



## ST. CHRISTOPHER AND NEVIS

### CHAPTER 14.07

# FISHERIES, AQUACULTURE AND MARINE RESOURCES ACT

#### Revised Edition

showing the law as at 31 December 2017

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#### **FISHERIES, AQUACULTURE AND MARINE RESOURCES ACT**

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## CHAPTER 14.07

# FISHERIES, AQUACULTURE AND MARINE RESOURCES ACT

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## CHAPTER 14.07

### FISHERIES, AQUACULTURE AND MARINE RESOURCES ACT

AN ACT TO PROVIDE FOR THE CONSERVATION, MANAGEMENT, DEVELOPMENT AND SUSTAINABLE USE OF FISHERIES, AQUACULTURE AND MARINE RESOURCES OF SAINT CHRISTOPHER AND NEVIS, TO MONITOR AND CONTROL SAINT CHRISTOPHER AND NEVIS FISHING VESSELS BEYOND THE FISHERIES WATERS, TO REPEAL THE FISHERIES ACT, 1984 AND FOR RELATED MATTERS.

#### PART I

##### PRELIMINARY SECTION

###### **Short title.**

1. This Act may be cited as the Fisheries, Aquaculture and Marine Resources Act.

###### **Interpretation.**

2. (1) In this Act, unless the context otherwise requires—

“Act” means this Act, and includes any regulation or instrument having the force of law made under this Act;

“adulterated” means—

(a) containing any poisonous or deleterious substances, veterinary drugs, pesticides, unsafe food additives, any filthy, putrid, decomposed substances, any harmful micro-organisms or any parts of diseased animals; or

(b) packed, processed, packaged or held under unsanitary conditions;

“aircraft” means any craft capable of self-sustained movement through the atmosphere, and includes helicopters and unmanned or remotely operated airborne devices;

“apparent owner” means the person in respect of whom there is evidence of ownership of an item seized under this Act;

“Appeals Committee” means the committee established under section 12;

“application fee” means the fee prescribed to be paid in relation to licence applications made under this Act;

“aquaculture”—

(a) means the cultivation, propagation or farming of fish or other living aquatic or marine resources; and

(b) includes the cultivation, propagation or farming from eggs, spawn, spat or seed, or by rearing fish or aquatic or marine resources lawfully taken from the wild or lawfully imported into Saint Christopher and

Nevis, or by other similar process, and includes the collecting and holding of live fish;

“aquaculture facility” means any locality, physically limited area or installation on land or in the fisheries waters that is used for aquaculture or an activity directly linked to aquaculture;

“artificial reef” means materials placed underwater that serve as habitat for fish, and include any submerged device placed in the fisheries waters to imitate a natural reef;

“associated electronic equipment” means any device or system that can be used to locate, track or otherwise monitor a fish aggregating device;

“authorised officer” means a person who is appointed as an authorised officer or deemed to be an authorised officer under section 82, and includes an officer acting within the limits of his or her authority under a fisheries management agreement or an international agreement;

“authorised person” shall include all authorised officers, inspectors and observers appointed in accordance with this Act;

“baseline” means the baseline drawn in accordance with the Maritime Areas Act, Cap, 7,03;

“beneficial owner” means the person to whom specific property rights belongs in equity even though legal title of the property belongs to another person;

“buy” includes—

- (a) barter or attempt to barter;
- (b) purchase or attempt to purchase;
- (c) trade or attempt to trade;
- (d) receive on account or consignment; or
- (e) receive in order to send, forward or deliver for sale;

and “buyer” has a corresponding meaning;

“by-catch”—

- (a) means fish harvested in a fishery that—
  - (i) are not the species of fish directly targeted; and
  - (ii) are not identified or are not identified as by-catch in the applicable licence; and
- (b) includes economic and regulatory discards; but
- (c) does not include fish which are released alive under a recreational catch and release programme;

“carrier vessel” means a vessel which is used or intended to be used for, or of a type normally used to transport fish;

“commercial aquaculture” means aquaculture resulting or intended to result in the selling or trading of any fish which may form part of the aquaculture operations;

“commercial fishing” means any fishing resulting or intended to result in the selling or trading of any fish which may be taken during the fishing operations;

- “commercial sport fishing” means the hiring out of a vessel or services for recreational fishing purposes, including for use in fishing competitions, and the use of such hired vessel or services for such purposes, or as otherwise prescribed;
- “conservation” means the multiple use and actions to protect fish stocks, habitat and ecosystem functions in order to provide for a healthy, sustainable fishery for the future;
- “conservation zone” is an area of water designated to protect a range of nationally important marine wildlife, habitats, geology and geomorphology, and can be designated anywhere in the St, Kitts and Nevis Marine waters;
- “container vessel” means a self-propelled ocean-going vessel constructed or adapted primarily to carry ocean freight containers;
- “Court” means a court of competent jurisdiction;
- “crew member” means a person who is engaged or employed as a crew member in any capacity in connection, with a vessel and in the business of the vessel, other than—
- (a) the master; and
  - (b) a pilot;
- “Department” refers to the government body that has lead responsibility for fisheries, aquaculture and marine resources;
- “deployment” means the introduction into the sea of a fish aggregating device or associated electronic equipment;
- “Deputy Director” means a person appointed pursuant to section 9;
- “Director” means the Director of the Department of Marine Resources appointed pursuant to section 8;
- “document” means a document in any form whether signed or initialled or otherwise authenticated by its maker or not, and includes—
- (a) any writing, printing or other information contained on any material;
  - (b) any information recorded or stored by means of any tape-recorder, computer, or other device (including any network or the internet), and any material subsequently derived from information so recorded or stored;
  - (c) any label, marking, or other writing that identifies or describes anything of which it forms part, or which it is attached by any means;
  - (d) any book, chart, map, plan, graph or drawing; or
  - (e) any photograph, film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;
- “driftnet” means a gillnet or other net or a combination of nets which is more than 2.5 kilometres in length, the purpose of which is to enmesh, entrap or entangle fish;
- “driftnet fishing activities” include fishing with a driftnet and any related activities including transporting, transshipping and processing any fish caught with the use of a driftnet, and the provisioning of food, fuel and other supplies for vessels used or outfitted for driftnet fishing;

“dwelling house” means premises used exclusively for dwelling; but does not include premises in which records, accounts or such other information required to be kept under this Act are located;

