

REPUBLIC OF NAURU

COASTAL FISHERIES AND AQUACULTURE BILL 2020 EXPLANATORY MEMORANDUM

The *Coastal Fisheries and Aquaculture Bill 2020* is a Bill for the *Coastal Fisheries and Aquaculture Act 2020*.

This memorandum provides an explanation of the Bill and is only intended to indicate the general effect.

EXPLANATION OF CLAUSES

PART 1 – PRELIMINARY

Clause 1 provides that, once enacted, the short title of the Bill will be the *Coastal Fisheries and Aquaculture Act 2020*.

Clause 2 sets out when the Bill's provisions will commence which is on certification by the Speaker.

Clause 3 is the interpretation clause of the Bill which defines key words used throughout the Bill.

Clause 4 provides that the Bill applies to:

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

Clause 5 provides for the objectives of the Bill which include:

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

- ensuring community participation in coastal fisheries and aquaculture management; and
- co-ordinating the role of Government agencies and the community to ensure compliance with conservation and management measures for coastal fisheries waters and aquaculture.

Clause 6 sets out the general principles that the Chief Executive Officer shall be guided by when performing a function or exercising a power under this Bill. The Chief Executive Officer shall:

- ensure the application of conservation and management practices based on the best available scientific advice and generally recognised local and international customs, standards and best practices;
- ensure the application of the precautionary approach which shall be applied to the management and development of the fisheries at a standard that is equal or superior to the standard in any applicable international instrument;
- prevent over-fishing, in particular by ensuring that levels of fishing effort do not exceed the availability of resources;
- collect and share, in a timely manner, accurate data concerning fisheries and aquaculture, as well as information from national and international research programmes;
- take into account the particular rights, interests and needs of traditional, subsistence and other local fishers and fishing communities;
- adopt an integrated approach to fisheries and other coastal living resources use management, including minimising, to the extent practicable, conflicts among fishers using the same coastal space and between fishers and other users of coastal space;
- apply the principle of inter-generational equity, by which the present generation should ensure that the health, diversity and productivity of coastal living resources and the coastal fisheries waters are maintained or enhanced for the benefit of future generations;
- apply principles of good governance, accountability and transparency, including the need to involve fisheries stakeholders and fishing communities in decision-making where necessary.

Subclause (2) clarifies what is meant by the precautionary approach. That is, where there is a threat of serious or irreversible harm to fisheries resources and related habitats in coastal fisheries waters, lack of scientific certainty shall not be used as a reason to prevent or postpone action to mitigate any harmful impacts to fisheries resources and related habitats in coastal fisheries waters.

Clause 7 provides that the following shall be considered where appropriate, in the development of any national policies and management plans: traditional coastal fisheries; traditional aquaculture knowledge; traditional practices and traditional fishing methods.

PART 2 – ADMINISTRATION

Clause 8 provides that the Minister has the power to do all things necessary or convenient to be done to attain or further the objectives of the Bill.

Subclause (2) empowers the Minister to:

- determine national policies;
- designate fisheries management areas;
- designate marine protected areas;
- declare closed seasons;
- where necessary, impose control and management measures on fishing effort and catch; and
- appoint one or more committees as he or she deems necessary to advise and make recommendations on any areas under his or her authority.

Clause 9 sets out the general powers of the Chief Executive Officer in relation to the protection and management of coastal fisheries resources and related habitats in the implementation of the Bill. The Chief Executive Officer has the power to do all things necessary or convenient to be done to attain or further the objectives of the Bill in his or her capacity as the Head of the Authority including the power to:

- do any act or thing authorised by this Act or any other written law;
- oversee ratification and implementation of multilateral environmental agreement;
- advise the Minister and the Cabinet on all aspects of coastal fisheries and aquaculture;
- liaise with other Governments, international or regional organisations or agencies, Government Departments, other instrumentalities of the Republic to allow mutual support in dealing with issues relating to the management of coastal fisheries waters and aquaculture resources;
- prepare national management and development plans for coastal fisheries and aquaculture;
- make recommendations to the Minister on coastal fisheries and aquaculture resources conservation, management and development;
- assist stakeholders to meet their obligations under this Act;
- advise Government Departments and committees on the management or development of coastal fisheries and aquaculture resources;
- monitor impacts on the management and development of coastal fisheries and aquaculture resources, and related habitats;
- assist in coastal fisheries or aquaculture research;
- collect or disseminate timely, reliable and effective data on coastal fisheries and aquaculture;
- promote public awareness and education in relation to coastal fisheries and aquaculture management and development;
- keep and maintain a Register of Community Fisheries Management Committees;

- ensure public consultation on initiatives for the conservation, management and sustainable development of coastal fisheries and aquaculture; and
- delegate in writing to an officer of the Authority any power except the power of delegation.

PART 3 – COASTAL FISHERIES

Division 1 – Coastal Fisheries Advisory Council

Clause 10 establishes a Coastal Fisheries Advisory Council.

The Council is a body that brings together community and relevant government department and non-government organisation’s representatives to contribute and discuss the views from their respective groups on policy matters relating to coastal fisheries and aquaculture before advising the Minister.

Clause 11 provides the function of the Council which is to advise the Minister on policy matters relating to coastal fisheries and aquaculture and in particular, conservation and management; and development and sustainable use.

