that there is no feasible and prudent alternative to his conduct, and that such conduct is consistent with the promotion of public health, safety and welfare, in light of:

- (a) the paramount concern of the Republic for the protection of the air, land and water, and other national resources from pollution, impairment or destruction; and
- (b) the purposes of this Act.

(2) Subsection (1) of this Section does not limit any other defense that is available. [P.L. 1984-31, §52.]

§153. Relief.

In an action under Section 151 of this Act, the High Court may grant temporary and permanent relief including injunctive relief and may impose conditions on the defendant that are required to protect the air, land and water, and other natural resources, from pollution, impairment or destruction; provided, however, that no relief by way of a penalty, injunction or writ shall lie against the Government of the Marshall Islands. [P.L. 1984-31, §53]

§154. Remission for administrative proceedings, etc.

If in an action under Section 151 of this Act, administrative, licensing or other proceedings are required or available to determine the legality of the conduct of the defendant, the High Court may remit the matter to such proceedings, and shall make a final determination after the completion of those proceedings. [P.L. 1984-31, §54.]

§155. Administrative proceedings, etc., subject to judicial review.

(1) This Section applies to any of the following proceedings:

(a) administrative, licensing and other proceedings provided for by law with respect to which judicial review is provided for; and

(b) proceedings on judicial review of any such proceedings.

(2) In any proceedings to which this Section applies the agency conducting the proceedings (in a case to which Subsection (1) of this Section applies), or the High Court, in any case, may permit the Attorney-General, any agency or instrumentality of the Government of the Marshall Islands, a local government or any other person to intervene as a party on the filing of a plea asserting that the proceedings involve conduct which has, or which is likely to have, the effect of polluting, impairing or destroying the air, land or water, or other aspect of the environment.

(3) In any proceedings to which this Section applies any alleged pollution, impairment or destruction of the air, land or water, or other aspect of the environment, shall be determined, and no conduct shall be authorized or approved which has, or which is likely to have, that effect, so long as there is a feasible and prudent alternative available which is consistent with the reasonable requirements of public health, safety and welfare. [P.L. 1984-31, §55.]

Division 4 - Fines, Penalties, etc. Violation.

§156. Violation.

In this Division, a reference to a violation of this Act including a reference to a violation of any provision of:

(a) the regulations made under Section 121 of this Act; or

(b) any permit, requirement or order issued or made by the Authority under this Act or the regulations made under this Act. [P.L. 1984-31, §56]

§157. Civil penalties.

(1) A person who violates any provision of this Act shall be liable to a civil penalty, fixed by the Authority, not exceeding \$10,000 for each day on which the violation continues.

(2) The amount of the penalty shall be paid into the Fund of the Authority. [P.L. 1984-31, §57.]

§158. Damages.

(1) Where a person violates any provision of this Act, the Attorney-General may petition the High Court for a judgment awarding damages.

(2) In determining the damages, the Court shall consider all relevant circumstances, including:

- (a) the extent and nature of the harm caused by the violation;
- (b) the nature and persistence of the violation;
- (c) the length of time over which the violation occurred; and
- (d) the corrective action (if any) taken by the violator.

(3) Subject to any order of the Court, the damages shall be paid into the Fund of the Authority. **[P.L. 1984-31, § 58.]**

§159. Criminal violations generally.

- (1) A person who:
 - (a) discharges pollutants in violation of this Act or the regulations made under this Act;
 - (b) with respect to the introduction of pollutants into any publicly owned treatment works, violates any applicable pretreatment standard or toxic effluent standard; or
 - (c) violates any other provision of the regulations made under this Act or of any permit issued by the Authority, shall be guilty of a misdemeanor.
- (2) The penalty for an offense under Subsection (1) of this Section shall be:
 - (a) in the case of a first offense under that Subsection, a fine not exceeding \$25,000 for each day the offense continues to occur; or
 - (b) in the case of a subsequent such offense, a fine not exceeding \$50,000 for each day the offense continues to occur. **[P.L. 1984-31, §59.]**

§160. Falsifying monitoring systems, etc.

A person who falsifies, tampers with or knowingly makes inaccurate any monitoring system, device or method required to be maintained under this Act or under a permit, requirement or order issued or made under this Act shall be guilty of a misdemeanor and shall upon conviction be liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding six (6) months, or both. **[P.L. 1984-31, §60][The effective date of this Act was retrospectively fixed as December 9, 1984, by P.L. 1987-2, §2]**

§161. False statements, etc.