“economic discards” means fish which are not retained or sold because they are of an undesirable quality or for other economic reasons;

“endangered” means under threat of extinction or, with reference to any fish species or stock, under threat of collapse;

“equipment” includes electronic equipment;

“exclusive economic zone” has the meaning assigned to that expression under section 8 of the 1984 Maritime Areas Act;

“export” in relation to fish or fish products, means to—

- (a) send or take out of Saint Christopher and Nevis;
- (b) attempt to send or take out of Saint Christopher and Nevis;
- (c) receive on account or consignment for the purposes of paragraph (a) or (b); or
- (d) carry or transport anything for the purposes of paragraph (a) or (b), when associated with any buying or selling, or intended buying or selling of the fish or fish products;

“export facility” means any building or vessel or area or space in which food is handled, prepared and stored for export purposes, including the surroundings under the control of the same management;

“fish” means any water-dwelling aquatic or marine animal or plant, alive or dead, and includes their eggs, spawn, spat and juvenile stages, and any of their parts and sedentary species;

“fish aggregating device” means an object or group of objects, of any size, whether drifting, deployed or not, that is natural, manufactured or a combination, and includes without limitation, buoys, floats, netting, webbing, plastics, bamboo, logs and whale sharks floating on or near the surface of the water with which fish may associate, and any natural floating object on which a device has been placed to facilitate its location;

“fish product” means any fish which has been partly or wholly processed;

“fisher” means any person who engages in fishing or related activities;

“fisherfolk” means any person who is associated with fishing or related activities, including a fisher;

“Fish Stocks Agreement” means the Agreement for the Implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, adopted in New York on 14 December 1995;

“fisheries access agreement” means an agreement entered into under section 41 of this Act;

“Fisheries, Aquaculture and Marine Resources Advisory Council”, or the “Advisory Council”, means the Advisory Council established under section 13;

“Fisheries, Aquaculture and Marine Resources Management and Development Fund”, or “the Fund”, means the fund established under section 16;

“fisheries management agreement “ means any agreement entered into under section 44 of this Act, but does not include an Access Agreement;

“Fisheries Management Plan” means a Fisheries Management Plan approved by the Minister, notice of which is published in the *Gazette* in accordance with section 19;

“fisheries waters” means the inland waters, the territorial sea, the archipelagic waters, the exclusive economic zone and any other waters over which Saint Christopher and Nevis exercises or claims sovereignty, jurisdiction or sovereign rights, and includes the seabed and subsoil underlying those waters;

“fisheries zone” is an area of water designated for fishing and fishing related activities as prescribed by the Director;

“fishery” or “fisheries” means—

- (a) one or more stocks of fish, or parts of any of them, which can be treated as a unit for the purposes of conservation, development and management, taking into account geographical, scientific, technical, customary, recreational, economic and other relevant characteristics; or
- (b) any fisheries and aquaculture operations based on such stocks;

“fishery resource” or “fisheries resource” means any fish, fishery, stock, species, or habit of fish or part of any of them;

“fishing” means—

- (a) searching for or taking fish;
- (b) the attempted searching for or taking of fish;
- (c) engaging in any activity which can reasonably be expected to result in the locating or taking of fish;
- (d) placing, searching for or recovering any fish aggregating device or associated electronic equipment including radio beacons;
- (e) any operation at sea in support of or in preparation for any activity in relation to a fishing vessel described in paragraphs (a) to (d); or
- (f) any use of an aircraft which is related to any activity described in paragraphs (a) to (d), except where flights in emergencies involving the health or safety of a crew member or the safety of the vessel;

“fishing master” means the person in charge or apparently in charge or for the time being in charge of the fishing activities of a fishing vessel;

“fishing trip” means a period of time commencing with the departure of a fishing vessel from port until such time as all or any of the fish caught since such departure are unloaded from the vessel, either ashore or onto another vessel;

“fishing vessel” means any vessel which is used for, equipped to be used for, or of a type normally used for, fishing or related activities;

“flag State” means—

- (a) the State in which the vessel is registered provided it is registered in only one State; or

(b) if the vessel is legitimately registered in more than one State in accordance with international law, the State whose flag the vessel flies at the relevant time;

“foreign fishing vessel” means a fishing vessel other than a Saint Christopher and Nevis fishing vessel;

“gear” in relation to fishing, includes any equipment, implement or other thing that can be used in the act of fishing or related activities, including any net, rope, line, float, trap, hook, hookah gear, scuba gear, winch, boat, craft or aircraft carried on board a vessel, or aircraft or vehicle used in association with the act of fishing;

“high seas” means any area of seas beyond the national jurisdiction of any State;

“illegal, unreported and unregulated fishing”, or IUU fishing, has the same meaning as it is given in the First Schedule of this Act;

“inland waters” means all fresh water areas, including lakes, creeks and rivers of Saint Christopher and Nevis;

“internal waters” has the meaning assigned to that expression under section 3 of Maritime Areas Act, 1984;

“international agreement” means a bilateral, sub-regional, regional, multilateral or other agreement or arrangement that is legally binding on Saint. Christopher and Nevis at the relevant time, and includes a fisheries access agreement and a fisheries management agreement;

“international conservation and management measure” means a measure to conserve or manage one or more species of living marine resources that is adopted and applied consistently with the relevant rules of international law, including those reflected in the 1982 United Nations Convention on the Law of the Sea and the 1995 UN Fish Stocks Agreement, by any regional fisheries management organization, treaty, agreement or arrangement applicable to Saint Christopher and Nevis;

“item” in the context of activities and powers within the scope of this Act that relate to seizures and forfeitures, includes any vessel, vehicle, aircraft or other conveyance, fish, fish product, fishing gear, implement, appliance, material, container, cargo, goods, equipment, article, document, record or other thing or property that may be used in relation to any activity that falls within the scope of this Act;

“IUU listed vessel” means a vessel that is included in a list of vessels, adopted by a regional fisheries management organization, that has engaged in IUU fishing or fishing-related activities in support of IUU fishing, or a vessel that has been convicted of IUU fishing by any country and has not fully satisfied the relevant judgment or determination;

“landing” or “land” in relation to fish means to begin to offload fish or to offload fish from any vessel in port or at a dock, berth, beach seawall or ramp, but does not include transshipment;