Clause 12 sets out the composition of the Council. Subclause (1) sets out the composition of the Council as follows:

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

Subclause (2) permits the Council to co-opt any other number of persons it deems necessary for the performance of its functions. This allows the Council to invite experts or other persons whose skills, expertise or views may be needed when the Council is deliberating on a specific issue.

The Council chaired by the Chief Executive Officer for the Authority, provides a pathway for ensuring the consideration and inclusion of community and non-governmental organisations inputs on coastal fisheries and aquaculture policy matters in the advice to the Minister.

Clause 13 in subclause (1) provides that the Council shall hold such meetings as are necessary for the performance of its functions.

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

Subclause (3) provides that the Council may determine its own procedures for its meetings and cause minutes of its meetings to be kept.

Clause 14 requires a Council member to promptly disclose the nature of his or her interest in situations where such member has financial or fiduciary interest that conflicts with his or her duty under this Bill.

Subclause (2) requires the recording of any conflict of interest disclosed under subclause (1). This will be recorded in the minutes of the Council meetings.

Subclause (3) provides that a member may be removed from the Council if he or she contravenes subclause (1).

Division 2 – Community Fisheries Stakeholder Forum

Clause 15 establishes a Community Fisheries Stakeholder Forum.

The Forum provides a place where districts can bring and share their issues and concerns regarding coastal fisheries and aquaculture for discussion. It will also serve as a place for keeping all districts on the same page in terms of managing and developing coastal fisheries and aquaculture.

Clause 16 sets out the objectives of the Forum. The Forum may:

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

One important role that the Forum can play relates to dispute resolution. Disputes may occur between districts especially if members of one district have repeatedly refused to respect the rules of another district's designated fisheries management area. Such disputes may be resolved through discussion and subsequent agreement between the members.

Clause 17 provides the composition of the Forum. This is purely a community body that is made up of representatives from each of the district Fisheries Management Committees. The Chairperson is selected by majority vote from among the district representatives. The Authority maintains a presence in the Forum but only as secretary providing support.

Clause 18 provides that the Forum may determine its own procedures for its meetings and minutes of its meetings and correspondence shall be kept and maintained by the secretary to the Forum.

Division 3 – Coastal Fisheries Conservation, Management and Development

This Division explains the main management tools that will be used in the Bill for managing coastal fisheries.

Clause 19 provides for the declaration of designated fisheries management areas. The Minister on the advice of the Chief Executive Officer and in consultation with the Cabinet may declare designated fisheries management areas. Such designated fisheries management areas will be marked as well.

These designated areas are solely for the purpose of helping the recovery of the coastal fisheries and marine resources by applying specific management measures on them.

Subclause (2) provides that a declaration under subclause (1) may be made by the Minister if the Minister deems appropriate having regard to scientific, social, economic, environmental and other relevant consideration that the area is important to the national interest and requires conservation and management measures for ensuring sustainable use of coastal fisheries resources.

Subclause (3) allows the Minister to declare a buffer zone of up to 2 nautical miles around the designated fisheries management areas to ensure sustainability of species within such areas. This declaration may be made by notice in the Gazette.

Clause 20 provides that the Chief Executive Officer shall be responsible for the preparation and review of a National Coastal Fisheries Management Plan. Subclause (2) provides that the Plan shall:

- identify the relevant fishery or fisheries;
- specify objectives to be achieved in the management and development of the fishery or area;
- describe the status of the fishery;
- specify management measures to be applied to the fishery including appropriate fines, penalties and sanctions for contravening such measures;
- protect the fishing interests of artisanal, subsistence and small scale fishers;
- specify the process for allocation of any fishing rights;
- include an assessment of risk;
- identify requirements for monitoring, reporting and assessment; and

- provide for any other matters as may be necessary for sustainable use, management and development of fishery resources.

Subclause (3) requires the Chief Executive Officer to carry out consultations with the Community Fisheries Stakeholder Forum; stakeholders who will be affected or have an interest and who may not be informed by the Community Fisheries Stakeholder Forum; and relevant government agencies. The Chief Executive Officer is required to take into account the Objectives and General Principles of this Bill under Clauses 5 and 6.

The National Coastal Fisheries Management Plan will be prepared by the Authority in consultation with all stakeholders that is, the community as well as Government. This will provide a roadmap on how the Coastal Fisheries would be managed to ensure its sustainability.

Clause 21 requires the National Coastal Fisheries Management Plan to be submitted to Cabinet for consideration.

Subclause (2) provides that Cabinet may approve the Plan if it satisfied that the Plan complies with this Bill; or request the Chief Executive Office to provide more information.

Subclause (3) provides that where the Cabinet approves the Plan under subclause (2)(a), the Plan shall be published as soon as practicable in the Gazette.

Subclause (4) provides that the Plan comes into effect on the date it is published in the Gazette or on any other date stated in the Plan.

Once the Plan is approved by the Cabinet, the Plan will become the bible to be followed by all users of the coastal fisheries and marine resources at the district and national level.

Clause 22 requires the review of the National Coastal Fisheries Management Plan by the Chief Executive Officer at any time at the direction of the Minister or Cabinet; or at the end of every annual year following the endorsement of the Plan if no direction is given by the Minister or Cabinet for review.

Subclause (3) requires that any amendment to the Plan shall be prepared and considered in the same manner the substantive Plan was prepared.

Subclause (4) allows for the amendment or revocation of the Plan by the Cabinet in consultation with Chief Executive Officer.

Clause 23 authorises the Minister to determine the total allowable catch, the total applied effort or combination of the same in coastal fisheries waters.

