



REPUBLIC OF NAURU
FISHERIES (AMENDMENT) ACT 2017

No. 18 of 2017

An Act to amend the *Fisheries Act 1997*

Certified: 3rd August 2017

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Enacted by the Parliament of Nauru as follows:

1 Short title

This Act may be cited as the *Fisheries (Amendment) Act 2017*.

2 Commencement

This Act commences upon certification by the Speaker.

3 Amendment of Fisheries Act 1997

The Fisheries Act 1997 is amended by the provisions of this Act.

4 Amendment of section 2

(1) Section 2 is amended by inserting the following in alphabetical order:

'commercial fishing' means any fishing other than for subsistence and artisanal fishing, using purse-seine, longline, pole-and-line and trolling gear beyond the territorial sea;

'dollars' means Australian currency;

'game fishing' means fishing for a specified fish stock, other than for subsistence or artisanal fishing, using specified fishing gear within and beyond the territorial sea;

'game fishing vessel' means a vessel used or chartered for game fishing;

'game fishing licence' means a licence issued to a game fishing vessel to engage in game fishing for a period not exceeding one year;

'game fishing permit' means a permit issued to a game fishing vessel to engage in game fishing for a period not exceeding one month;

'foreign fishing licence' means a licence issued to a foreign fishing vessel;

'national fishing licence' means a licence issued to:

- (a) a Nauruan citizen or a Nauruan corporation or company which may be based in Nauru;
- (b) a joint venture;
- (c) a foreign fishing vessel operating under a charter agreement;

- (d) a flagged fishing vessel;
- (e) a flagged fishing vessel operating under a charter agreement;

'permit' means a document other than a licence or authorisation, issued to a person to:

- (a) participate in game-fishing for a specified period not exceeding one month; or
- (b) undertake research in the fisheries waters of Nauru.

'the Act' means the Fisheries Act 1997;

(2) Section 2 is amended by:

(a) omitting "**fishing boat**" and substituting:

'fishing vessel' means a vessel which is used for, equipped to be used for or of a type that is normally used for fishing;

(b) omitting "foreign boat" and substituting:

'foreign fishing vessel' means a fishing vessel other than a small vessel or a national vessel;

(c) omitting "**joint venture**" and substituting:

'joint venture' means an enterprise of which:

- (a) the management and control exercisable in law or by agreement between the shareholders, or by agreement between the enterprise and a third party, or in practice, adequately reflect the majority Nauruan shareholding; and
- (b) the arrangements for contribution towards costs and expenses and for distribution of profits, dividends and other payments adequately reflect the majority Nauruan shareholding;

(d) omitting "**licensed boat**" and substituting:

'licensed vessel' means a fishing vessel licensed under this Act;

(e) omitting "**national boat**" and substituting:

'national fishing vessel' means a fishing vessel, other than a small boat, which;

- (a) is wholly owned by one or more Nauruan citizens, a Nauruan corporation or company;

- (b) is operating under a joint venture; or
- (c) may be based in Nauru;
- (f) omitting “**small boat**” and substituting:

‘**small boat**’ means a boat used for artisanal fishing or subsistence fishing;

- (g) omitting “**boat**” and substituting:

‘**vessel**’ means any vessel, ship or other water-going craft, carrier or transport vessel, except for a small boat;

5 General amendment to references in the Act

The Act is amended by:

- (a) omitting “**fishing boat**” and substituting “**fishing vessel**”, wherever it appears;
- (b) omitting “**foreign boat**” and substituting “**foreign fishing vessel**”, wherever it appears;
- (c) omitting “**licensed boat**” and substituting “**licensed vessel**”, wherever it appears;
- (d) omitting “**national boat**” and substituting “**national fishing vessel**”, wherever it appears;
- (e) omitting “**boat**” and substituting “**vessel**”, wherever it appears.

6 Amendment of section 12

Section 12 is omitted and substituted with the following:

12 General Licensing Provisions

- (1) The Chief Executive Officer may grant a permit, licence or authorisation to a person to use a vessel for fishing or a fisheries activity in accordance with this Act.
- (2) A permit, licence or authorisation issued under this Act shall be in the prescribed form and is subject to the following conditions:
 - (a) a pre-fishing inspection may be conducted in a port determined by the Chief Executive Officer prior to the issuance of the permit, licence and/or authorisation;
 - (b) any other conditions imposed by this Act;

- (c) any conditions as may be prescribed by regulations;
 - (d) any fisheries management plan and strategy.
- (3) The Chief Executive Officer may impose additional general conditions on all permits, licences and authorisations issued pursuant to section 12(2).
 - (4) The Chief Executive Officer may attach special conditions to any permit, licence or authorisation.
 - (5) The Chief Executive Officer may from time to time vary any special condition applied to a permit, licence or authorisation under section 12(4), if he or she is satisfied that it is expedient to do so for the proper management of fisheries in Nauru waters.
 - (6) A general condition issued under section 12(3) or a special condition issued under section 12(4) shall be consistent with this Act, including any applicable fishery management plan and strategy, access agreement or multilateral agreement, Convention, Treaty or fisheries arrangement to which Nauru is party.
 - (7) If a special condition has been varied under section 12(5), the Chief Executive Officer shall notify the permit, licence or authorisation holder as soon as possible.
 - (8) A permit, licence or authorisation shall not be issued or given, unless the required fee is paid according to this Act or any applicable access agreement.
 - (9) A permit, licence or authorisation is deemed invalid if any fee due remains unpaid after it falls due.

7 Insert new section 12A

12A Term of licence or authorisation

- (1) A foreign fishing licence is, unless earlier suspended or cancelled, valid for a period not more than 1 year, or such lesser period specified in an applicable multilateral access agreement.
- (2) The term of a foreign fishing licence may not extend beyond the term of any applicable multilateral access agreement.
- (3) A national fishing licence is valid for such period not exceeding 1 year as is specified in the licence.

- (4) The term of a game fishing licence may not extend beyond 1 year as specified in the licence.
- (5) If a vessel licensed as a national fishing vessel becomes a foreign fishing vessel, the national fishing vessel license is deemed to be rendered as invalid.
- (6) A licence shall not be transferred to any other vessel, except with the written authority of the Chief Executive Officer unless otherwise provided under an applicable multilateral access agreement.
- (7) The term for an authorisation issued pursuant to this Act shall not extend beyond 1 year.