A person who knowingly falsifies or makes a false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this Act or the regulations made thereunder, or under a permit, requirement or order made under

this Act, shall be guilty of a misdemeanor and shall upon conviction be liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding six (6) months, or both. [P.L. 1984-31, §61.]

PART VIII- MISCELLANEOUS

§162. Local authorities.

Every Local Government Council and other local authority shall be deemed to be an agent of the Authority and shall exercise and perform such powers, duties and functions as may be delegated to it by the Authority. [P.L. 1984-31, §62]

§163. Validity of regulations and by-laws.

No regulation or by-law made by the Authority shall be valid until it has been approved by the President. [P.L. 1984-31, §63] [P.L. 2002-55]

§164. Applicability to the Government.

This Act binds the Government of the Marshall Islands. [P.L. 1984-31, §64.]

§165. Exception.

This Act shall not apply or relate to that portion of the territory to which the Agreements regarding the military use and operating rights of the Government of the United States in the Marshall Islands concluded pursuant to Sections 321 and 323 of the Compact of Free Association, dated May 24, 1982, applies. [P.L. 1984-31, §65.]

§166. Repeal and Savings.

(1) 63 TTC (1980), Sections 501-5 10 are hereby repealed.

(2) Notwithstanding the provisions of Subsection (1) of this Section, all regulations, permits and certificates adopted or issued pursuant to 63 TTC(1980), Sections 501-510 and in force, shall continue to be in force until amended, modified or repealed, or revoked under the regulations made under this Act.

MARINE RESOURCES ACT

**REPUBLIC OF THE MARSHALL
ISLANDS**

Official Copy

August 3rd 1997

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 transhipping 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, transhipping 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) transhipment;
- (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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- (i) 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 ratenone, tephrosin or plant material from *Barrington asiatica*, *coccus 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 measures 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 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 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 deve-

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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 re-

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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 *Marine Resources Act 1997*

(e) 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 transhipping 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) transhipment, 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 *Marine Resources Act 1997*

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

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- 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.

Civil Liability for Oil Pollution Damage Act

MARSHALL ISLANDS REVISED CODE 2004

TITLE 47 – MARITIME

CHAPTER 6.

CIVIL LIABILITY FOR OIL POLLUTION DAMAGE

ARRANGEMENT OF SECTIONS

§601. Short Title.

§602. International Convention.

§603. Action for Compensation.

§604. Limitation Fund.

§605. Procedure.

§606. Certificates of Insurance.

§607. Penalty for Lack of Certificate.

An Act to provide the force and effect of law within the Republic for certain portions of the International Convention on Civil Liability for Oil Pollution Damage, adopted at Brussels on 29 November 1969, as amended by the 1976 Protocol thereto.

Commencement: 15 October 1993

Source: P.L. 1993-76

§601. Short Title.

This Chapter may be cited as the Civil Liability for Oil Pollution Damage Act.

[**Short title supplied by Commissioner.**]

§602. International Convention.

Articles I-XI of the International Convention on Civil Liability for Oil Pollution Damage, adopted at Brussels on 29 November 1969, as amended by the 1976 Protocol thereto (the 'Convention on Civil Liability'), a copy of which is annexed to the Nitijela Resolution providing for the accession of the Republic thereto, shall form a part of the laws of the Republic, subject to the provisions of Sections 603 to 607 of this Chapter. [**P.L. 1993-76, §3(205)**].

§603. Action for Compensation.

An action for compensation under this Chapter may be brought in the Republic if pollution damage resulting from an incident covered under the Convention on Civil Liability has been sustained within the Republic, including its territorial sea, or if measures have been taken to prevent or minimize such damage in that area. Any such action shall be brought before the High Court. [P.L. 1993-76, §3(206)].

§604. Limitation Fund.

The Limitation Fund referred to in Article V (3) of the Convention on Civil Liability shall be constituted with the High Court. [P.L. 1993-76, §3(207)].

§605. Procedure.

The High Court shall determine the procedure for the presentation of claims and for the distribution of the Limitation Fund. If the limitation amount is insufficient to satisfy the claims of those who are entitled to compensation, the amount of compensation of each claimant shall be reduced pro rata. [P.L. 1993-76, §3(208)].

§606. Certificates of Insurance.