“licence” includes a licence or other form of authorisation required under this Act or a Fisheries Management Plan, including a licence issued by an Administrator, and “licensed” and “licensee” have corresponding meanings;

“licence fee” means the fee prescribed to be paid in relation to licences issued under this Act;

- “licence period” means the period of time a licence is valid;
- “Licensing Committee” means a committee established under section 11;
- “local fishing vessel” means a fishing vessel owned by any person or persons who are nationals or permanent residents of Saint Christopher and Nevis and used for fishing primarily in the fisheries waters or as may be otherwise specified by Regulation;
- “locally based foreign fishing vessel” means any foreign-owned fishing vessel registered and licensed in Saint Christopher and Nevis which lands all its catch in Saint Christopher and Nevis;
- “machine” includes an electric or electronic device;
- “Marine Management Area” is the area declared pursuant to section 20 of this Act;
- “Maritime Areas Act” means the Maritime Areas Act, Cap. 7.03 of the Laws;
- “master”, in relation to a vessel, aircraft or vehicle, means the person in command or charge, or for the time being in charge, or apparently in command or in charge of the vessel, aircraft or vehicle, but does not include a pilot on board a vessel solely for the purpose of navigation;
- “Minister” means the Minister responsible for fisheries, aquaculture and marine resources;
- “mobile transceiver unit” or “MTU” means a device approved by the Director, which is placed on a fishing vessel and is designed to transmit, whether independently or in conjunction with another device or devices, information or data concerning position, fishing, catch and such other activities as may be required;
- “multiple use zone” is an area of water that enables a range of fishing, conservation, transportation and recreational activities which complement the multi-use function of the locality and providing benefits at higher densities which responds to the existing or preferred characteristics of an area.
- “net” means a fabric of rope, cord, twine or other material knotted or woven into meshes and designed or fitted to take or harvest fish;
- “observer” means a person appointed in accordance with section 92;
- “observer programme” means the programme established under section 91;
- “operator” means any person who is in charge of, responsible for the operations of, or directs or controls a vessel, including the owner, charterer, master and the beneficiary of the economic or financial benefit of the vessel’s operations;
- “owner” means any person exercising or discharging or claiming the right or accepting the obligation to perform, exercise or discharge any of the powers or duties of an owner whether on the person’s own behalf or on behalf of another, and includes a person who is the owner jointly with one or more other persons and any manager, director, secretary or person in charge of any corporation which is an owner;
- “person” means any natural person or business enterprise, and includes a corporation, partnership, cooperative and association;
- “photograph” includes any picture, video or image taken by a camera or other device capable of capturing pictures, videos or images, and “photographic” has a corresponding meaning;

- “Plan” means a Fisheries Management Plan;
- “public office” means an office that is a public office for the purpose of the Constitution;
- “public officer” means a person holding or acting in a public office;
- “precautionary approach” means a decision making principle that acknowledges that where there is a threat of serious or irreversible environment harm, lack of scientific certainty shall not be used as a reason to prevent or postpone action to mitigate the environmental harm;
- “prescribed” means prescribed by regulations made in accordance with this Act;
- “previously landed” means landed in a port or at a dock, berth, beach seawall or ramp and subsequently loaded onto a container or other carrier vessel;
- “processing” in relation to fish means the preparation or packaging of fish to render the fish suitable for, *inter alia*, human consumption, retail sale, industrial uses, export or long-term storage, and includes cutting up, cleaning, dismembering, sorting, cooking, canning, smoking, slating, drying, filleting, packaging, icing, freezing or rendering into meal or oil, or any other action taken to alter the shape, appearance or form of fish from that when first taken from its natural habitat;
- “record” includes any document, whether or not it has been completed;
- “recreational fishing” means non-commercial fishing by an individual for leisure or relaxation;
- “regional fisheries management organization”, or RFMO, means an intergovernmental fisheries organization or arrangement, as appropriate, that has the competence to establish conservation and management measures;
- “regulatory discards” means fish harvested in a fishery which are required by regulation or Fisheries Management Plan to be discarded or to be retained but not sold;
- “related activities”, in relation to fishing, includes—
- (a) refuelling or supplying fishing vessels or performing other activities in support of fishing operations;
  - (b) transshipping, storing, processing or transporting fish or fish products up to the time they are first landed;
  - (c) on-shore storing, or processing fish or fish products from the time they first landed; and
  - (d) attempting or preparing to do any of the above activities;
- “research” means scientific research carried out on any aspect of fish, fishing or fisheries resources in or relating to the fisheries waters;
- “retrieve” in relation to any fish aggregating device or associated electronic equipment, means the collection or removal from the water of any such device or equipment;
- “Saint Christopher and Nevis fishing vessel” means any fishing vessel that is used or intended to be used for fishing or related activities in areas beyond national jurisdiction and holds a valid and applicable registration issued by the entity authorised by the Government of Saint Christopher and Nevis to register such vessels;



“sell” includes—

- (a) any method of disposition for consideration, including cash, trade and barter, of anything which has value or which can be exchanged for cash;
- (b) disposition to an agent for sale on consignment;
- (c) offering or attempting to sell, or receiving or having in possession for sale, or displaying for sale, or sending or delivering for sale, or causing or permitting to be sold, offered, or displayed for sale;
- (d) disposition by way of raffle, lottery, or other game of chance, and “sale” and “sold” have corresponding meanings;

“small scale fishing” means fisheries involving individuals, households, small fishing companies or fisherfolk organisations using relatively small, unsophisticated fishing vessels, if any, under 20 meters length overall, powered by engines not exceeding 300 horsepower, operating relatively close to shore, and producing fish for local consumption or for export;

“sport fishing” means harvesting fish for personal use, fun, or challenge.