Subclause (2) requires the Minister in making a determination under subclause (1) to apply necessary catch quotas or size limits in a particular area; in respect of a particular species or

group of species of fish; or in respect of the use of particular gear, fishing methods or the type of fishing vessel.

This clause essentially imposes a limit on much each fisher can catch and the methods of fishing to be used.

Clause 24 authorises the Minister to where necessary, declare a closed season. This may be done by notice in the Gazette.

Subclause (2) provides that a declaration by the Minister under subclause (1) may include the period for the closed season; type of fish, fishery, fishing method or other parameters as the case may be; and a specific area.

It is an offence for a person who contravenes a closed season. The penalty upon conviction is a fine not exceeding \$10,000.00 or term of imprisonment not exceeding 6 months or to both.

This Clause does not allow fishing activities at certain set periods or months of the year. This is effectively used for stopping fishing during the fish breeding seasons to allow for the regeneration of fisheries. This ensures the sustainability of the fisheries as well as food security for the community.

PART 4 – COMMUNITY FISHERIES MANAGEMENT

This Part sets out the approach taken to involve the community in the management of the coastal fisheries and marine resources through the use of community fisheries management areas.

Clause 25 allows a district community to submit an application to the Minister for a specified portion of the coastal area adjacent to the district to be declared as a fisheries management area.

The Minister in consultation with the Cabinet and Chief Executive Officer may approve a district community request and delineate a community fisheries management area.

Subclause (3) requires the Minister to consult with the Authority, Coastal Fisheries Advisory Council, the Community Fisheries Stakeholder Forum and any other relevant stakeholders; and take into account:

- the purpose and justification for the need to establish the fisheries management area;
- the geographical location and size of the proposed fisheries management area in relation to the district involved;
- the community management plan for the proposed fisheries management area;
- the population of each district;
- customary marine tenure in each district; and
- traditional fisheries practices and usages.

Clause 26 provides for a district community to apply to the Chief Executive Officer to register its community fisheries management committee.

Subclause (2) provides the requirements of an application which is to consist of:

- the name of the community fisheries management committee;
- names of the Chairperson, other officers of the committee if any and other members of the committee;
- banking information;
- the committee's mission statement and proposed activities;
- the committee's rules of procedure; and
- such other information or documentation as the Authority may require.

Subclause (3) requires the Chief Executive Officer to review an application and either register the community fisheries management committee or decline the application. Where an application is declined, the Chief Executive Officer is to provide reasons for the same.

Subclause (4) allows a district community to make a new application where the original application was declined. The new application must take into consideration the reasons why the original application was declined.

Subclause (5) prohibits a district community from performing the functions of a community fisheries management committee unless it is registered with the Authority.

Clause 27 provides that the Authority may assist a community fisheries management committee with the preparation, adoption and review where necessary of the community's fisheries management area.

Subclause (2) requires the community fisheries management area plan to:

- comply with any written laws and national plans relating to coastal fisheries;
- identify the fishery to be managed under the plan;
- describe the status of the fishery;
- provide the management and development objectives of the fishery or area;
- identify any development strategies;
- specify conservation and management measures to be applied to the fishery;
- specify the process for the allocation of any fishing rights or additional catch quotas by species provided for in this plan and that has not been defined in this Act and the national coastal fisheries management plan;
- identify requirements for monitoring, reporting, and assessment;
- make provision in relation to any other matter necessary for sustainable use of fisheries resources including sustainable finance activities.

Subclause (3) requires a community fisheries management committee prior to submitting the plan to the Minister for approval to:

- present the proposed plan to a meeting of the Forum; and
- consult with neighbouring district communities.

A community fisheries management area plan shall be provided to the Minister for approval. The Minister on receipt of a plan may approve the plan completely; approve but with modifications; or return the plan to the community fisheries management committee for further consideration.

An approved plan shall be published in the Gazette within 7 days of approval by the Minister.

Once approved, the declared coastal area would be subjected to the management measures in the plan which will be enforced by the district management committee. The management measures for the designated fisheries management area will apply to everyone including members of the district community. Approval of the fisheries management area therefore does not give the district the exclusive right to own and use but only the right to manage the area. The rules and restrictions they impose will apply to everyone including the members of their own district community.

Clause 28 requires a detailed review of a community fisheries management area plan every 2 years. However, such plan may be amended at any other time where a district fisheries management committee and the Chief Executive Officer deem appropriate.

This Clause further requires that where a community fisheries management area plan is amended, the amendment will go through the same process the original plan went through that is, submitted to the Minister for approval and published in the Gazette within 7 days of such approval.

Clause 29 provides for a community fisheries management committee to monitor its community fisheries management area; enforce its community fisheries management area; and report any breach of its community fisheries management area.

In enforcing the rules and restrictions for the fisheries management area, the fisheries management committee cannot prosecute but can report a violation to the Chief Executive Officer for prosecutions to be made. The fisheries management committee however can stop and inform offenders about the violation, take records, take photos, collect evidence and report to the Chief Executive Officer for any violations for prosecutions. The rules and restrictions for a community fisheries management area are derived from this Bill and Regulations. As such, any contravention of this Bill and Regulations committed within a community fisheries management area will result in a prosecution.

Clause 30 provides for a community fisheries management fund which a community fisheries management area committee may establish. The purpose of such an account is for:

- receiving financial assistance or donations for the purpose of supporting the implementation of the community fisheries management area plan; or

- receiving revenue from any sustainable financing activity identified and developed under the community fisheries management area plan.