With respect to vessels registered under the provisions of this Title, certificates attesting that insurance or other financial security is in force as required under Article VII (2) of the Convention on Civil Liability, shall be issued by the Maritime Administrator in the form prescribed in such Article, and such certificates shall be issued by the Maritime Administrator upon proof of financial responsibility, to ships flying the flag of a State not party to the Convention on Civil Liability that leave a port in the territory of the Republic. The Maritime Administrator shall determine the procedure for the issue of certificates of insurance or other financial security. [P.L. 1993-76, §3(209)].

§607. Penalty for lack of Certificate.

Each vessel carrying as cargo more than 2,000 tons of oil in bulk, as defined in Article I (5) of the Convention on Civil Liability, shall carry a valid certificate of insurance or other financial security prior to entering or leaving, as the case may be, a port or terminal installation within the territory of the Republic. The owner and master of any vessel which fails to comply with such requirement shall be subject to a fine in an amount not to exceed \$5,000. [P.L. 1993-76, §3(210)].

Coast Conservation Act 1988

MARSHALL ISLANDS REVISED CODE 2004

TITLE 35 – ENVIRONMENT

CHAPTER 3.

COAST CONSERVATION

ARRANGEMENT OF SECTIONS

Section

PART I. PRELIMINARY

§301. Short title

PART II. ADMINISTRATION

§302. Interpretation

§303. Administration.

§304. Director of Coast Conservation.

§305. Duties and functions of the Director.

PART III. COASTAL ZONE MANAGEMENT

§306. Survey of Coastal Zone.

§307. Coastal Zone Management Plan.

§308. Authority to prescribe criteria to issue permits.

PART IV. PERMIT PROCEDURE

§309. Issue of permits

§310. Conditions for issue of permits.

§311. Environmental impact assessment.

§312. Conditions attached to permits zone

§313. Duration and renewal of permits.

§314. Variation of conditions of permit

§315. Execution of schemes of coast conservation.

§316. Appeals.

§317. Provisions of this Part not to apply to maintenance or dredging of existing navigation channels.

PART V. GENERAL

§318. Transitional provisions

§319. Permits for the occupation of the foreshore or Sea bed

§320. Director to give directions for prevention or Intrusion of waste or foreign mater into the coast zone

§321. Powers of entry

§322. Returns

§323. Contravention of the provisions of Section 409 and Offenses under this Act.

§324. Offenses

§325. Additional fine.

§326. Demolition of unauthorized structures, etc.

§327. Regulations

§328. Savings as to the rights of the Republic and local Governments

§329. Protection for action taken in good faith

§330. Application of certain written laws to the coastal

An Act to make provision for a survey of the coastal zone and the preparation of a coastal zone management plan; to regulate and control development activities within the coastal zone; to make provisions for the formulation and execution of schemes for coast conservation; and to provide for matters connected therewith or incidental thereto.

[Former Chapter 3 'Alternative Energy Fund' re-codified as 11 MIRC Ch.17. Section numbering style modified to conform to new Code format] Rev.2003]

Commencement: September 21. 1988
Source: P.L. 1988-13

PART I. - PRELIMINARY

§301. Short Title.

This Act may be cited as the 'Coast Conservation Act 1988'. **[P.L. 1988-13, §1.]**

PART II. - ADMINISTRATION

§302. Interpretation.

In this Act, unless the context otherwise requires:

- (a) 'coast' means the border of land which is adjacent to the sea and not covered by sea water;
- (b) 'coast conservation' means the protection and preservation of the coast from sea erosion or encroachment of the sea, and includes the planning and management of development activity within the Coastal Zone;

(c) 'Coastal Zone' means the area laying within a limit of twenty five (25) feet landwards of the mean high water line and a limit of two hundred feet seawards of the mean low water line;

(d) 'coastline' means the line of intersection of the plane of water at mean sea level with the coast;

(e) 'Council' means the Environmental Advisory Council established under Section 140 of the National Environmental Protection Act 1984;

(f) 'development activity' means any activity likely to alter the physical nature of the coastal zone in any way, and includes the construction of buildings and works, the deposit of wastes or other material from out-falls, vessels or by other means, the removal of sand, coral, shells, natural vegetation, sea grass or other substances, dredging and filling, land reclamation and mining or drilling for minerals, but does not include fishing;

(g) 'environmental impact assessment' means a written analysis of a proposed development activity, and includes a description of the avoidable and unavoidable adverse environmental effects of the proposed development activity, a description of alternatives to the activity which might be less harmful to the environment of the Coastal Zone, together with reasons why the alternatives were rejected;