“State” includes any entity referred to in Article 305(1) (c), (d) and (e) of the 1982 United Nations Convention on the Law of the Sea;

“subsistence” in relation to fishing, means local, non-commercial fisheries, oriented not primarily for recreation but for the procurement of fish for consumption of the users, their families and community;

“summary administrative proceedings” means proceedings taken under Part 13;

“surveillance officer” means any officer of a vessel or aircraft used for the enforcement of this Act under an international agreement or arrangement for cooperation in fisheries surveillance and enforcement to which Saint Christopher and Nevis is party, whether or not such officers are citizens of Saint Christopher and Nevis or such vessel or aircraft is registered in Saint Christopher and Nevis;

“sustainable use” includes—

- (a) maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of a future generation;
- (b) avoiding, remedying or mitigating any adverse effects of fishing on the aquatic environment; or
- (c) conserving, using, enhancing and developing fisheries resources to provide for the people of Saint Christopher and Nevis’ social, economic and cultural wellbeing;

“take” in relation to fish, means to capture, catch or harvest fish, but does not include the release of live fish;

“territorial sea” has the meaning assigned to that expression under section 3 of the Maritime Areas Act;

“transshipment” means the transfer of fish or fish products to or from any vessel for the purpose of transporting that fish elsewhere, and may include the transfer of fish or fish products from a vessel to a land-based facility exclusively for purposes of promptly on-loading to another vessel, without being subject to importation into the country where the land-based facility is located;

“trap” means an enclosure designed to take fish;

“underwater cultural heritage” means all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years such as—

- (a) sites, structures, buildings, artefacts and human remains, together with their archaeological and natural context;
- (b) vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and
- (c) objects of prehistoric character;

“use of port” means use for landing, transshipping, packaging, or processing of fish or for other port services including, *inter alia*, refuelling and resupplying, maintenance and dry docking;

“vehicle” means any car, truck, van, bus, trailer or other powered or unpowered land conveyance;

“vessel” means a ship or vessel of any type whatsoever operating in the aquatic or marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft, fixed or floating platforms, floating storage units and floating production storage and off-loading units and other water going craft;

“vessel attributes” include the type, construction, capacity, machinery and other attributes of a vessel, and specifications and other information in relation to its gear, equipment, aircraft and instrumentation;

“vessel monitoring system” or “VMS” means a satellite-based reporting system to monitor the position and activities of fishing vessels for the purpose of effective management of fisheries.

(2) A reference in this Act to the owner of a vessel shall be read as a reference to the hirer or charterer where, under a contract of hire or charter agreement, the control maintenance and operation of the vessel is vested in the hirer or charterer.

(3) If any question arises under this Act as to whether any fishing is coastal fishing, “coastal fishing” in this context refers to fishing and aquaculture carried out in coastal waters with relatively small fishing craft.

### **Application.**

3. (1) This Act applies to and in relation to—

- (a) all areas and persons over which Saint Christopher and Nevis exercises sovereignty, sovereign rights or jurisdiction, including areas prescribed under the Maritime Areas Act;
- (b) all fisheries resources, fishing and related activities, utilisation of fish and genetic material derived from them and any other matter falling within the scope of this Act;
- (c) all persons, vessels, vehicles, aircraft, processing plants or facilities, export or import facilities or other craft or place engaged in or otherwise connected with any activity falling within the scope of this Act;

- (d) all persons, including non-citizens of Saint Christopher and Nevis and vessels, including foreign vessels in and in relation to the fisheries waters; and
- (e) all persons, including non-citizens of Saint Christopher and Nevis and vessels, including foreign vessels in relation to areas within or beyond national jurisdiction—
  - (i) following in hot pursuit conducted in accordance with international law; or
  - (ii) as required by this Act or any international conservation and management measure, or permitted by international law or any convention, treaty, access agreement, fisheries management agreement or other arrangement or agreement to which Saint Christopher and Nevis is a party; and
- (f) all Saint Christopher and Nevis nationals, including persons and fishing vessels, including vessels registered under the Merchant Shipping Act, Cap. 7.05;
- (g) and all persons on such fishing vessels or dealing with or having any relevant relationship to them or persons on them, in and in relation to any areas beyond national jurisdiction.

(2) This Act has extra-territorial application according to its provisions and tenor and shall be interpreted, and all persons exercising or performing functions, duties, or powers conferred or imposed by or under this Act shall act in a manner consistent with Saint Christopher and Nevis' international and regional obligations relating to the conservation and management of fisheries resources in the fisheries waters and beyond.

(3) The provisions of this Act concerning the application of international conservation and management measures do not apply to the internal waters and territorial sea of Saint Christopher and Nevis as defined under the Maritime Areas Act, without the express consent of Saint Christopher and Nevis Government or as may be otherwise provided in this Act.

#### **Objective.**

4. The objective of this Act shall be to ensure the long-term conservation, management, development and sustainable use of Saint Christopher and Nevis fisheries, aquaculture and marine resources and related ecosystems for the benefit of the people of Saint Christopher and Nevis.

#### **Principles.**

5. (1) All functions, duties and responsibilities under this Act shall be exercised in a manner consistent with the following principles—

- (a) all natural living resources of Saint Christopher and Nevis, as well as the environment in which they exist and non-living resources of the sea, are a natural asset and heritage of all its people, and should be managed and developed for the benefit of present and future generations in the country as a whole;
- (b) Saint Christopher and Nevis fisheries resources are to be used sustainably so as to achieve socio-economic benefits including economic growth, human resource development, employment creation

- and sound ecological balance, consistent with Saint Christopher and Nevis' national development objectives;
- (c) fisheries conservation and management measures shall be based on the best technical knowledge and scientific evidence available to maintain or restore stocks at levels capable of producing sustainable yield, as qualified by relevant environmental and economic factors including fishing patterns, the interdependence of stocks and relevant international standards;
  - (d) fisheries conservation and management measures shall, as appropriate, be based on applicable standards agreed at international, regional or sub-regional level, such as Limit Reference Points and Target Reference Points;
  - (e) the precautionary approach 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;
  - (f) the ecosystem approach shall be applied to the management and development of fisheries and to promote the health of the general marine and aquatic environment;
  - (g) biodiversity in the fisheries waters shall be maintained and enhanced;
  - (h) complete and accurate data and information concerning fishing activities and fisheries resources shall be collected and, as appropriate, and shared, in a timely manner;
  - (i) international agreements and relevant international law shall be effectively implemented;
  - (j) fishing and related activities shall minimise—
    - (i) wastes, by-catch, discards, regulatory discards, economic discards and catch by lost or abandoned gear;
    - (ii) pollution originating from fishing vessels or vessels engaged in related activities; and
    - (iii) catch of non-targeted species;
  - (k) development and use of selective, environmentally safe and cost-effective fishing gear and techniques shall be promoted;
  - (l) over-fishing and excess capacity shall be prevented or eliminated and levels of fishing effort managed so they do not exceed those commensurate with sustainable use of fishery resources;
  - (m) the interests of artisanal and subsistence fishers shall be taken into account, including their participation in management of their respective fisheries;
  - (n) fisheries conservation and management measures shall be implemented and enforced through effective monitoring, control and surveillance;
  - (o) an understanding of, and broad and accountable participation by, stakeholders in the conservation, management, development and sustainable use of fisheries resources shall be promoted to the extent practicable; and

(p) Saint Christopher and Nevis shall cooperate effectively with other States and organisations.