These funds will be utilised to support the management and development of the coastal fisheries management area.

Clause 31 refers to those communities that are situated away from the coastline and whose access to the coastal fisheries waters is dependent on access to another district community. This Clause gives such communities the opportunity to take part in the management of a coastal fisheries management area of a coastal district through their traditional, family or clan link.

PART 5 – AQUACULTURE

Division 1 – National Aquaculture Plan

Division 1 sets out the need for a National Aquaculture Plan which is required to guide the development of Aquaculture in Nauru. It is the responsibility of the Chief Executive Officer to prepare the Plan and to make sure it is reviewed and updated annually or when needed. The National Aquaculture Plan and future amendments need the approval of the Cabinet in order for it to come into effect.

Clause 32 requires the Chief Executive Officer to prepare the National Aquaculture Plan and to review where necessary.

Subclause (2) sets out the details required to be provided in the National Aquaculture Plan which are to:

- (a) identify the types of aquaculture activities and their characteristics;
- (b) describe, as the case may be:
 - (i) the land tenure and characteristics including but not limited to soil, topography, and land use patterns in the area;
 - (ii) the aquatic area and tenure, and the characteristics including but not limited to water type and usage;
 - (iii) specify the objectives to be achieved by the aquaculture operations;
- (c) specify management and development measures to be applied, as appropriate;
- (d) consider the fishing interests of artisanal fishers;
- (e) include an environmental impact assessment report;
- (f) comply with the requirements of this Act and any other relevant written law; and

(g) make provision in relation to any other matter necessary for sustainable use of aquaculture resources.

Subclause (3) requires the Chief Executive Officer to ensure that all relevant stakeholders are consulted when the National Aquaculture Plan is being prepared.

Clause 33 requires the National Aquaculture Plan to be submitted to Cabinet for consideration and approval. The Cabinet may either approve the Plan or require more information to be provided by the Chief Executive Officer.

Subclause (3) provides for the Gazettal of the National Aquaculture Plan within 7 days of approval by the Cabinet.

The Plan comes into effect on the date of publication in the Gazette.

Clause 34 requires the Chief Executive Officer to review the National Aquaculture Plan either at any time at the direction of the Minister or Cabinet; or annually.

The Chief Executive Officer may consult with any person or organisation or such persons as the Chief Executive Officer deems necessary when reviewing the National Aquaculture Plan.

Any amendment to the National Aquaculture Plan resulting from the review shall be prepared and considered in the same manner as the initial Plan.

The National Aquaculture Plan may be amended or revoked by the Cabinet in consultation with the Chief Executive Officer.

Division 2 – Aquaculture Registration

Division 2 explains the need and importance for all aquaculture operators to register with the Authority through the Chief Executive Officer. Registration is mandatory but is free so to encourage all operators to register. Registration will help the Authority keep track of active aquaculture operations and to make it easy to monitor and ensure that the required standards and code of practice

Clause 35 requires a person intending to engage in or carry out aquaculture operations to apply to the Chief Executive Officer for registration. The Chief Executive Officer may approve an application if satisfied that the applicant is capable of complying with any aquaculture standards issued by the Authority. A certificate of registration shall be issued to an applicant in the prescribed form where an application is approved by the Chief Executive Officer.

Clause 36 provides for a Register of Aquaculture Operators of which the Chief Executive Officer shall bear responsibility for keeping and maintaining such Register as prescribed.

Clause 37 provides for the Chief Executive Officer to issue aquaculture standards from time to time, having regard to internationally agreed standards and codes of practice. Such aquaculture standards include:

- (a) use of good aquaculture practices relating to:
 - (i) aquaculture farm design and maintenance;
 - (ii) stocking densities, farming strategies;
 - (iii) feed;
 - (iv) supplementary feeding;
 - (v) biosecurity including the use of antibiotic and chemical treatments;
 - (vi) environmental management; and
 - (vii) waste management;
- (b) site selection;
- (c) water quality monitoring;
- (d) use of gear, equipment or devices in aquaculture;
- (e) aquaculture premises;
- (f) record-keeping; and
- (g) any other matter related to the management, development and control of aquaculture.

The standards issued by the Chief Executive Officer are required to be implemented by a person engaged in aquaculture operations.

Any aquaculture operation shall be inspected by authorised officers to ensure operators are complying with the aquaculture standards issued by the Chief Executive Officer.

Any aquaculture operator who does not comply with the aquaculture standards shall be provided a list of all non-complying aspects of the operation and a timeline by which such standards are to be complied with. In addition, the aquaculture operator shall be de-registered if such operator fails to meet the compliance advice issued to him or her.

PART 6 – STATISTICS AND REPORTING

This Part deals with the collection of information and data both on coastal fisheries and aquaculture activities. This is very important in order to be able to identify trends and changes in catches and fishing efforts in coastal fisheries and in production in general for both coastal fisheries and aquaculture. This will assist the Authority to ascertain if coastal fisheries and aquaculture is improving or getting worse and whether the management measures and standards implemented are working. It is equally important that stakeholders in coastal fisheries and aquaculture are aware of the outcomes from the collection of such data and information in order to appreciate the importance and relevance of the information collecting activities and to have an idea about the status of their coastal fisheries and aquaculture resources and activities.