(h) 'foreshore' means the area of the shore of the sea between the mean high waterline and mean low waterline:

(i) 'land' includes the seabed and anything resting on the seabed or shore of the sea;

(j) 'material' includes minerals, turf, sea-grass, and any other vegetation;

(k) 'scheme of work' in relation to coast conservation or the Coastal Zone means any work of construction, alteration, demolition, excavation, reclamation, repair or maintenance and includes dredging and drilling, the removal or dumping of any material or the sowing or planting of vegetation for the purpose of protecting the Coastal Zone from sea erosion or encroachment by the sea, or for the development of the Coastal Zone;

(l) 'sea' includes the water of any channel, creek, bay, estuary or any lagoon extending up to the furthest point to which the tide flows;

(m) 'Straight base line' means the base line as defined in the Marine Zones (Declaration) Act 1984, being the baselines from which the limits of the territorial sea of the Republic of the Marshall Islands are measured; and

(n) 'territorial sea' means the area of sea declared to be the territorial sea of the Republic of the Marshall Islands under Section 107 of the Marine Zones (Declaration) Act 1984.

[P.L. 1988-13, §2.]

§303. Administration.

The administration, control, custody and management of the Coastal Zone, and the general administration and implementation of the provisions of this Act are hereby vested in the National Environmental Protection Authority established under the National Environmental Protection Act 1984. Accordingly the provisions of this Act shall apply, mutatis mutandis, with respect to the objects, powers, functions and duties of the Authority and shall be deemed to form part of its objects, powers, functions and duties. [P.L. 1988-13, §3.]

§304. Director of Coast Conservation.

(1) There shall be appointed by the Authority, a Director of Coast Conservation (hereinafter the 'Director') who shall be subject to the direction of the Authority, responsible for the day to day administration and implementation of this Act.

(2) The Authority may appoint the General Manager of the Authority, appointed under Section 114(1)(a) of the National Environmental Protection Act 1984, or any other person suitably qualified to be the Director. [P.L. 1988-13, §4.]

§305. Duties and functions of the Director.

(1) The Director shall be responsible:

- (a) for the formulation and execution of schemes of work for coast conservation within the Coastal Zones; and
- (b) for the conduct of research, in collaboration with other ministries, departments, agencies and institutions for the purpose of coast conservation.

(2) The Director shall, in the execution of his duties and functions, act in consultation with the respective landowners affected by the implementation of this Act. [P.L. 1988-13, §5.]

PART III . COASTAL ZONE MANAGEMENT

§306. Survey of Coastal Zone.

(1) As soon as practical, the Director shall cause a survey to be made of the Coastal Zone and shall prepare a report based on the results of such survey. The report shall include:

- (a) an inventory of all structures, roads, excavations, harbors, outfalls, dumping sites and other works located in the Coastal Zone;
- (b) an inventory of all coral reefs found within the Coastal Zone;
- (c) an inventory of all commercially exploitable mineral deposits, both proven and

suspected, located within the Coastal Zone;

- (d) an inventory of all areas within the Coastal Zone of religious significance or of unique scenic value or of value for recreational purposes, including those areas most suitable for recreational bathing;
- (e) an inventory of all estuarine or wetland areas within the Coastal Zone with an indication of their significance as fisheries or wildlife habitat;
- (f) an inventory of all areas within the Coastal Zone of special value for research regarding coastal phenomena, including fisheries and shell fisheries, sea erosion, littoral movements and related subjects;
- (g) an inventory of all areas within the Coastal Zone from which coral, sand, sea shells or other substances are regularly removed for commercial or industrial purposes;
- (h) an assessment of the impact of sea erosion on the Coastal Zone including a quantified indication, by geographical location, of the amount of land lost thereby, an estimate of the economic cost of such loss and the extent to which human activity has contributed to such loss;
- (i) an estimate of the quantities of sand, coral, sea shells and other substances being removed from the Coastal Zone, together with an estimate of the extent to which such quantities can be supplied from other sources or other materials and an analysis of the economic practicability of doing so; and
- (j) a census, classified by geographical areas, and by activity, of all workers currently engaged on a regular basis in the removal of coral, sand, sea shells or other substances from the Coastal Zone and a census of the dependents of such workers and estimate of the per capita income obtained from these activities.