8 Insert new section 12B

12B Refusal to issue a licence or authorisation

- (1) Subject to subsection (2), the Chief Executive Officer shall not issue a licence or authorisation, if:
 - (a) the application is not in accordance with the requirements of this Act or any applicable access agreement;
 - (b) the required fees have not been paid in accordance with this Act or any applicable access agreement, or the applicant has not been able to establish that he or she has the means to make the payments when they fall due;
 - (c) the vessel or person associated with the vessel has previously breached this Act or any applicable access agreement; or
 - (d) other prescribed conditions have not been met or are likely not to be met in the future.
- (2) The Chief Executive Officer may issue the licence or authorisation to fish subject to payment of an appropriate performance bond by the applicant if the Chief Executive Officer is of the opinion that:
 - (a) an applicant may not be able to make payments under the Act or any applicable access agreement; or
 - (b) a person associated with the vessel has previously been involved in a breach of this Act or any applicable access agreement.

- (3) A bond payable under subsection (2) shall not be less than \$500,000.

9 Insert new section 12C

12C Suspension and cancellation of licences and authorisations

- (1) Subject to subsection (3), the Chief Executive Officer may suspend or cancel a licence or an authorisation, if he or she is satisfied that:
- (a) information required to be given or reported under this Act or any applicable access agreement is false, incomplete, incorrect, misleading or not provided when required;
 - (b) it is necessary to do so in order to give effect to any policy changes specified in a fishery management plan or strategy;
 - (c) the operator is the subject of bankruptcy proceedings under the insolvency laws of any jurisdiction, and satisfactory financial assurance has not been provided;
 - (d) the vessel in respect of which the licence or authorisation has been issued, has been used in contravention of this Act;
 - (e) payment has not been made and is overdue in relation to any fees, charges, royalties and other payment required under any other Act, or for any penalty or fine in relation to a breach of any other Act; or
 - (f) the operator of the vessel has breached any applicable access agreement or any obligation or requirement imposed by a Convention, Treaty or other international arrangements, or has committed an offence against the laws of Nauru.
- (2) If a licence or authorisation is suspended or cancelled under this section, written notification of the suspension or cancellation shall be given to the holder of a licence or authorisation.
- (3) If a foreign fishing licence or authorisation is issued by an administrator pursuant to a multilateral agreement, it may

be suspended or cancelled only in accordance with the terms of that multilateral agreement.

- (4) If a licence is suspended or cancelled by the Chief Executive Officer in order to give effect to any policy changes specified in a fishery management plan or strategy, a proportion of any fee paid for the licence representing the unexpired period of that licence is to be reimbursed to the licensee at the licensee's request.

10 Insert new section 12D

12D Observance of other laws

A licence or authorisation issued under this Act does not relieve the holder, operator or crew of a licensed vessel of any obligation or requirement imposed by written law concerning navigation, shipping, health, customs, immigration or any other matter.

11 Insert new section 12E

12E Request for reconsideration of denied licence or authorisation

- (1) If the Chief Executive Officer has decided to refuse, suspend or cancel a licence or authorisation, the applicant or holder of the licence or authorisation may resubmit the application in writing to the Chief Executive Officer for reconsideration within 30 days of being notified of the refusal, suspension or cancellation.
- (2) A written request for reconsideration under subsection (1) shall be accompanied by relevant information.

12 Insert new section 12F

12F National Fisheries Register of licences and authorisations

- (1) The Chief Executive Officer shall maintain a National Fisheries Register of licences and authorisations issued under this Act.
- (2) The Register shall contain the following information:
- (a) the nature of the activity licenced or authorised;
 - (b) the particulars of the vessel, or person licensed or authorised;

- (c) the term of each licence or authorisation;
- (d) any action taken in respect of the licence or authorisation issued under this Act;
- (e) the result of any appeal affecting the licence or authorisation considered under section 37; and
- (f) any other matter that is prescribed.

13 Insert new section 12G

12G Information to be accurate

- (1) A person who is required to provide, notify, communicate or report any information under this Act shall ensure that any information provided, notified, communicated or reported is true, complete and correct.
- (2) A person shall immediately notify the Chief Executive Officer of any change of circumstance which results in any information provided under subsection (1) as being false, misleading, incomplete or incorrect.
- (3) A person who contravenes this section commits an offence and upon conviction is liable to a fine not exceeding \$150,000.

14 Insert new PART IIA

PART IIA REGISTRATION OF FISHING VESSELS ON THE REGISTERBOOK ESTABLISHED UNDER THE SHIPPING REGISTRATION ACT 1968

15 Insert new Division 1

Division 1 Registration Requirements

16 Insert new section 12H

12H Requirements for registration of fishing vessels in the Register Book established under the Shipping Registration Act 1968

- (1) Despite the requirements for registration under the Shipping Registration Act 1968, a fishing and support vessel shall not be entered in the Register Book unless all additional requirements in this Act are satisfied.
- (2) The registration of a fishing vessel in the Register Book be carried out in a manner consistent with obligations under any:

- (a) International or Regional Arrangements to which Nauru is a party; and
 - (b) arrangements Nauru is a party to, including international conservation and management measures and resolutions relating to effort and catch limits and the prevention, deterrence, and elimination of illegal, unreported and unregulated fishing or related activity in support of such fishing.
- (3) For the purposes of verifying any engagement in illegal, unreported and unregulated fishing or related activity in support of such fishing, a fishing vessel shall not:
- (a) at any time, be listed on the illegal, unreported and unregulated fishing vessel list of any regional fisheries management organisation or arrangement;
 - (b) have committed any illegal, unreported and unregulated fishing or related activity in support of such fishing;
 - (c) have been owned by an operator or beneficial owner who is known to have another vessel on the illegal, unreported and unregulated fishing vessel list of any regional fisheries management organisation or arrangement;
 - (d) have been operating, or have previously operated in a manner inconsistent with any obligations or requirements of international conservation and management measures and resolutions.
- (4) The operator of a fishing vessel shall provide true, complete and accurate information when required to do so under this section.