Clause 38 requires the Chief Executive Officer to collect and analyse statistical and other information on coastal fisheries and aquaculture.

Subclause (2) authorises the Chief Executive Officer to require persons engaged in coastal fisheries or aquaculture activities including fishing vessel owners engaged in such activities to provide data, statistics and other information in the prescribed form, relating to:

- catches;
- bycatches;
- fishing methods;
- fishing effort;
- production;
- production methods; or
- any other relevant information.

Subclause (3) allows the Chief Executive Officer to share information received with a Government Department, statutory authority, instrumentality of the Republic, agency or association.

Clause 39 requires the Chief Executive Officer to provide as soon as practicable at the end of each financial year as part of the Authority's annual report, a report on coast fisheries and aquaculture which includes:

- an evaluation of any community fisheries management plans;
- statistical information on coastal fisheries and aquaculture; and
- any information relevant to the management and development of coastal fisheries and aquaculture.

This report shall be presented by the Minister to the Cabinet.

PART 7 – AUTHORISED OFFICERS

Clause 40 provides for the appointment of authorised officers.

Subclause (1) provides that the Chief Executive Officer is an authorised officer for the purposes of this Bill.

Subclause (2) empowers the Minister to appoint authorised officers by notice in the Gazette.

Subclause (3) requires authorised officers to act under the directions or instructions of the Chief Executive Officer.

Subclause (4) requires all authorised officers appointed, except police officers, to be issued with an identification card and should produce the same upon request. This is necessary to ensure that authorised officers are easily identifiable. For example, an authorised officer must show his or her identification card to an owner or lawful occupier of premises, upon request, before such authorised officer enters the premises, or to an individual in the performance of any other duties or functions under the Act.

Subclause (5) prevents an authorised officer from exercising any powers under this Bill unless he or she produces his or her identification card.

Authorised officers are required to conduct themselves in a manner in accordance with their lawful powers and must conduct themselves in a manner which shows respect to all members of the public.

Clause 41 outlines the powers of authorised officers.

Subclause (1) provides for authorised officers to:

- enter and search any conveyance, including a vessel, aircraft or vehicle; or
- stop and search a person; or
- pass across any land.

Subclause (2) requires authorised officers to exercise any power under subclause (1) only if he or she has reasonable cause to believe that:

- (a) an offence under this Act is being or has been committed; or
- (b) any of the following may be concealed to avoid prosecution:
 - (i) any fish taken or item used or intended to be used in contravention of this Act;
 - (ii) any record or information required under this Act to be kept, completed or provided; or
 - (iii) any document or item which may be taken as evidence as to the commission of an offence under this Act.

Subclause (3) allows an authorised officer to:

- subject to any other written laws, detain a person or any conveyance, including a vessel, aircraft or vehicle; and
- retain in his or her custody a thing, including a parcel, package, record, document, article, gear, apparatus, container or fish, for any period as is reasonably necessary to enable the authorised officer to carry out a search under this section

Clause 42 provides for the power of arrest of authorised officers.

Subclause (1) allows an authorised officer to:

- order a person found committing an offence to stop committing the offence and if the person fails to obey the order, arrest the person without a warrant; or
- with a warrant issued by a Resident Magistrate or judge, arrest a person whom the officer reasonably suspects of having committed an offence under this Bill.

Subclause (2) provides that where an authorised officer other than a police officer arrests a person under subclause (1), such authorised officer shall as soon as practicable, take the arrested person to the police station or into the custody of a police officer.

Clause 43 provides for directions to be issued to a master of a fishing vessel that an authorised officer believes is being used or has been used to contravene this Bill, to take the vessel to a Nauru port. The authorised officer may in consultation with the Chief Executive Officer give any reasonable directions to the master or any person aboard the vessel in relation to any:

- activity;
- method;
- procedure;
- item;
- gear;
- document;
- fish;
- property; or
- other thing.

An authorised officer need not consult with the Nauru Maritime and Port Authority if consultation cannot be done within a reasonable timeframe or due to an emergency involving the imminent loss of life or property which requires immediate action to be taken.

Clause 44 allows authorised officer to use reasonable force as may be necessary to enable such authorised officer to exercise powers under this Bill.

Clause 45 permits an authorised officer to make, remove or take copies of any record or document; or if necessary, require a person to reproduce or assist to reproduce a document stored or information recorded.

Clause 46 authorises authorised officers to seize:

- any conveyance or thing, including a vessel, aircraft, vehicle, fishing gear, implement, appliance, material, container, goods, equipment, which the authorised officer reasonably believes is being or has been or is intended to be used to contravene this Act;
- any fish, including any other fish with which the fish has been intermixed, which the authorised officer reasonably believes is being or have been, taken, killed, transported, bought, sold or found in the possession of a person, in contravention of this Act; or
- a thing or any article, including a record or document which the authorised officer reasonably believes is evidence of the commission of an offence.

An authorised officer must provide a receipt for any article or item seized under this Clause and any seized property shall be immediately delivered into the custody of the Authority.

Clause 47 provides that where any property is seized under this Bill, the following persons may apply to the Chief Executive Officer in writing for the release of such seized property:

- the person from whom the property was seized;
- the owner of the property; or
- the person entitled to the possession of the property.

Subclause (2) allows the Chief Executive Officer to release the property under a bond in the sum equal to the value of the seized property or under any surety or condition imposed by the Chief Executive Officer. Release of the seized property may be done before the information or charge is laid for an offence.