(2) In preparing the report under Subsection (1) of this Section, the Director shall have regard to relevant data and information collected or compiled by Government ministries, departments, institutions and other agencies, and it shall be the duty of the heads of such ministries, departments, institutions and agencies to furnish any such data or information as may be reasonably required by the Director for the purpose of preparing such report. [P.L. 1988-13, §6.]

§307. Coastal Zone Management Plan.

(1) The Director shall, not later than three (3) years from the date of operation of this Act, submit to the Council a comprehensive Coastal Zone Management Plan (hereinafter 'the Plan'), based on the results of the survey made pursuant to Section 306 of this Act. The Plan shall include:

- (a) the guidelines to be used in determining the suitability of particular development activities in the Coastal Zone;

(b) proposals which deal with the following subjects within the Coastal Zone:

- (i) land use;
- (ii) transport facilities;
- (iii) preservation and management of the scenic and other natural resources;
- (iv) recreation and tourism;
- (v) public works and facilities, including waste disposal facilities, harbors and power plants;
- (vi) mineral extraction;
- (vii) living resources;
- (viii) human settlements;
- (ix) agriculture; and
- (x) industry;

(c) proposals for the reservation of land or water in the Coastal Zone for certain uses, or for the prohibition of certain activities in certain areas of the Coastal Zone;

(d) a comprehensive program for the utilization of manpower displaced as a direct result of more effective Coastal Zone regulation; and

(e) recommendations for strengthening Governmental policies and powers and the conduct of research for the purposes of coast conservation.

(2) The Council shall, within sixty (60) days of the Plan being submitted to it by the Director, make modifications, if any, to the Plan and submit the Plan to the Authority for provisional approval.

(3) Upon the submission of the Plan to the Authority under Subsection (2) of this Section, the Authority shall make it available for public inspection. Any person may, within sixty (60) days of the date on which the Plan is made available for public inspection, submit any comments thereon to the Authority in writing.

(4) At the end of the period of sixty (60) days referred to in Subsection (3) of this Section, the Authority may provisionally approve the Plan subject to such modifications, if any, as it may consider necessary having regard to any comments submitted to it under that subsection and shall submit the Plan to the Cabinet through the Minister for final approval. Upon the approval of the Plan by the Cabinet, the Minister shall cause the Plan to be published in the Gazette. The Plan

shall come into operation on the date of such publication or on such later date as may be specified therein.

(5) The Plan shall be revised during the period of four years commencing from the date of coming into operation of the Plan and within a period of four years from the date of every revision of the Plan and the provisions of Subsections (2), (3) and (4) of this Section shall, mutatis mutandis, apply with respect to every such revision.

(6) The Authority may, on the recommendation of the Director, make such regulations as may be necessary to give effect to any of the provisions of the Plan including regulations restricting the use of the foreshore by members of the public, or any development activity within the Coastal Zone.

(7) The Authority may make such regulations as may be necessary to give effect to any of the provisions of the Plan including regulations restricting and controlling the use of the foreshore by members of the public prohibiting or controlling any development activity within the Coastal Zone. [P.L. 1988-13, §7.]

§308. Authority to prescribe criteria to issue permits.

The Authority may, having regard to the long term stability, productivity and environmental quality of the Coastal Zone, prescribe the criteria to be used in determining whether a permit should be issued under Section 409 of this Act, upon application made in that behalf to the Director after the date of operation of this Act and prior to the date of coming into operation of the Plan. [P.L. 1988-13, §8.]

PART IV - PERMIT PROCEDURE

§309. Issue of permits.

(1) Notwithstanding the provisions of any other law, no person shall engage in any development activity other than a prescribed development activity within the Coastal Zone except under the authority of a permit issued in that behalf by the Director.

(2) The Authority may, having regard to the effect of those development activities on the long term stability, productivity and environmental quality of the Coastal Zone, prescribe the categories of development activity which may be engaged in within the Coastal Zone without a permit issued under Subsection (1) of this Section.

(3) An application for a permit to engage in any development activity within the Coastal Zone shall be made to the Director in the prescribed manner. Every such application shall be in the prescribed form, shall contain the prescribed particulars and be accompanied by the prescribed fee. [P.L. 1988-13, §9.]

§310. Conditions for issue of permits.