17 Insert new section 12I

12I ENTRY AND MAINTENANCE OF REGISTRATION IN THE REGISTER BOOK

For the purposes of entry and the maintenance of registration in the Register Book, a person applying for registration shall:

- (a) demonstrate that the vessel has not been removed from its previous registry, and that there are no outstanding or pending penalties from the flag state of that registry;

- (b) demonstrate that the vessel and its owner or operator have good standing on the Regional Register, Parties to the Nauru Agreement Vessel Register, Western Central Pacific Fisheries Commission Record of Fishing Vessels, Western Central Pacific Fisheries Commission Interim Register of Non-CCM carriers and bunkers, or regional fisheries management organisations to which Nauru is a member, and such good standing has not been suspended or withdrawn;
- (c) provide a statutory declaration that the vessel and its owner or operator have not engaged in driftnet fishing activities; and
- (d) demonstrate that the vessel and its owner or operator have no outstanding or pending judicial issues with any coastal State of a regional fisheries management organisation to which the Republic is a member.

18 Insert new section 12J

12J OBLIGATION OF OPERATORS APPLYING FOR REGISTRATION

An operator of a fishing vessel applying for registration shall:

- (a) comply with all reporting and monitoring, control, surveillance and enforcement measures, including all relevant and applicable legal requirements stipulated under this Act, and any other laws of Nauru;
- (b) comply with terms and conditions of licenses issued pursuant to the Act;
- (c) ensure that the fishing vessel installs an approved automatic location communicator and operate such unit properly at all times and report automatically to the Nauru Vessel Monitoring System;
- (d) pay in full necessary fees as may be prescribed from time to time;
- (e) ensure that the fishing vessel fully complies with all applicable international conservation and management measures and resolutions; and
- (f) undertake that the fishing vessel is to remain under the Nauru flag for a continuous minimum period of 5 years.

19 **Insert new Division 2**

Division 2

20 **Insert new section 12K**

12K **NAURU RECORD OF FISHING VESSELS**

- (1) The Authority shall maintain a record of all fishing vessels entitled to fly the flag of Nauru that are authorised to fish pursuant to this Act outside the fisheries waters of Nauru.
- (2) The record of fishing vessels is to be called the Nauru Record of Fishing Vessels.
- (3) Subject to subsection (4), the record shall contain the following information:
 - (a) the vessel's name, previous names if known, registration numbers and port of registry;
 - (b) the vessel's previous flags if any;
 - (c) the vessel's International Radio Call Sign if any;
 - (d) the names, addresses and details of the vessel's beneficial owners and operators;
 - (e) where and when the vessel was built;
 - (f) the type of vessel;
 - (g) the vessel's length;
 - (h) the type of fishing method or methods;
 - (i) the moulded depth of the vessel;
 - (j) the beam of the vessel;
 - (k) the gross tonnage and gross registered tonnage of the vessel;
 - (l) the power of the main engine or engines of the vessel;
 - (m) vessel navigation and position fixing equipment;
 - (n) specifications of the mobile transceiver unit of the vessel;
 - (o) processing equipment; and

- (p) intended area of operation, intended port of discharge and species to be targeted.
- (4) Despite subsection (3), the Authority may require further information to be provided if such information is necessary in order for Nauru to comply with:
 - (a) relevant measures adopted by any regional or sub-regional fisheries management organization; or
 - (b) arrangement of which Nauru is a member.
- (5) The Nauru Record of Fishing Vessels may be in addition to any requirements for registration of vessels entitled to fly the flag of Nauru.
- (6) The owner, operator, charterer, or lessee of a fishing vessel entitled to fly the flag of Nauru, who knowingly provides false information under subsection (3), commits an offence punishable on conviction by a fine not exceeding \$1,000,000 or by a term of imprisonment not exceeding 5 years.

21 Insert new section 12L

12L DISCLOSURE OF INFORMATION ON THE RECORD OF NAURU FISHING VESSELS

For the purposes of complying with Nauru's international obligations, the Authority may provide to any foreign government, international, regional or subregional fisheries management organisation, any information on the record including:

- (a) additions to the Record;
- (b) deletions from the Record;
- (c) the withdrawal of any authorisation to fish; and
- (d) information that a vessel is no longer entitled to fly the flag of Nauru.

22 Insert new section 12M

12 M PENALTIES FOR FISHING WITHOUT PROVIDING INFORMATION

- (1) The owner, operator, charterer, or lessee of any fishing vessel entitled to fly the flag of Nauru who engages in fishing outside the fisheries waters of Nauru without

providing the information required under section 12K commits an offence and upon conviction is liable to a fine not exceeding \$500,000 or to a term of imprisonment not exceeding 5 years or both.

- (2) In addition to the penalty under subsection (1), the Authority may cancel any licence issued, if the vessel has been found guilty of contravening the requirements of this section.

23 Insert new Division 3

Division 3

FISHING BY NATIONAL FISHING VESSELS BEYOND NAURU WATERS

This Division applies:

- (1) beyond Nauru waters; and
- (2) to any National fishing vessel and any act or omission occurring on or by such a vessel, wherever that vessel may be; and
- (3) to any act or omission by an authorised officer whether within or beyond Nauru waters.

24 Insert new section 12N

12N Application for an authorisation to fish

- (1) The operator of a National fishing vessel who intends to carry out fishing or related activities beyond Nauru fisheries waters is to apply to the Chief Executive Officer for an authorisation to fish in respect of that vessel.
- (2) An application for an authorisation to fish is to be:
 - (a) made in the manner and form prescribed; and
 - (b) accompanied by prescribed fees, including but not limited to the:
 - (i) application fee; and
 - (ii) authorisation to fish fee.
- (3) The application under subsection (2) shall contain the following:
 - (a) the vessel's name, previous names if known, registration numbers and port of registry;

- (b) the vessel's previous flags if any;
- (c) the vessel's International Radio Call Sign if any;
- (d) the names, addresses and details of the vessel's owners and operators;
- (e) where and when the vessel was built;
- (f) the type of vessel;
- (g) the vessel's length;
- (h) the type of fishing method or methods;
- (i) the moulded depth of the vessel;
- (j) the beam of the vessel;
- (k) the gross tonnage and gross registered tonnage of the vessel;
- (l) the power of the main engine or engines of the vessel;
- (m) the vessel's navigation and position fixing equipment;
- (n) the specifications of the mobile transceiver unit on the vessel;
- (o) any processing equipment;
- (p) the intended area of operation, intended port of discharge and species to be targeted;
- (q) the name and address of an agent based in Nauru who:
 - (i) has legal authority to act on behalf of the vessel and its operator; and
 - (ii) is to receive formal communications under this Act;
- (r) details of the beneficial ownership of the vessel; and
- (s) any other information or relevant documentation the Chief Executive Officer requires for the purpose of giving effect to international conservation and management measures and resolutions.