(2) In any proceedings under this Act the fine or determination shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities.

## PART 2

### ADMINISTRATION

#### **Ministry responsible for fisheries, aquaculture and marine resources.**

6. The Ministry responsible for fisheries, aquaculture and marine resources shall have the institutional responsibility for the administration of this Act.

#### **Functions, powers and duties of the Minister.**

7. (1) The Minister shall perform or exercise such functions, powers and duties as are provided under this Act, and in particular—

- (a) shall give general direction, control and policy guidance on matters within the scope of this Act, including approving and as appropriate recommending amendments to or revocation of—
  - (i) a Fisheries, Aquaculture and Marine Resources Management and Development Policy for consideration and endorsement by Cabinet;
  - (ii) a Fisheries, Aquaculture and Marine Resources Management and Development Strategy for consideration and endorsement by Cabinet;
  - (iii) a Corporate Plan for consideration and endorsement by Cabinet; and
  - (iv) annual operational plans;
- (b) shall implement by Order in the *Gazette* or by regulations prescribe—
  - (i) conservation and management measures determined in accordance with this Act, including its objective and principles;
  - (ii) requirements under any applicable international agreement; and
  - (iii) all applicable international conservation and management measures;
- (c) shall promote international cooperation, communication and understanding between Saint Christopher and Nevis in its capacity as a coastal State, flag State and port State, and other governments, regional fishery bodies, regional fisheries management organizations and international organizations, with a view to development and implementation of harmonized standards and procedures based on minimum standards adopted in international fisheries instruments;

- (d) may on the advice of the Director, designate local fisheries management areas and devolve designated governance functions relating to fisheries conservation, management and development to local authorities in relation to those areas, while maintaining the oversight of the Ministry responsible for fisheries, aquaculture and marine resources, in accordance with requirements of this Act or as may be prescribed;
- (e) may designate or revoke for a period of three (3) to five (5) years, on the advice of the Director and in accordance with any directive from the Minister of Finance and applicable legislation, designate or revoke for a period of 3 to 5 years, fishers who are eligible or non-eligible for duty free concessions or tax exemptions subject to their compliance with this Act and the terms of an applicable licence or authorisation;
- (f) shall take into account the advice of the Director, Advisory Council and such other advice or consultations as may be required pursuant to this Act; and
- (g) may give general or special directions to the Director from, time to time.

(2) The Minister may delegate any of the Minister's functions, powers and duties under this Act to the Director, except the power to make regulations under section 145.

#### **Functions, powers and duties of the Director.**

**8.** (1) The Director shall be appointed by the Minister and shall perform or exercise such functions, powers and duties as are assigned to him or her under this Act to supervise, manage and control the affairs of the Department.

(2) Notwithstanding the generality of subsection (1), the Director shall be responsible to do the following—

- (a) coordinate and facilitate the implementation of national policy and strategies concerning fisheries conservation, management, development and sustainable use, including the development of and transmission to the Minister a Fisheries, Marine Resources and Aquaculture Management and Development Policy, a Corporate Plan and Operational Plans, and shall ensure that the implementation of each is kept under review and reported to the Minister as appropriate;
- (b) manage and coordinate the following at national, and under the general direction of the Minister, as appropriate at regional and international levels through coordination and cooperation with governments, regional bodies, regional fisheries management organizations and international organizations—
  - (i) the conservation, management, development and sustainable use of fisheries resources;
  - (ii) the management and development of aquaculture;
  - (iii) the monitoring, control and surveillance of fisheries activities;
  - (iv) relevant fish processing activities;
  - (v) the exploration and exploitation of non-living resources of the seabed and subsoil over which Saint Christopher and Nevis

exercises sovereignty, jurisdiction or sovereign rights pursuant to the Maritime Areas Act; and

(vi) any other activity that falls within the scope of this Act;

- (c) give effect to the responsibilities in paragraph (b) by, recommending for consideration and implementation by the Minister such measures as may be necessary to implement conservation and management measures in accordance with the principles of this Act and any relevant international agreement;
- (d) where an entity is authorised by the Government of Saint Christopher and Nevis to register fishing vessels that are entitled to fly the Saint Christopher and Nevis flag and used or intended to be used for fishing or related activities in areas beyond national jurisdiction, liaise and as appropriate, give direction to such entity in relation to matters falling within the scope of this Act;
- (e) give direction to the Deputy Directors appointed pursuant to section 9 and the staff and other employees of the Department of Marine Resources;
- (f) monitor and advise on international developments in fisheries matters and ensure the fulfilment of obligations of Saint Christopher and Nevis under relevant international agreements;
- (g) promote and facilitate—
  - (i) fisheries research, training and education; and
  - (ii) the development of Fisheries Management Plans;
- (h) identify and recommend the establishment of Marine Managed Areas to the Minister for declaration pursuant to section 20;
- (i) make decisions relating to licensing, taking into account as appropriate, recommendations made under delegated authority in accordance with subsection (2) and by committees appointed in accordance with subsection (3);
- (j) appoint such committees within or chaired under the authority of the Department as the Director determines necessary to advise or make recommendations on any area under the Director's authority, and shall take into account the advice and recommendations of such committees;
- (k) liaise with the Advisory Council;
- (l) represent Saint Christopher and Nevis in meetings relating to bilateral, regional or international agreements, arrangements or organizations that relate to matters under the scope of this Act, or nominate such persons within government as may be suitable to serve in such representative capacity; and
- (m) perform or exercise such other functions, powers and duties as may be prescribed or necessary to carry out the objectives and provisions of this Act.

(3) The Director may, in accordance with section 10, delegate any of the Director's functions, powers and duties under this Act to a public officer in the Department.