No permit shall be issued by the Director under this Part unless the proposed development activity:

- (a) is consistent with the Coastal Zone Management Plan and any regulations made to give effect to such Plan, or if the application is received prior to the date of coming into operation of such Plan, satisfies the criteria prescribed under Section 308 of this Act: and
- (b) will not otherwise have any adverse effect on the stability, productivity and environmental quality of the Coastal Zone. [P.L. 1988-13, §10.]

§311. Environmental impact assessment.

- (1) Upon receipt of an application for a permit to engage in a development activity within the Coastal Zone, the Director may require the applicant to furnish an environmental impact assessment relating to such development activity and it shall be the duty of the applicant to comply with such requirement. Every environmental impact assessment furnished under this Section shall contain such particulars as may be prescribed.
- (2) The Director shall, on receipt of an environmental impact assessment furnished to him by an applicant in compliance with any requirement imposed on such applicant under Subsection (1) of this Section:
 - (a) submit a copy of such assessment to the Council for its comments, if any; and
 - (b) by notice published in the Gazette, notify the place and times at which such assessment will be available for inspection by the public, and invite the public to make its comments thereon, if any.
- (3) The Council shall, within sixty (60) days of an environmental impact assessment being submitted to it under Subsection (1) of this Section, make its comments, if any, thereon to the Authority. The Authority shall within thirty (30) days give its direction thereon to the Director.
Any member of the public may, within thirty (30) days of the date on which a notice is published in the Gazette under Subsection (2)(b) of this Section, make his comments thereon, if any, to the Director.
- (4) In deciding whether to issue a permit under Section 309 of this Act, authorizing a person to engage in a development activity within the Coastal Zone, the Director shall have regard to any directions given under Subsection (3) of this Section, on the environmental impact assessment, if any, relating to such activity.
- (5) The Director shall, within thirty (30) days of the receipt by him of any directions given under Subsection (3) of this Section, make the decision referred to in Subsection (4) of this Section. [P.L. 1988-13, §11.]

§312 Conditions attached to permits.

The Director may attach to any permit issued under this Part, such conditions as he may consider necessary for the proper management of the Coastal Zone, having regard to the Coastal Zone Management Plan, or to any scheme of work for coast conservation. [P.L. 1988-13, §12.]

§313. Duration and renewal of permits.

- (1) A permit issued under Section 309 of this Act, shall remain in force for such period as the Director may specify therein.
- (2) The holder of a permit may, not less than one month prior to the date of expiration of such permit, apply for a renewal of such permit. An application for renewal of a permit shall be in the prescribed form and shall be accompanied by the prescribed fee.
- (3) Where the holder of a permit desires to transfer the permit to another person, such holder may apply to the Director for permission to effect such transfer, and the Director may by order permit such transfer subject to the payment of the prescribed fee. [P.L. 1988-13, §13.]

§314. Variation of conditions of permit.

The Director may make an order varying the conditions attached to any permit issued under Section 409 of this Act, or revoking such permit if he is satisfied that:

- (a) the permit-holder has contravened any of the conditions attached to such permit; or
- (b) such variation or revocation is necessary as expedient for the proper management of the Coastal Zone. An order of the Director varying the conditions attached to a permit issued under Section 309 of this Act, or revoking such permit shall state the grounds therefor, and the Director shall cause a copy of such order to be served on the permit-holder. [P.L. 1988-13, §14.]

§315. Execution of schemes of coast conservation.

- (1) Where any condition attached to a permit issued under Section 309 of this Act, requires the execution by the permit-holder of a scheme of work and where the permit-holder fails to execute such scheme, the Director may, by notice in writing, require the permit-holder to execute within such period as may be specified in such notice, such scheme.
- (2) Where a person on whom a notice is issued under Subsection (1) of this Section, fails to execute the scheme of work referred to in such notice within the period specified therein, the Director may, after offering that person an opportunity to show cause, execute such scheme and shall be entitled to recover the costs thereof from such person. [P.L. 1988-13, §15.]

§316. Appeals.

Any person aggrieved by an order of the Director refusing to issue a permit under Section 309 of

this Act, or an order under Section 313(3) of this Act, refusing to permit the transfer of any such permit or an order under Section 314 of this Act, varying the conditions attached to any such permit, or revoking any such permit or requirement imposed by the Director under Section 315(1) may, within thirty (30) days of the date of the notice imposing such requirement or such order, as the case may be, appeal therefrom to the Authority. The decision of the Authority on any such appeal shall be final. [P.L. 1988-13, §16.]

§317. Provisions of this Part not to apply to maintenance or dredging of existing navigation channels.