Subclause (3) provides that where a person to whom property was released to under subclause (2) fails to comply the condition of a bond or surety or condition imposed by the Chief Executive Officer, the Chief Executive Officer may direct the property to be re-seized and he or she may apply to the Court for an order to forfeit the bond.

Subclause (4) provides that where the Chief Executive Officer applies for a forfeiture order under clause 47(3), the Registrar of the Courts shall fix a time and place for the hearing of the application and cause the application to be served at least 7 days before the time fixed for a hearing, on a person bound by the bond.

Subclause (5) empowers the Court to make an order it deems fit where it is proved to the Court's satisfaction that the bond has been contravened.

Clause 48 relates to the release of seized property on application by a person to the Court. provides that the Court may release property under bond, surety or condition to:

- the person from whom the property was seized;
- the owner of the property; or
- the person entitled to the possession of the property seized.

Subclause (2) provides that the Court when determining the value of a bond or the form of security or type of condition:

- (a) shall take into account the aggregate amount of:
 - (i) the value of the property to be released;
 - (ii) the total maximum fine provided for the offence charged or likely to be charged; and
 - (iii) the loss, damages or costs the prosecution may need to recover, if a conviction is entered, and
- (b) may set the value at any aggregate amount.

Clause 49 allows the Chief Executive Officer to dispose of any perishable property seized by an authorised officer. The Chief Executive Officer may:

- sell such property at reasonable market value;
- return such property to the person from whom it was seized on receiving security of equivalent value; or
- where he or she is unable to sell the property at reasonable market value or where such property is unfit for sale, dispose of it in such manner as he or she deems appropriate.

Subclause (2) provides that if the owner of a property is unknown at the time such property was seized, the property is forfeited to the Authority from the date of seizure or the property is to be disposed of as directed by the Chief Executive Officer within 30 days of the seizure of the property.

Subclause (3) provides that a person who bought any property sold under this Clause acquires good and unencumbered title.

Subclause (4) allows the Authority to keep in its custody any property seized under this Bill or the proceeds of the sale of the property under this Clause until:

- (a) a decision is made not to proceed with the offence for which the property was seized; or
- (b) where a charge or information is laid:
 - (i) the final determination of proceedings, including any appeal, for the offence for which the property was seized; or
 - (ii) the court otherwise makes an order on the property.

Clause 50 empowers authorised officer to remove parts from an aircraft or vessel in the custody of the Authority in order to immobilise such aircraft or vessel. Any part so removed needs to be kept safe and returned when such aircraft or vessel is released from the custody of the Authority.

No person may possess or arrange to obtain any part of the aircraft or vessel removed or have a replacement or substitute made for such part without the authority of the Chief Executive Officer.

PART 8 – FORFEITURE

This Part deals with cases when properties of the person convicted may need to be forfeited to the Republic in addition to the punishment imposed by the court. It explains the circumstances when forfeiture of property is necessary and when they can be disposed.

Clause 51 provides for the forfeiture of property belonging to a person convicted of an offence under this Bill. The court may in addition to any other penalty imposed, order any one or more of the following be forfeited to the Republic:

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

Clause 52 provides for the disposal of forfeited property in situations where either there is no appeal or the appeal is finally determined.

Subclause (2) allows the Authority to hold on property including a vessel, aircraft or vehicle or goods seized under this Bill until all fines, orders for restitution or costs and penalties imposed under this Bill have been paid.

Subclause (3) provides that if the fines, orders for restitution or costs and penalties imposed under this Bill remain unpaid within the timeframe given for payments of the same to be made, any seized property may be sold and the proceeds to be paid in order of priority as follows:

- to pay for any fines, orders for costs, penalties imposed under this Act and costs of sale; and
- to the owner for the balance of the proceeds.

Clause 53 provides for the liability for loss, damage or deterioration of property in custody.

Subclause (1) specifically provides that the Republic is not liable for any loss or damage to, spoilage or deterioration in the condition of any property seized or while in the custody of the Republic.

Subclause (2) protects an authorised officer from any civil or criminal liability where such authorised officer at the time of seizure of any fish under Clause 46, returns to the water any fish the authorised officer believed to be alive at the time in situations where:

- a decision has been made not to proceed with the offence relating to the seized fish; or
- the person has been acquitted of the charge.

PART 9 – FIXED PENALTY NOTICE

This Part provides for the use of Fixed Penalty Notices. The use of Fixed Penalties Notices has been found to be an efficient way in enforcing clearly defined offences and common petty crimes so to avoid unnecessary court trials on such matters.

Clause 54 provides police officers and authorised officers the authority to issue Fixed Penalty Notices to any offenders. The clause empowers the Cabinet to make regulations prescribing:

- offences for which fixed penalties shall be imposed;

- penalties for each corresponding prescribed fixed penalty offences;
- fixed penalty notice which may be served on an offender by a police or authorised officer for an offence for which a fixed penalty is prescribed;
- a time frame for the payment of the prescribed fixed penalty;
- procedure for the prosecution of and additional penalties to be imposed by the court on offenders;
- any other matters in relation to the effective enforcement of the fixed penalty notice.

PART 10 – EVIDENCE

Clause 55 allows the Chief Executive Officer or person authorised by the Chief Executive Officer in writing to provide a certificate stating that:

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

Clause 56 provides for a presumption for photographic evidence that where photographs are taken of any coastal fishing activity, it is presumed that the photograph was taken on the date, at the time and in the position appearing or superimposed on the photograph and shall be received as evidence by the court unless the contrary is proven.