- (4) The Chief Executive Officer shall notify the applicant of the decision to issue the authorisation within 30 days of receiving the application.
- (5) A person who knowingly or recklessly provides any information required to be given under this section which is false commits an offence and upon conviction is liable to a fine not exceeding \$100,000.
- (6) The Chief Executive Officer may suspend or cancel the authorisation of a person who is convicted of an offence under subsection (5).

25

Insert new section 120

120 Power of Chief Executive Officer to grant authorisation

- (1) The Chief Executive Officer shall not grant an authorisation under this section, if he or she is satisfied that:
 - (a) the vessel, its owners, charterers or operators are not in good standing on the regional register maintained by the Pacific Islands Forum Fisheries Agency;
 - (b) the vessel is on a list of fishing vessels maintained by a regional fisheries management organisation of vessels that are believed to have engaged in illegal, unreported, or unregulated fishing;
 - (c) it has been established that the vessel has been involved in the commission of a serious violation of an international conservation and management measure, until such time as all outstanding sanctions imposed under Nauru law in respect of the violation have been complied with, or
 - (d) there is reasonable belief that the vessel has engaged in trafficking of people, firearms or drugs, or has treated fish workers and observers on board in a cruel or inhumane manner.
- (2) The Chief Executive Officer may grant an authorisation under this section if:
 - (a) the ownership of the vessel has changed since the vessel undermined the effectiveness of international conservation and management measures and resolutions; and

- (b) the new owner has provided sufficient evidence to the Chief Executive Officer demonstrating that the previous owner or operator no longer has any legal, beneficial or financial interest in the vessel.

26 Insert new section 12P

12P Power not to issue an authorisation

- (1) The Chief Executive Officer shall not issue an authorisation to fish unless satisfied that Nauru will be able to exercise its responsibilities under applicable international conservation and management measures and resolutions with respect to that vessel.
- (2) The Chief Executive Officer shall not issue an authorisation to a vessel, if that vessel was previously authorised to be used for fishing on the high seas by a foreign State, and:
 - (a) the foreign State suspended the authorisation as a result of the vessel undermining the effectiveness of international conservation and management measures and resolutions and the suspension has not expired; or
 - (b) the foreign State, within the last 3 years preceding the application for an authorisation under this section, withdrew the authorisation as a result of the vessel undermining the effectiveness of international conservation and management measures and resolutions; or
 - (c) that at the time of application, the vessel is on a list of vessels maintained by a global or regional fisheries management organisation that are believed to have engaged in illegal, unregulated or unreported fishing.
- (3) A person who knowingly or recklessly provides any information required to be given under this section which is false commits an offence and is liable upon conviction to a fine not exceeding \$500,000.

27 Insert new section 12Q

12Q Conditions applying to an authorisation to fish

- (1) An authorisation shall contain the following conditions:
 - (a) the vessel to which the authorisation to fish relates shall be marked in accordance with this Act;

- (b) the vessel shall not engage in any activities which undermine the effectiveness of international conservation and management measures and resolutions; and
 - (c) the holder of the authorisation to fish shall report such information as the Chief Executive Officer requires, including the area of fishing operations, vessel position and catch statistics.
- (2) The Chief Executive Officer may, by means of conditions attached to an authorisation, introduce such measures as are necessary and appropriate to implement obligations under the treaties, conventions, or other agreements to which Nauru is a party and applicable international conservation and management measures and resolutions including, but not limited to, the following:
- (a) the area or areas in which fishing is authorised;
 - (b) the period, times or particular voyages during which fishing is authorised;
 - (c) the descriptions, quantities and size of fish that may be taken;
 - (d) the method of fishing to be undertaken and type of gear to be used;
 - (e) the marking of gear;
 - (f) a requirement that the vessel carry observers on board during fishing operations on the high seas;
 - (g) a requirement that access be permitted to foreign observers;
 - (h) a requirement that an approved mobile transceiver unit be carried, and the requirements governing its operation;
 - (i) measures to be taken to avoid catching non-targeted species;
 - (j) requirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data;

- (k) requirements for verifying the catch of target, non-target species and discards;
 - (l) the requirements for the authorisation of transshipments at a designated port including the presence of an observer and/or port sampler, operation of approved mobile transceiver unit at all times, reporting of catch transhipped by species and quantity, and notifications; or
 - (m) the stowage of gear.
- (3) The Chief Executive Officer may vary any conditions attached to an authorisation if he or she is satisfied that it is necessary to ensure compliance with Nauru's obligations under a treaty, convention or agreement to which Nauru is a party, or in respect of any applicable international conservation and management measures and resolutions.
 - (4) If the Chief Executive Officer varies a condition attached to an authorisation, he or she shall notify the agent or the holder of the authorisation of the variation within 30 working days.
 - (5) If conditions are varied under subsection (3), the holder of the authorisation shall comply with the conditions within 30 working days after being notified.
 - (6) If it is necessary to implement international conservation and management measures, relating to the living resources of the high seas as a matter of urgency, the Chief Executive Officer may set a period of not less than 30 working days by which time compliance with the conditions of a licence varied under subsection (3), shall be observed.
 - (7) If the operator of the vessel is not in Nauru, the agent under section 12(N)(3)(q), is deemed to be the operator of the vessel for the purposes of the institution of proceedings for an offence committed by such vessel.
 - (8) An authorisation to fish is not transferrable.

28

Insert new section 12R

12R Validity of an authorisation

- (1) An authorisation is valid for a period of not more than 1 year.

- (2) An authorisation to fish is void in the event that the vessel in respect of which it was granted is no longer entitled to fly the flag of Nauru.