Nothing in this Part shall be read and construed as requiring a person to obtain a permit under Section 309 of this Act, for the maintenance or dredging of existing navigation channels if the dredged spoils are deposited in disposal areas approved by the Director. [P.L. 1988-13, §17.]

PART V - GENERAL

§318. Transitional provisions.

(1) Notwithstanding anything in Section 309 of this Act, where any person who was engaged, on the day immediately preceding the date of coming into operation of this law, in any development activity within the Coastal Zone, being an activity which was lawful according to the law in force on that date makes, within thirty (30) days of the date of coming into operation of this law, an application for a permit under Section 409 of this Act with respect to that activity, it shall be lawful for such person to engage in that activity until the determination of that application.

(2) Where an application made by a person referred to in Subsection (1) for a permit under Section 309 of this Act, is refused by the Director and such person is compelled, in consequence of such refusal, to abandon any equipment or fixtures used for, or in connection with, the development activity with respect to which that application was made, such person shall be entitled to reasonable compensation for the equipment or fixtures so abandoned. [P.L. 1988-13, §18.]

§319. Permits for the occupation of the foreshore or sea bed.

(1) The Director or any officer authorized by him in writing, may issue permits subject to such conditions as he may impose having regard to the Plan, for the occupation, for any period not exceeding three (3) years, of any part of the foreshore or bed of the sea lying within the Coastal Zone.

(2) The Director may, after such inquiry as he may deem necessary, cancel any permit if he is satisfied that the permit-holder has contravened any of the conditions attached to such permit.

(3) Any person aggrieved by an order of the Director, or of any officer authorized in writing by the Director, refusing to issue a permit under Subsection (1) of this Section, or canceling a permit under Subsection (2) of this Section, may appeal therefrom to the Authority. The decision of the Authority on any such appeal shall be final. [P.L. 1988-13, §19.]

§320. Director to give directions for prevention or intrusion of waste or foreign matter into the Coastal Zone.

(1) Where the Director finds that the quality of the water in the Coastal Zone or the stability of the Coastal Zone is being adversely affected by the intrusion of any waste or foreign matter or by physical activity, he shall:

- (a) if the source of such waste or foreign matter is within the Coastal Zone or if such activity lies within the Coastal Zone, require, by a notice in writing, the person responsible therefor to take such corrective measures as are specified in such notice or to desist from such activity; and
- (b) if the source of such waste or foreign matter, or if such activity, is not within the Coastal Zone, request the appropriate local authority or agency to take such measures as may be necessary to prevent such intrusion or activity.

(2) A local authority or agency to which a request is made by the Director under Subsection (1)(b) of this Section, shall take all steps within its power to comply with such request. If a local authority is unable to comply with any such request, it may notify the Director accordingly and upon such notification the Director shall take such measures as may be necessary to prevent such intrusion or activity. [P.L. 1988-13, §20.]

§321. Powers of entry.

Subject to any other law and with the consent of the owners or occupiers of the land affected, it shall be lawful for the Director or any officer generally or specially authorized by him in writing, at any reasonable time to enter upon any land within the Coastal Zone and then do such acts as may be reasonably necessary for the purpose of executing any scheme of work or of ascertaining whether the conditions attached to any permit issued under this Act are being or have been complied with or of making any survey, examination or investigation, preliminary or incidental to the exercise of any power or the discharge of any function under this Act, or any regulations made thereunder. [P.L.

1988-13, §21.]

§322. Returns.

The Director may, by a notice in writing, require any person engaged in any development activity within the Coastal Zone under the authority of a permit issued under this Act, to furnish him with such returns and information as may be prescribed and it shall be the duty of such persons to comply with the requirements of such notice. [P.L. 1988-13, §22.]

§323. Contravention of the provisions of Section 409 and offense under this Act.

(1) Any person who acts in contravention of the provisions of Section 309 of this Act. shall be guilty of an offense and subject to a fine of not less than five hundred dollars (US \$500) and not

exceeding five thousand dollars (US \$5,000) or to imprisonment for a term not exceeding one year, or both, and in the case of a second or subsequent offense, a fine of not less than one thousand dollars (US \$1,000) and not exceeding ten thousand dollars (US \$10,000) or imprisonment for a term not exceeding two years, or both.