Subclause (2) provides that the presumption under subclause (1) shall arise where:

- in the case of subsection (1)(a), the camera taking the photograph is connected directly to the instruments which provided the date, time and position concerned; and

- in either case, the photograph was taken by an authorised officer.

Subclause (3) requires an authorised officer who took the photograph to provide a certificate in relation to the photograph taken. Such certificate shall state:

- his or her name, address, official position and authority under which he or she is appointed;
- the name, if known, of the person or owner of any fishing vessel appearing in the photograph;
- the name of the apparatus supplying the date and time and the position fixing instrument and a declaration that he or she has checked those instruments a reasonable time before and after the taking of the photograph and that they all appeared to be working correctly;
- the matters, as appropriate, under subclause (2)(a);
- the accuracy of the position-fixing instrument used, within the internationally accepted margin of errors or standards relating to such instrument; and
- the maximum possible distance and the direction of the subject of the photograph away from the camera at the time the photograph was taken.

Clause 57 provides for presumption evidence to make it clear that all fish found on board a fishing vessel that have been found to commit an offence are regarded as catch for that offence and where the location for an offence is in doubt then the location of the authorised officer will be presumed to be the location. Also, if in doubt, all acts of fishing by a crew on board of a fishing vessel will be included as part of the charge to the operator.

PART 11 – COASTAL FISHERIES AND AQUACULTURE DEVELOPMENT FUND

Clause 58 establishes a Coastal Fisheries and Aquaculture Development Fund for the purpose of:

- protecting, conserving and managing coastal fisheries;
- aquaculture development; and
- food security.

The Fund shall consist of any compensation and expenses from the offences committed and penalised by a court, any amount appropriated from the Treasury Fund and any related levies or taxes imposed by law. This fund can be used solely to support activities that will help to manage the coastal fisheries resources better or provide new opportunities and activities in aquaculture.

The idea behind the fund is to put money collected from coastal fisheries violations back into coastal fisheries to help develop it further as a move into a sustainable financing approach.

Clause 59 relates to withdrawals from the Fund and provides that there is no withdrawal from the Fund unless:

- the withdrawal is for the purpose for which the Fund is established; and

- the purpose of the withdrawal has been authorised by the Cabinet in consultation with the Minister.

Subclause (2) provides that the co-signatories to the Fund are the Chief Executive Officer and the Secretary for Finance.

Clause 60 provides that the Chief Executive Officer shall:

- keep proper accounts and records of all transactions and affairs of the Fund;
- ensure that all monies received are properly brought to account;
- all payments out of its monies are correctly made and properly authorised; and
- adequate control is maintained over its assets and liabilities.

Subclause (2) requires the Chief Executive Officer to submit within 2 months after the end of each financial year to the Cabinet an annual report in respect of that financial year containing such financial statements as the Cabinet may require; a report on the operations of the Fund; and such other information as the Cabinet may direct in writing.

The Chief Executive Officer is also required to submit to the Auditor General the accounts of the Fund for the financial year; and the annual report the Chief Executive Officer provides to the Cabinet.

The audit report shall be made to the Cabinet by the Auditor General within 3 months of receiving the accounts and audit report.

PART 12 – OFFENCES

This Part sets out the main offences that and what these offences entail including the maximum penalties. The offences are focussed on the catching or holding of fish with restrictions as prescribed or in the use of restricted fishing gears, methods or practices or even the possession of these restricted fishing gears during fishing.

Clause 61 relates to the illegal holding of fish. This clause prohibits the master from taking or allowing on board his or her fishing vessel fish or any other related species which was not taken under the authority of and in accordance with a fishing licence.

Subclause (2) is the defence provision.

Subclause (3) is the penalty provision. Penalty: \$5,000.00 or to a term of imprisonment not exceeding 6 months or to both.

Clause 62 provides for prohibited fishing methods and practices. It is an offence for a person to:

- (a) permit to be used, use or attempt to use an explosive, firearm, poison or any other noxious substance for the purpose of killing, stunning, disabling or catching fish or for any related purpose; or

- (b) carry or possess or control without lawful authority an explosive, firearm, poison or any other noxious substance in circumstances indicating an intention of using that substance for any of the purposes referred to in paragraph (a).

Subclause (2) provides for a presumption unless the contrary is proven, that any explosive, firearm, poison or any other noxious substance found on board a fishing vessel shall be presumed to be intended to be used for killing, stunning, disabling or catching fish or any related purpose.

Subclause (3) requires a person not to land, sell, receive or possess fish taken by any means in contravention of this Clause and such person knew or had reasonable cause to believe that the fish has been so taken.

Subclause (4) is the penalty provision – a person who contravenes subclauses (1) and (3) commits an offence and upon conviction is liable to a fine not exceeding \$10,000.00 or term of imprisonment not exceeding 12 months or to both.

Clause 63 provides that it is an offence to possess prohibited gear. Prohibited gear is any gear which does not conform to the standards which may be prescribed by Regulations for that type of gear or, any gear that is prescribed by Regulations to be prohibited.

No person on board a fishing vessel shall use, possess or have control of such prohibited gear. A person who contravenes this Clause commits an offence and upon conviction is liable to a fine not exceeding \$10,000.00 or term of imprisonment not exceeding 12 months or to both.