- (4) The Director—
- (a) shall appoint a Licensing Committee in consultation with the Minister;
  - (b) may appoint such other committees that the Director considers are necessary or convenient for carrying out the purposes of the Act;
  - (c) shall specify the terms of reference for the appointed committees, if the Director determines that the specification of terms of reference is necessary or convenient for carrying out the purposes of the Act;
  - (d) may make recommendations on any matter under the Director's authority; and
  - (e) shall take into account the advice and recommendations of any committees appointed under this Act.

#### **Appointment, functions, and duties of Deputy Directors.**

**9.** (1) Two Deputy Directors shall be appointed in accordance with subsection (2), and shall take direction from and report to the Director and support him or her in the exercise of his or her powers, duties and functions in accordance with this Act.

- (2) The Deputy Directors shall be appointed as follows—
- (a) one Deputy Director shall be appointed by the Minister; and
  - (b) one Deputy Director shall be appointed by the Nevis Island Administration.

#### **Delegation of functions, powers and duties.**

**10.** Any delegation made by the Minister or Director under this Act shall be made in writing subject to such procedures and conditions as may be prescribed.

#### **Licensing Committee.**

**11.** (1) A Licensing Committee shall be established within six months of the entry into force of this Act to review applications for licenses and authorisations made pursuant to this Act and make recommendations to the Director relating to their grant, renewal, suspension and revocation.

(2) The Director shall appoint to the Licensing Committee no more than five persons, including representatives of Saint Christopher and of Nevis, which shall as appropriate be drawn from the Department and other government Ministries with a complementary mandate to the Department, or stakeholders with knowledge and experience relevant to matters within the scope of this Act.

(3) The membership, Chair and criteria for members and duration of membership and procedural matters shall be prescribed.

#### **Appeals Committee.**

**12.** (1) There is hereby established an Appeals Committee which shall have the function of hearing appeals from—

- (a) decisions on licensing in accordance with section 11; and
- (b) any substantive decision of the Director taken in the performance or exercise of his or her functions, powers and duties under this Act,

in accordance with procedures that may be prescribed or agreed by the Committee.



- (2) The Appeals Committee shall consist of the following members—
- (a) the Chair of the Advisory Council or such member of the Advisory Council as he or she may delegate to act in his or her absence;
  - (b) a representative appointed by the Nevis Island Administration; and
  - (c) a representative of the Attorney-General appointed by the Attorney-General's Chambers.

(3) The members of the Appeals Committee shall serve a term, of no more than 3 years, which may be renewable up to three times, provided there is an interval of at least 3 years after the first two terms have been served and before the third term is served.

(4) The Appeals Committee shall meet as often as may be necessary or expedient for the transaction of its business, and such meetings shall be held at such places and times and on such days as the Director may determine.

(5) Where any member of the Appeals Committee declares a conflict of interest in relation to a matter referred to the Committee, the Director shall nominate a member to replace him or her for the purposes of such matter.

(6) The Appeals Committee shall endeavour to take decisions by consensus, but where this is not possible shall take decisions by majority vote.

(7) The Appeals Committee may adopt such procedures it deems necessary for the conduct of its meetings.

#### **Fisheries, Aquaculture and Marine Resources Advisory Council.**

**13.** (1) There shall be established within six months of the entry into force of this Act a Fisheries, Aquaculture and Marine Resources Advisory Council (“Advisory Council”) of no less than seven and no more than eleven members with due recognition of gender and Fisheries, Aquaculture and Marine Resources experience and proportional representation between the islands of Saint Christopher and Nevis.

(2) The Director shall solicit nominations for members of persons who have knowledge, skills and experience in relation to fisheries, aquaculture or marine resources which shall, wherever possible, include management, science, economics, law, policy or other relevant field from relevant government Ministries and stakeholder organizations, including—

- (a) St, Christopher and Nevis National Trust;
- (b) Ministry responsible for Sustainable Development;
- (c) Ministry responsible for the environment;
- (d) Ministry responsible for fisheries monitoring, control and surveillance;
- (e) Ministry responsible for Planning;
- (f) Ministry of Finance;
- (g) any other Ministry as the Director may deem appropriate; and
- (h) the fisherfolk community.

(3) The Director shall make recommendations to the Minister from among the nominees and the Minister shall appoint the members of the Advisory Council, taking into account such recommendations.

(4) The functions of the Advisory Council shall be to advise the Minister and make recommendations at the request of the Director on matters relating to fisheries and aquaculture conservation, management, development and sustainable use and the exploration and exploitation of non-living marine resources.

(5) The Minister may authorise the Council to make such inquiries, conduct such research, and make such reports as may assist the Council in advising the Minister.

(6) The Director shall be the *ex officio* secretary to the Advisory Council.

(7) The specific areas of inquiry and research, membership, officers, terms, meetings, quorum, procedures and other matters relating to the Fishery Advisory Council shall be prescribed.

#### **Interdepartmental Cooperation on underwater cultural heritage in the fisheries waters.**

**14.** (1) The Department of Marine Resources shall be responsible for implementing the 2001 Convention on the Protection of the Underwater Cultural Heritage and shall coordinate such implementation as shall be done in conjunction with the Ministry responsible for Sustainable Development, the environment and any other Ministry as the Minister may deem appropriate.

(2) In implementing the Convention, the Department of Marine Resources shall use the best practicable means at its disposal to protect underwater cultural heritage and to prevent or mitigate any adverse effects that might arise from activities in areas under national jurisdiction that incidentally affect underwater cultural heritage.

#### **International cooperation.**

**15.** Bilateral, regional and international cooperation for all matters falling within the scope of this Act shall be encouraged under any relevant policy, strategy and operational plan developed pursuant to this Act, in accordance with the functions and responsibilities of the Minister pursuant to section 8(2)(c) and the Director pursuant to section 9(1)(b) of this Act, and shall include, *inter alia*, cooperation in—

- (a) fisheries conservation and management;
- (b) fisheries monitoring, control and surveillance;
- (c) collection and exchange of data and information; and
- (d) implementation of international standards for flag State performance;
- (e) such other matters within the scope of this Act as may be relevant for Saint Christopher and Nevis.

#### **Fisheries, Aquaculture and Marine Resources Management and Development Fund.**

**16.** (1) There is hereby established a trust fund to be known, as the Fisheries, Aquaculture and Marine Resources Management and Development Fund.