(2) Upon the conviction of any person for an offense under Subsection (1) of this Section, the Court may make an order declaring that any vessel, craft, boat, vehicle, equipment or machinery used in, or in connection with, the commission of that offense together with any article or substance found on board such vessel, craft, boat or vehicle shall be forfeited. Upon such order, the property referred to in the order shall vest absolutely in the Republic. Such vesting shall take effect:

- (a) after the expiration of the period within which an appeal may be referred to a higher court against the order of forfeiture; or
- (b) where an appeal has been referred to the Court against the order of forfeiture, upon the determination of the appeal confirming or upholding the order of forfeiture. Provided, however, that the Court may make an order releasing any vessel, craft, boat, vehicle, equipment, machinery, article or substance if it is proved that such vessel, craft, boat, vehicle, equipment, machinery, article or substance belongs to a person other than the person convicted of the offense and that other person satisfies the court that he had no knowledge that it would be used in, or in connection with, the commission of the offense.
[P.L. 1988-13, §23.]

§324. Offenses.

- (1) Any person who:
 - (a) fails to comply with the requirement of a notice sent by the Director under Section 320(1)(a) of this Act;
 - (b) resists or obstructs the Director or any officer in the exercise of any power conferred on the Director or such officer;
 - (c) fails to comply with the requirements of a notice issued under Section 322 of this Act;
 - (d) makes any statement, which to his knowledge is false or incorrect, in any return or information furnished by him in compliance with a notice issued by the Director under Section 322 of this Act, shall be guilty of an offense under this Act and shall on conviction, be liable to a fine of not less than one thousand dollars (US \$1,000) and not exceeding five thousand dollars (US \$5,000), or to imprisonment for a term not exceeding six (6) months, or both. [P.L. 1988-13, §24.]

§325. Additional fines.

Every person who is guilty of an offense under this Act, shall, in addition to the fines prescribed

under Sections 323 and 324 of this Act, be liable to a fine not exceeding \$500 for each day on which the offense continues after conviction. [P.L. 1988-13, §25.]

§326. Demolition of unauthorized structures, etc.

- (1) No person shall, with effect from the date of operation of this Act, erect or construct any unauthorized structure, house, hut, shed or other building on any part of the Coastal Zone.
- (2) The Director may, by giving notice to the owner or occupier, as the case may be, by affixing a notice to some conspicuous part of such structure, house, hut, shed or other building, direct such owner or occupier to take down and remove such unauthorized structure, house, hut, shed or other building within such time as the Director may specify in the notice.
- (3) Any person aggrieved by any direction of the Director made under Subsection (2) may, within seven days from the affixing of the notice, appeal therefrom to the Authority. The decision of the Authority on any such appeal shall be final.
- (4) Where any such structure, house, hut, shed or other building is not taken down and removed within the time specified in the notice or within such time as may be specified by the Authority upon rejection of any appeal taken under Subsection (2) of this Section, the Director shall upon an order of court, cause the structure, house, hut, shed or other building to be taken down and removed, and the expenses incurred by the Director in doing so, shall be recovered from the owner or the occupier as a debt due to the Authority. [P.L. 1988-13, §26.]

§327. Regulations.

The Authority may make regulations with respect to any matter for which regulations are authorized to be made or required to be prescribed under this Act. [P.L. 1988-13, §27.]

§328. Savings as to the rights of the Republic and local government.

Nothing in this Act shall be read and construed as derogating from, the powers or rights of the Republic, in or over, the Coastal Zone or soil of the Coastal Zone or the area of sea declared, under the Marine Zones (Declaration) Act 1984, to be the territorial sea of the Republic of the Marshall Islands or, the powers or rights of the local government in the exercise of its jurisdiction within its territorial limits. [P.L. 1988-13, §28.]

§329. Protection for action taken in good faith.

No suit, prosecution or other legal proceeding shall be instituted against the Authority, Director, or any other officer for any act which in good faith is done or purported to be done by such Authority, Director, or other officer under this Act or any regulations made thereunder. [P.L. 1988-13, §29.]

§330. Application of certain written laws to the Coastal Zone.

Where in any written law, there is provision conferring or imposing on any person or authority, any power or duty:

- (a) to grant, in relation to the Coastal Zone, any permit or other authority authorizing any person to engage in any development activity; or
- (b) to formulate or execute, in relation to the Coastal Zone, any schemes of work, such provision shall be read and construed as enabling or requiring that person or authority to exercise that power or to perform that duty only after consultation with the Director of Coastal Conservation. **[P.L. 1988-13, §30.]**