Clause 64 provides that given that current fishing activities are mostly done for subsistence or as a side activity to supplement income, it is not seen necessary to prescribe details of a commercial fishing activity as an offence except for the fact that such an activity needs to be licensed.

Clause 65 provides that as a precaution to protect authorised officers from any assault abuse or mistreatment from offenders so they can carry out in their duties effectively in enforcing the prohibitions under this Bill.

No person shall:

- knowingly provide false or misleading information pursuant to a requirement under this Act to provide information;
- assault, hinder, resist, delays, intimidates or obstruct an authorised officer who is exercising powers or carrying out duties, or attempting to do so, pursuant to this Act;
- incite or encourage any other person to assault, hinder, resist, delay, intimidate or obstruct an authorised officer who is exercising powers or carrying out duties, or attempting to do so, pursuant to this Act;
- use threatening language or behave in a threatening or insulting manner or uses abusive language or insulting gestures towards an authorised officer who is exercising powers or carrying out duties, or attempting to do so, pursuant to this Act;

- impersonate or pretend to be an authorised officer or pretends to be a person lawfully acting under an authorised officer's orders or in aid of an authorised officer; or
- otherwise contravenes this Act.

A person who contravenes this Clause commits an offence and upon conviction is liable to a fine not exceeding \$10,000.00 or term of imprisonment not exceeding 12 months or to both.

Clause 66 makes it an offence if a person knowingly destroys, conceals, abandons, discards or tampers with:

- a conveyance, including a vessel, aircraft or vehicle;
- fish, fishing gear, a net or any other item used on connection with fishing or a related activity; or
- any record, document or any equipment or device containing any record or document.

A person who contravenes this Clause commits an offence and upon conviction is liable to a fine not exceeding \$10,000.00 or term of imprisonment not exceeding 12 months or to both.

Clause 67 provides that the nature of offences committed by corporations are likely to be on a different scale with heavy consequences. Given that the coastal fisheries and marine resources are of great importance for local livelihoods and food security, this needs to be considered and treated differently so to discourage corporations from committing such offences.

PART 13 – LIABILITIES

Clause 68 provides for holding the offender liable for the cost of damage to the environment in relation to the offence they commit. There is always a cost associated in investigating or in making a prosecution of an offence which should not be put on as a burden to the Republic but should be covered or recovered from the offenders.

Clause 69 provides that it shall not be necessary in a prosecution for an offence under this Bill for the prosecution to prove that the defendant intended to commit the offence.

Subclause (2) provides that it may be a defence for the defendant to prove that where it is alleged that anything:

- required to be done was not done, the defendant took all reasonable steps to ensure that it was done; or
- prohibited was done, that the defendant took all reasonable steps to ensure that it was not done.

PART 14 – MISCELLANEOUS

Clause 70 allows the court to order a compensation in addition to a fine imposed for an offence committed within a district community's fisheries management area to be paid to the

district community in whose community fisheries management area the offence was committed.

Clause 71 requires, where appropriate, the Minister, Chief Executive Officer, Council and Forum to provide and disseminate reports and other relevant information on its activities.

Subclause (2) requires the Authority to ensure the wide publication and dissemination of:

- all laws, rules and standards in relation to coastal fisheries and aquaculture; and
- descriptions and maps of marine protected areas and coastal fisheries management areas, including community fisheries management areas, and the rules applicable to them.

Clause 72 provides for indemnities from personal liabilities for various personnel, namely the Government, Minister, Chief Executive Officer, Authority, Council and authorised officers who exercise powers and functions under this Act in relation to regulating the environment and its biological diversity, from any criminal prosecutions and civil claims provided they carried out their functions and exercised their powers in good faith.

Clause 73 vests jurisdiction in the District Court to hear matters relating to any offence committed under the Bill.

Clause 74 provides the regulation making power for the Cabinet to make regulations. Regulations may be made to prescribe matters necessary or convenient to be prescribed to carry out or give effect to this Bill. Regulations may be made to:

- prescribe forms and fees;
- prescribe the licensing process;
- provide for the type or class of fisher or fishing vessel;
- provide for the means of determining the total allowable catch, the maximum sustainable yield of fish, precautionary reference points, fish species catch quotas, fish species size limits, fishery areas;
- regulate the conduct of fishing and fisheries activities;
- provide for marine protected areas;
- determine sustainable conservation and management measures, including the use of a particular type of vessel or gear, area of fishing or type of fish to which a right may be subject;
- regulate, control and manage research, surveys, study and education regarding fish, fisheries resources and the coastal fisheries waters;
- provide for the monitoring and surveillance of fishing and fishing activities;
- provide for the gathering, storing and use of information regarding fishers or fishing vessels, fishing and fisheries activities;
- provide for the furnishing of returns containing information in relation to fishing, fisheries activities;

- provide for any fees, charges, taxes, royalties, bonds or securities payable in respect of any matter under this Act;
- prescribe penalties not exceeding \$10,000 for offences under any regulations or offences under the Act for which no penalty is provided;
- prescribe prohibited fishing methods or practices;
- prescribe measures for the development and management, of aquaculture;
- regulate or prohibit the use of aquaculture gear, devices and equipment;
- prescribe the standards of operation of an aquaculture farm;
- provide for the import, export, distribution and marketing of aquaculture products, including live aquatic organism;
- provide for statistical and other information related to aquaculture;
- provide for matters relating to the control, inspection and monitoring of aquaculture operations; and
- provide for any other matter related to the management, development and control of aquaculture.