(2) The Minister shall appoint a Board charged with the responsibility of the management of the Fund in accordance with such procedures as may be required pursuant to this Act or prescribed, which shall consist of—

- (a) the number of members appointed by the Ministry of Finance as may be appropriate for proper management of the Fund;

- (b) a senior official nominated by the Ministry of Finance;
- (c) a senior official nominated by the Attorney-General's Chambers, Ministry of Justice and Legal Affairs;
- (d) a senior official nominated by the Ministry responsible for Marine Resources or and the Director shall be a member *ex officio* and shall perform the function of the Secretary to the Board; and
- (e) two representatives appointed by the Nevis Island Administration.

(3) The Board, on the recommendation of the Director, shall approve in advance of the commencement of each year a budget consisting of an estimate of expected revenues and expenditures. It shall meet at least quarterly thereafter to approve requests for expenditure submitted by the Director in relation to items in subsection (6), and no expenditure may be made unless approved by the Board.

(4) The Board shall approve financial policies and procedures setting out expenditure authority limits.

(5) The Fund shall consist of—

- (a) monies from licences, authorisations, registration, fines, penalties, administrative determinations secured by virtue of this Act;
- (b) monies from participation in an applicable bilateral or regional arrangement relating to any matter within the scope of this Act;
- (c) monies from compensation paid in relation to adverse impacts on or damage to fisheries and marine biodiversity, including the marine environment;
- (d) monies and proceeds from the sale of items or property forfeited or confiscated by virtue of this Act;
- (e) such monies as may be appropriated to the Fund by Parliament;
- (f) such monies as may be donated to the Fund by any person, government or organization; and
- (g) such other monies derived from, any other source or as may be prescribed.

(6) The monies may be expended from the Fund only in payment for the following activities, which shall directly relate to matters within the scope of this Act—

- (a) monitoring, control and surveillance;
- (b) research, education and training;
- (c) fisheries and aquaculture management and development activities in the community and small-scale commercial fisheries and aquaculture sectors;
- (d) travel expenses relating to official meetings concerning fisheries, aquaculture or other marine resources within the scope of this Act for the Director and staff in accordance with the budget and rates approved by the Board;
- (e) training and education courses or programmes for purposes relating to the objectives of this Act and the programmes of the Department;

- (f) grants to institutions, agencies, associations or other organizations for the purpose of promoting fisheries or aquaculture development and management;
- (g) contributions to donor aid projects as agreed with the donor agency;
- (h) stipends or allowances to the members of the Board and committees established pursuant to this Act; and
- (i) such other purposes as are consistent with the functions and powers Department as the Board, after consultation with the Director, shall determine.

(7) There shall be deducted from any monies and proceeds of the sale of any item or property forfeited or confiscated by virtue of this Act a ten percent administrative fee to be deposited in the Consolidated Fund of the Government of Saint Christopher and Nevis to be shared with the Nevis Island Administration in accordance with the Constitution of the Federation of Saint Christopher and Nevis and the remaining ninety percent shall be deposited into the Fund.

(8) The operation of the Fund shall comply with the requirements of the Finance Administration Act, Cap. 20.13 and the Audit Act, Cap. 20.01.

#### **Conflict of interest.**

**17.** (1) Where the Minister, or any other person who discharges responsibilities or performs functions or duties that fall within the scope of this Act, he or she and any member of his or her immediate family shall, where any such person has an interest of a financial or fiduciary nature or otherwise that conflicts with such functions or duties—

- (a) promptly disclose in writing the nature of such interest as provided in subsection (2); and
- (b) not perform any functions under this Act in respect of that matter.

(2) Where any person referred to in subsection (1) is—

- (a) the Director, he or she shall declare his or her interest to the Minister; or
- (b) any other person, he or she shall declare his or her interest to the Director.

(3) Where a disclosure is made pursuant to subsection (2), the Minister or the Director, as the case may be, shall appoint another officer to perform functions in respect of that matter.

(4) For the purposes of this section, a person has an interest in a matter if he or she—

- (a) may derive a financial or in-kind benefit from the matter;
- (b) is the spouse, child, de facto partner or parent of a person who may derive a financial benefit from the matter;
- (c) may have a financial interest in a person to whom the matter relates;
- (d) may have a fiduciary relationship with a person to whom the matter relates;
- (e) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or

(f) may be interested in the matter because this Act so provides.

(5) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding the amount described in the Second Schedule and any other penalty provided for under this Act.

(6) For the purposes of this section, the term “de facto partner” includes someone who is in a common law or similar type of relationship with another person.

### PART 3

#### FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT

#### **Division 1**

##### *Fisheries Conservation and Management Measures*

#### **Conservation and management measures.**

**18.** (1) The Minister may, in accordance with section 8(2)(b), require conservation and management measures upon the recommendation of the Director and consistent with applicable national and international standards, for any fisheries resource and in relation to any activity which falls within this scope of this Act.

(2) Conservation and management measures may, *inter alia*—

- (a) provide for allocations, areas, gear, closures, effort limitation, quotas, participatory rights and reporting;
- (b) prohibit, *inter alia*, the landing, transporting, transshipping, receiving or possession of fish, and any activity within the scope of this Act which may have an adverse effect on living or non-living marine resources;
- (c) include positive incentives for full compliance, at the discretion of the Minister.

(3) A person who contravenes any conservation and management measure taken pursuant to this section commits an offence and shall be liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule and any other penalty provided under this Act.

#### **Fisheries Management Plan.**

**19.** (1) The Minister may designate priority fishery or fisheries for the purpose of developing Fisheries Management Plans, and in doing so shall take into account the recommendations of applicable regional fishery bodies and international conservation and management measures adopted by applicable regional fisheries management organizations.

(2) The Director may cause to be prepared Fisheries Management Plans at national or local levels for any fishery or fisheries within the scope of this Act, and shall do so for any fishery designated as a priority by the Minister in accordance with subsection (1), and in doing so shall ensure that consultations with stakeholders are undertaken.