29

Insert new section 12S

12S Cancellation or suspension of an authorisation

- (1) The Chief Executive Officer may cancel or suspend an authorisation if:
 - (a) it appears to him or her that it is necessary to do so for the conservation or management of living marine resources in the high seas;
 - (b) he or she has reason to believe that the vessel has engaged in illegal, unreported, or unregulated fishing;
 - (c) he or she has reason to believe that the vessel has been used in the commission of a serious violation of an conservation and management measure; or
 - (d) the vessel has been involved in trafficking of people, trafficking of firearms, drug trafficking, or has treated fish workers and observers on board in a cruel or inhumane manner.
- (2) Prior to the suspension or cancellation of an authorisation under subsection (1), the holder of the authorisation shall be:
 - (a) informed by written notice of the intention to cancel or suspend, giving reasons for such action; and
 - (b) invited to make written submissions in response to the written notice.
- (3) The Chief Executive Officer shall consider the submission made under subsection (2), in deciding whether or not to suspend or cancel an authorisation.
- (4) The decision of the Chief Executive Officer shall be final.

30

Insert new section 12T

12T Fishing in contravention of an authorisation to fish

- (1) If a Nauruan fishing vessel is used without an authorisation or in contravention of a condition or restriction contained in the authorisation, the master, owner, charterer and operator of the vessel commits an

offence and are jointly and severally liable to a fine not exceeding \$250,000 or to a term of imprisonment not exceeding 2 years or both.

- (2) In addition to the penalty under subsection (1), the court may also order the confiscation of the vessel concerned.

31 Insert new Division 4

Division 4 Use of fishing vessels flagged to other countries on the high seas

32 Insert new section 12U

12U Use of vessels of other flags by Nauruan citizens or Nauruan corporations or companies on the high seas

- (1) A citizen of Nauru or a Nauruan corporation shall not use a vessel registered in another country for fishing or related activities on the high seas, except in accordance with a qualifying authorisation issued by the flag State.
- (2) A qualifying authorisation may be issued:
- (a) by a State that is a party to the Fish Stocks Agreement;
 - (b) by a State that is a party to or has accepted the obligations of a global, regional or subregional fisheries organization or arrangement; or
 - (c) by a State that:
 - (i) is a signatory to the Fish Stocks Agreement; and
 - (ii) has legislative and administrative mechanisms to control its vessel on the high seas in accordance with that agreement.
- (3) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$1,500,000 or to a term of imprisonment not exceeding 2 years or both.
- (4) In addition to the penalty imposed under subsection (3), the court may also order the confiscation of the vessel concerned.

33 Insert new section 12V

12V Use of National fishing vessels in the jurisdiction

of another State

- (1) A person shall not use a fishing vessel for fishing or related activities:
 - (a) in an area under the national jurisdiction of a foreign country except in accordance with the laws of that country and with an authorisation issued in accordance with this section;
 - (b) in an area subject to a multilateral access agreement or related agreement, except in accordance with that agreement;
 - (c) on the high seas except in accordance with an authorisation to fish issued in accordance with this section; or
 - (d) in an area subject to international conservation and management measures and resolutions, except in accordance with those measures.
- (2) If a vessel is used in contravention of subsection (1), the operator and master of such vessel each commits an offence and upon conviction is liable to a fine not exceeding \$250,000, or by a term of imprisonment not exceeding 2 years or both.
- (3) In addition to the penalty imposed under subsection (2), the court may also order the confiscation of the vessel concerned.

34 Insert new section 12W

12W Investigation of breaches and non-compliance

- (1) The Chief Executive Officer shall investigate the fishing and related activities of any vessel to which this section applies if:
 - (a) a complaint is made to the Chief Executive Officer concerning that vessel by an administrator responsible for the implementation and enforcement of any treaty;
 - (b) the Registrar of Foreign Vessels refers a matter to the Chief Executive Officer involving an allegation of breach of a condition of an authorisation to fish under this section by a vessel registered under the Shipping Registration Act 1968; or

- (c) the Chief Executive Officer has any other reason to believe that a breach of any condition of an international authorisation to fish under this section may have been committed by a vessel to which this section applies.
- (2) The Chief Executive Officer shall notify the master, owner and charterer of any vessel under investigation that the Chief Executive Officer is conducting an investigation into the fishing and related activities of that vessel, and the master, owner and charterer shall each:
- (a) provide such information, data and documentation as is required by the Chief Executive Officer;
 - (b) answer such specific questions concerning the fishing and related activities of the vessel under investigation; and
 - (c) cooperate with any investigator authorised by the Chief Executive Officer in relation to the investigation and permit the investigator to have full access to all records and to the crew of the vessel for questioning.
- (3) A master, owner or charterer who fails to comply with subsection (2) or who otherwise obstructs an investigation under this section commits an offence and upon conviction is liable to a fine not exceeding \$500,000.
- (4) For the purposes of conducting an investigation under this section, the Chief Executive Officer may authorise any person to conduct the investigation on his or her behalf, and in such a case the authorised person may exercise all the powers of the Chief Executive Officer under this section.
- (5) The Chief Executive Officer shall provide a report of any investigation conducted under this section to:
- (a) the Minister;
 - (b) the Registrar of Foreign Vessels;
 - (c) the administrator responsible for the implementation and enforcement of any Treaty, Convention or arrangements whose obligations and requirements may have been breached by the vessel under investigation; and

- (d) the master, owner and charterer of the vessel under investigation.

35

Insert new section 12X

12X Penalties for breaches of conditions or non-observance of obligations

- (1) A person, who in the course of fishing or related activities of a vessel to which this section applies commits an offence and upon conviction is liable to a fine not exceeding \$250,000 or by a term of imprisonment not exceeding 2 years if he or she:
 - (a) breaches a condition applying to that vessel under an authorisation to fish under this section; or
 - (b) fails to observe an applicable obligation or requirement of a Convention, Treaty or Arrangement.
- (2) In addition to the penalty imposed under subsection (1), the court may also order the confiscation of the vessel concerned.
- (3) If a vessel used for fishing or related activities is in breach of a condition applying to an authorisation to fish, or in breach of an obligation or requirement of a Convention, Treaty and Arrangement:
 - (a) the owner and charterer are jointly and severally liable to pay the costs incurred in any investigation under section 12(W);
 - (b) the master, owner, charterer and any other person convicted of an offence under this Part are jointly and severally liable to pay the costs of the prosecution undertaken in respect of the breach, as determined by the court;
 - (c) the Chief Executive Officer shall notify the Regional Register and any other relevant register of the breach; and
 - (d) the Chief Executive Officer shall notify the Registrar of Foreign Vessels of the breach and provide such further related information as the Registrar may request.

36

Insert new section 12Y

12Y Access to information held by the Registrar of Foreign Vessels

- (1) For any purpose related to his or her functions under this Act, the Chief Executive Officer may request that the Registrar of Foreign Vessels make available any information that it has concerning a vessel to which this section applies.
- (2) If the Registrar of Foreign Vessels considers that certain information concerning a vessel to which this section applies is confidential, it is to make it available to the Chief Executive Officer on a confidential basis for every purpose other than one relating to the conduct of a prosecution in relation to the vessel.
- (3) Subject to subsection (2), all information in the possession of the Registrar of Foreign Vessels that has been requested under subsection (1), is to be made available to the Chief Executive Officer as soon as practicable.
- (4) Any information concerning a vessel and its fishing and related activities to which this section applies that is in the possession of the Chief Executive Officer, is to be made available to the Registrar of Foreign Vessels upon request.

37

Insert new section 12Z

12Z Obligation to provide fisheries data and catch information

- (1) The Chief Executive Officer may require a person specified in subsection (2) to provide within a specified time catch information, data and any other information in relation to the fishing and related activities of a vessel to which this section applies.
- (2) A request for information and data made under subsection(1), is to be made to:
 - (a) the operator of the vessel; or
 - (b) a person nominated to receive a request in the application for an international authorisation to fish submitted on behalf of the vessel.

- (3) If the information requested under subsection (1) is not provided to the Chief Executive Officer within the specified time the operator, master, owner, charterer and nominated person each commit an offence and upon conviction is liable to a fine not exceeding \$250,000 or to a term of imprisonment of not exceeding 2 years or both.
- (4) In addition to the penalty imposed under subsection (3), the court may also order the confiscation of the vessel concerned.

38 Insert new Division 5

Division 5 International Fisheries Unit

39 Insert new section 12AA

Section 12AA

- (1) The International Fisheries Unit is established.
- (2) The Unit has the following functions:
 - (a) collaborate with the Registrar of Nauruan Vessels or Registrar of Foreign Vessels in the registration and oversight of all National and foreign fishing vessels in and beyond Nauru fisheries waters;
 - (b) coordinate the monitoring and control of all National and foreign fishing vessels in and beyond Nauru waters through the vessel monitoring system;
 - (c) collect, analyse and verify catch data, log sheets and any information on all National and foreign fishing vessels;
 - (d) prepare data and reports for submission to regional or sub-regional fisheries management organisations or arrangements to which Nauru is a member or cooperating non Contracting Party;
 - (e) discharge any other obligations of Nauru under a Treaty or agreement to which Nauru is a party, or under regional or sub-regional fisheries management organisations or arrangements to which Nauru is a member or cooperating non Contracting Party;
 - (f) discharge such other functions as the Chief Executive Officer determines; and
 - (g) take responsibility for any matter concerning the compliance by any vessel to which this section applies, with any

condition, obligation or requirement imposed on it by this section.

40 Insert New Part IIIA

PART IIIA – REQUIREMENTS FOR CHARTER OF FISHING VESSELS

41 Insert new section 13A

13A Charter of fishing vessel by citizens

(1) Despite the requirements under the Shipping Registration Act 1968, a citizen of Nauru who wishes to charter a fishing vessel for the purposes of fishing or related activities:

- (a) within the fisheries waters; or
- (b) beyond the fisheries waters,

shall apply to the Chief Executive Officer for a relevant fishing licence if the fishing or related activities is to be within Nauru waters or an authorisation, if the fishing or related activities is to take place beyond Nauru waters.

(2) An application made under subsection (1) shall:

- (a) be made in the prescribed manner and form; and
- (b) be accompanied by any prescribed fees including but not limited to:
 - (i) the application fee; and
 - (ii) the authorisation to charter fee.

(3) A licence or authorisation may be granted for the duration of the charter-party agreement or such lesser period as determined by the Chief Executive Officer.

(4) The Chief Executive Officer shall not grant a licence or an authorisation in respect of an application made pursuant to subsection (1) if:

- (a) the fishing vessel is listed on the IUU vessel list of any regional fisheries management organisation or arrangement;
- (b) the fishing vessel has committed any IUU fishing or related activity in support of such fishing;

- (c) the fishing vessel is owned or was previously owned by an operator or beneficial owner who is known to have another vessel on the IUU vessel list of any regional fisheries management organisation or arrangement;
 - (d) the fishing vessel has been operating, or has previously operated in a manner inconsistent with any obligations or requirements of international conservation and management measures and resolutions;
 - (e) the fishing vessel has been operating, or has previously operated in a manner inconsistent with any Convention, Treaty or arrangements to which Nauru is party;
 - (f) the charter of the fishing vessel is prohibited under any requirement of the Shipping Registration Act 1968 and any laws of Nauru; and
 - (g) the authorisation of the charter will contribute to excess fishing capacity in a fishery.
- (5) In considering an application for an authorisation to charter, the Chief Executive Officer shall be satisfied that:
- (a) in the case of the charter of a foreign fishing vessel, the applicant demonstrates that the charter of such vessel is permitted under the laws of the flag State;
 - (b) there are no outstanding or pending penalties from the flag state or other State with respect to the vessel; and
 - (c) the vessel has good standing on the Regional Register or Record of Fishing Vessels of regional fisheries management organisations to which Nauru is a member, and such good standing has not been suspended or withdrawn.

42 Insert new section 13B

13B Duty of operator to comply

The operator of a fishing vessel operating under a charter agreement and applying for a game fishing licence, national licence, or authorisation shall:

- (a) comply with all reporting and monitoring, control and surveillance measures, including all relevant and applicable legal requirements stipulated under this Act;
- (b) if the vessel is used for fishing or related activity beyond fisheries waters, comply with terms and conditions of the authorisation to fish;
- (c) ensure that the fishing vessel has an approved mobile transceiver unit installed and the operator is able to operate the unit properly at all times and report automatically to the Nauru Vessel Monitoring System;
- (d) pay the prescribed fees;
- (e) ensure that the fishing vessel fully complies with all applicable conservation and management measures and resolutions;
- (f) ensure that the fishing vessel fully complies with Nauru laws; and
- (g) provide a copy of the charter-party agreement to the Chief Executive Officer.

43

Insert new section 13C

13C Suspension or cancellation of a licence or authorisation in respect of a fishing vessel operating under a charter agreement

- (1) The Chief Executive Officer may suspend or cancel a licence or authorisation issued under section 13(A) on any of the following grounds:
 - (a) the operator has contravened a term or condition of the authorisation; or
 - (b) the operator has contravened this Part or any provision of this Act; or
 - (c) the operator has committed a serious violation; or
 - (d) any other grounds determined by the Chief Executive Officer.
- (2) An operator of a fishing vessel, who contravenes sections 13(A) or 13(B), commits an offence and upon conviction is liable to a fine not exceeding \$250,000.

44 **Insert New Part IIIB**

**PART IIIB AUTHORISATION TO CHARTER BEYOND NAURU
WATERS**

45 **Insert new section 13D**

**13D Application by non-citizen for authorisation to charter a
National fishing vessel beyond Nauru waters**

- (1) A person, who wishes to charter a National fishing vessel for the purposes of fishing or related activities beyond the fisheries waters, shall apply to the Chief Executive Officer for an authorisation.
- (2) An application for an authorisation shall be:
 - (a) made in the manner and form prescribed; and
 - (b) accompanied by any prescribed fees.
- (3) An authorisation beyond Nauru waters may be granted for the duration of the charter-party agreement or to such lesser period determined by the Chief Executive Officer.
- (4) In granting an authorisation the Chief Executive Officer may specify the area in which the vessel may be used for fishing or related activity.
- (5) The Chief Executive Officer shall not grant an authorisation beyond Nauru waters, if the charter of the fishing vessel is prohibited under any requirement of the Shipping Registration Act 1968.
- (6) In considering an application for an authorisation, the Chief Executive Officer shall be satisfied that:
 - (a) the applicant demonstrates that the charterer has not chartered, owned or previously owned a vessel on the IUU vessel list of any regional fisheries management organisation or arrangement; and
 - (b) the applicant demonstrates that the charterer has not been operating, or has not previously operated in a manner inconsistent with any obligations or requirements or international conservation and management measures and resolutions or Treaty under this Act; and

- (c) there are no outstanding or pending penalties imposed by another State with respect to the vessel; and
- (d) the vessel has good standing on the Regional Register or Record of Fishing Vessels of regional fisheries management organisations to which Nauru is a member, and such good standing has not been suspended or withdrawn.

46 Insert new section 13E

13E Duty of operator to comply

The operator of a fishing vessel applying for an authorisation shall comply with all requirements under this Act relating to the use of Nauru fishing vessels beyond Nauru waters and all requirements under the Shipping Registration Act 1968.

47 Insert new section 13F

13F Suspension or cancellation of authorisation

- (1) The Chief Executive Officer may suspend or cancel an authorisation on the following grounds:
 - (a) a Treaty or other international agreement requires that the Chief Executive Officer suspend or cancel the authorisation to charter;
 - (b) the operator has contravened a term or condition of the authorisation;
 - (c) the operator has contravened this Part or any provision of this Act;
 - (d) the operator or any crew member on the vessel has committed a serious violation; or
 - (e) any other grounds determined by the Chief Executive Officer.
- (2) An operator of a fishing vessel that contravenes sections 13(D) or 13(E) commits an offence and upon conviction is liable to a fine not exceeding \$500,000.

48 Insert PART IIIC

PART IIIC COMPLIANCE WITH INTERNATIONAL OBLIGATIONS

49 Insert new section 13G

13G Application of Part III C

Unless stated otherwise in this Act or any other Act, this Part applies to all vessels registered under the Shipping Registration Act 1968.

50 Insert new section 13H

13H Giving effect to international conservation and management measures

- (1) The Minister may by notice, publish a list of the global, regional or sub-regional organisations or arrangements to which Nauru is a party or a cooperating non-contracting party.
- (2) The Minister may by notice, publish the international conservation and management measures which are to have the force of law in Nauru.
- (3) The Minister may specify in the notice under section 13(I) (2) the parts of an international conservation and management measure that are to have the force of law in Nauru.
- (4) The Minister may, for the purpose of giving effect to any Treaty entered into by Nauru or any international conservation and management measure or arrangement to which Nauru is a party or is a cooperating non-contracting party, make such regulations or give notice in the Gazette or attach such conditions to a licence as the Minister may consider necessary or expedient for this purpose.
- (5) The Minister may publish in the Gazette no less than every 6 months, any conditions that have been imposed on individual licences according to this section.

51 Insert new Part IIID

PART IIID – POLLUTION

52 Insert new section 21A

21A Interpretation

For the purpose of this part:

“garbage” includes all kinds of victuals, domestic and operational wastes, excluding fresh fish and parts of a fish,

generated during the normal operation of a vessel and liable to be disposed of continuously or periodically, but does not include oil, pollutants, or sewage from vessels;

“oil” means oil of any description in any form and includes spirits and other distillates produced from oil of any description, coal tar, bitumen, bitumen emulsions, fuel, oil, sludge, oil refuse, and oil mixed with wastes and any references to oil includes a reference to mixtures of oil with water or with any other substance;

“pollutant” means any substance, or any substance that is part of a class of substances, or any form of energy, and includes any water contained by any such substance or form of energy, and a reference to any pollutants includes a reference to mixtures of a pollutant with water or with any other substance or form of energy;

“sewage” in relation to vessels, includes:

- (a) drainage and other wastes from any form of toilets, urinals, and scuppers;
- (b) drainage from medical premises, including dispensaries and sick bays, by way of wash basins, wash tubs and scuppers located in such premises;
- (c) drainage from spaces containing living animals; and
- (d) other waste waters when mixed with the drainages as mentioned before.

53 Insert new section 21B

21B Discharge of oil or pollution into Nauru waters

- (1) A fishing vessel owner, master or operator of an apparatus as the case may be, commits an offence if during the course of transferring oil to a fishing vessel, oil or pollutants are discharged or escape into Nauru waters.
- (2) Any person who commits an offence under subsection (1) is liable upon conviction to:
 - (i) a fine not exceeding \$100,000; and
 - (ii) an amount assessed by the court as costs incurred or will be incurred for removing or cleaning up any oil or pollutant discharged or having escaped into Nauru waters.

54 Insert new section 21C

21C Discharge of oil or pollutants into waters outside Nauru waters

If any oil or pollutant is discharged or escaped from a vessel into any part of the sea outside Nauru waters, the owner or master of the vessel:

- (a) commits an offence;
- (b) is liable upon conviction to a fine not exceeding \$100,000; and
- (c) shall pay an amount assessed by the Court for costs incurred or will be incurred for removing or cleaning up any oil or pollutant that is discharged or which escaped into Nauru waters.

55 Insert new section 21D

21D Discharge of garbage or sewage from fishing vessels into Nauru water

(1) A fishing vessel owner, master or operator of a fixed or floating apparatus as the case may be, commits an offence if any garbage or sewage is discharged or escape from any fishing vessel or fixed or floating apparatus into Nauru waters, other than in the prescribed manner.

(2) Any person who commits an offence under subsection (1) shall be liable upon conviction to:

- (i) a fine not exceeding \$100,000; and
- (ii) an amount assessed by the court as costs incurred or will be incurred for removing or cleaning up any garbage or sewage discharged or having escaped into Nauru waters.

56 Insert new section 21E

21E Equipment to prevent pollution

(1) For the purpose of preventing or reducing discharge of oil, pollutants, garbage or sewage into the sea, any fishing vessel registered in Nauru shall be fitted with such equipment as may be prescribed.

- (2) The equipment to be installed in any fishing vessel shall be tested and approved by the surveyor appointed by the Minister.
- (3) Any surveyor appointed under the Shipping Registration Act 1968, shall be deemed to be appointed by the Minister for the purposes of the regulations made under this section.

57 Insert new section 21F

21F Equipment to deal with pollution

- (1) For the purposes of cleaning or removing any oil, pollutant, garbage or sewage in or on the sea, the fishing vessel shall carry prescribed equipment and comply with any other prescribed requirements.
- (2) The Minister may appoint a surveyor to test the equipment to be used for the purpose of this section.
- (3) Any surveyor appointed under the Shipping Registration Act 1968 shall be deemed to be appointed by the Minister for the purpose of the regulations made under this section.

58 Insert new section 21G

21G Duty to report discharge

- (1) If any oil, pollutant, sewage or garbage is discharged or escapes into Nauru waters from a fishing vessel, the owner or master of the fishing vessel or person in charge of the operation as the case may be, shall immediately report in by radio or other means, the incident to the harbour master.
- (2) The Harbour master shall immediately inform the Chief Executive Officer of such discharge or escape into Nauru waters.
- (3) The report shall provide the following:
 - (a) time or position of discharge or escape oil, pollutant, garbage or sewage;
 - (b) event to which the discharge or escape of the oil, pollutant, garbage or sewage;
 - (c) weather or sea conditions at the time of discharge or escape, and time when the report was made;

- (d) where the oil, pollutant, garbage or sewage has been discharged or escaped, whichever the case may be, the description, quantity of oil, pollutant, garbage or sewage carried, and concentration of each type of oil, pollutant, garbage or sewage that was discharged or escaped; and
 - (e) the existence of any slick and movement in any direction and measures taken to stop or reduce such discharge or escape, remove the oil, pollutant, garbage or sewage and to minimise the damage or possibility of damage resulting from the discharge or escape.
- (4) If any fishing vessel becomes stranded or abandoned whether inside or outside Nauru waters, the owner or master shall immediately radio and report the incident to the Harbour master providing:
- (a) full details of the fishing vessel including name, description and location of where the fishing vessel is stranded or abandoned;
 - (b) full details of the damage to the fishing vessel;
 - (c) a complete list of all oil, pollutants, garbage or sewage including the description and quantity, as the case may be; and
 - (d) estimated quantity of oil, pollutant, garbage or sewage discharged or escaped.

59 Insert new section 21H

21H Records

The master of a national fishing vessel or a foreign fishing vessel shall carry a separate record book as part of the fishing vessel's official log book records carried on board relating to:

- (a) loading of oil cargo;
- (b) transfer of oil cargo during a voyage or to or from a vessel and in between tanks in a vessel;
- (c) discharge of oil cargo;
- (d) mixture containing oil;

(e) ballasting and cleaning of oil tanks and discharge of ballast or cleaning water or other substance from any such tank; and

(f) discharge or other disposal of mixture containing oil.

60 Insert new section 211

211 Enforcement of the prevention of pollution

A regulation made under section 42 of the Act shall make provision for an authorised officer to board a vessel within Nauru waters and require production of records for inspection for enforcement purposes.

61 Amendment of section 22

(1) Section 22(1)(a) is amended by omitting “\$500,000” and substituting “\$1,000,000”;

(2) Section 22(2)(b) is amended by omitting “\$500,000” and substituting “\$1,000,000”.

62 Amendment of section 23

Section 23(1)(a) is amended by omitting “\$500,000” and substituting “\$1,000,000”.

63 Amendment of section 24

(1) Section 24(1)(a) is amended by omitting “\$500,000” and substituting “\$1,000,000”.

(2) Section 24(3)(a) is amended by omitting “\$50,000” and substituting “\$100,000”.

64 Amendment of section 25

Section 25(4)(a) is amended by omitting “\$500,000” and substituting “\$1,000,000”.

65 Amendment of section 26

Section 26(1)(a) is amended by omitting “\$500,000” and substituting “\$1,000,000”.

66 Amendment of section 27

Section 27(3)(a) is amended by omitting “\$500,000” and substituting “\$1,000,000”.

Amendment of section 42

Section 42 is amended by inserting the following after subsection (1)(m):

- (n) conditions, circumstances and areas of the sea in which garbage or sewage may be discharged by a vessel into Nauru waters and by foreign vessels beyond Nauru waters;
- (o) requirements for vessels or structures to fitted with equipment to prevent pollution;
- (p) providing for such matters as contemplated or necessary to give full effect to the pollution provision and due administration;
- (q) production and inspection of records and taking copies of evidence by an authorised officer.