(3) A Fisheries Management Plan—

- (a) at the national level has no force or effect unless it is approved by the Minister;
  - (b) at the local level has no force or effect unless it is approved by the Director.
- (4) A Fisheries Management Plan may apply to all persons, vessels and fish and to fishing and related activities and aquaculture within the scope of this Act.
- (5) A Fisheries Management Plan shall be consistent with the objective and principles of this Act, and shall as appropriate be drawn up in accordance with a framework that may be prescribed.
- (6) A Fisheries Management Plan shall—
- (a) identify the fishery and its characteristics, including the—
    - (i) current status of the fishery and resource, including area, species and fishing;
    - (ii) possible adverse effects of fishing on the resource and environment;
    - (iii) regional and international context if applicable;
  - (b) specify the management objectives for the fishery;
  - (c) identify as appropriate any local fishing rights or practices and management plans or practices;
  - (d) identify the process for development and implementation of the Fisheries Management Plan, including stakeholder consultations;
  - (e) specify management measures to be applied to the fishery;
  - (f) specify plans for monitoring and review of the fishery and the Fisheries Management Plan;
  - (g) as appropriate, make provision in relation to any other matter necessary for effective conservation and sustainable use of the fishery.
- (4) A Fisheries Management Plan may delegate shared management responsibility to any local area authority.
- (5) When the required approvals under subsection (2) have been given for a Fisheries Management Plan, the Director shall cause—
- (a) the Plan to be published in the *Gazette*, either in full or in part, provided that if it is published in part the published Plan must include the components specified in subsection (4) and notification of where full copies of the Plan may be accessed; and
  - (b) copies of the Plan to be made available—
    - (i) at the offices of the Department of Marine Resources;
    - (ii) at any other place the Director considers appropriate to ensure that the Plan is readily available to persons likely to be affected by it; and
    - (iii) if practicable, on an internet site maintained for the purposes of the Department of Marine Resources.
- (6) The Minister may, by Order in the *Gazette* or regulations, provide for management measures, fines, penalties and sanctions, as well as the licensing and

enforcement powers, authorities and other requirements in each Fisheries Management Plan.

### **Marine Management Area.**

**20.** (1) The Minister may, on the recommendation of the Director, declare a Marine Management Area by Order in the *Gazette* for the purposes of establishing priority zones within such Area.

(2) The Minister may, on the recommendation of the Director, declare the following priority zones within such Marine Management Area by Order in the *Gazette*—

- (a) no-take zone, where conservation and management measures may prohibit any activity involving fishing or removing living or non-living resources from the zone;
- (b) conservation zone, where conservation and management measures may apply in relation to living or non-living marine resources;
- (c) fisheries zone, where fishing and related activities may be regulated;
- (d) multiple use zone for fishing and conservation, where, in addition to paragraph (c) the conservation of biodiversity and the marine environment may be regulated in cooperation with the Ministry responsible for sustainable use;
- (e) multiple use zone for tourism, fishing and conservation, where, in addition to paragraphs (c) and (d), tourism may be regulated in cooperation with the Ministry responsible for tourism;
- (f) multiple use zone for transportation, tourism, fishing and conservation, where, in addition to paragraphs (c), (d) and (e), transportation may be regulated in cooperation with the Ministry responsible for Maritime Affairs,

and any zone established pursuant to paragraph (d), (e) or (f) shall be declared in consultation with the Ministry having responsibility for tourism or transportation as appropriate.

(3) The declaration of each priority zone shall describe—

- (a) the objective of its establishment;
- (b) any applicable conservation and management measures or a process for their development.

(4) Where a priority zone is declared, the Director shall—

- (a) ensure the development and implementation of conservation and management measures for any areas declared by the Minister pursuant to subsection (1), including through a Fisheries Management Plan; and
- (b) establish and maintain a register of areas declared pursuant to subsection (1).

(5) The Director may—

- (a) appoint a management committee responsible for the management of any priority zone declared pursuant to subsection (2); and

(b) make recommendations to amend, suspend or revoke a declaration for a priority zone made pursuant to subsection (2), as appropriate in consultation with another relevant Ministry.

(6) No person shall engage, or permit or allow any other person to engage in any activity that—

- (a) is prohibited under a declaration made pursuant to subsection (2);
- (b) is prohibited under a conservation and management measure or other provision having the force of law adopted for the area; or
- (c) results in destruction or adverse impacts on the marine resource or habitat in the area declared pursuant to subsection (1) or causes the objective of establishing such area to be unattainable.

(7) Any person who contravenes subsection (6) commits an offence and upon conviction shall be liable to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 2 years or to both such fine and imprisonment, and in addition for any contravention of subsection (6)(c) shall be liable to full compensation for any destruction or adverse impacts and restoration of the area to its original state.

## Division 2

### *Prohibited activities*

#### **Fishing and related activities may be subject to prohibition.**

**21.** (1) Notwithstanding section 3, this section applies to all persons, vessels, fishing and related activities within the scope of this Act.

(2) The Minister may prohibit any of the activities referred to in subsection (3) by Order in the *Gazette*.

(3) Any Order made under subsection (2) may wholly or partially prohibit—

- (a) fishing—
  - (i) at all times or during a specified period from any specified area of fisheries waters, and the possession of such fish during the specified period or in the specified area;
  - (ii) for fish that are not of a specified size or dimension;
  - (iii) for a designated species of fish;
  - (iv) using a specified method or gear;
  - (v) by persons other than a specified class of persons;
  - (vi) by vessels other than a specified class or number of vessels;
  - (vii) in a manner that results in wastes, by-catch, discards, regulatory discards, or economic discards;
  - (viii) above a regulated quantity or specified quota; or
  - (ix) in a manner that is otherwise inconsistent with the objective, principles or provisions of this Act;



- (b) the landing, buying, selling, receiving, possession, import or export of fish or of fish included in a specified class of fish;
  - (c) a person from having in his or her possession or charge fishing gear or equipment, including fish aggregating devices and associated electronic equipment, of a specified kind, size or quantity;
  - (d) deployment or retrieval of a fish aggregating device and associated electronic equipment or fishing within a specified radius of such device;
  - (e) the use of a port or fish landing centre by specified categories of fishing vessels for specified purposes;
  - (f) any activity designated as prohibited in a Fisheries Management Plan;
  - (g) any activity prohibited or otherwise regulated under any international conservation and management measure adopted by a regional fisheries management organization in which Saint Christopher and Nevis is member or cooperating non-member;
  - (h) the conduct of a specified type of related activity;
  - (i) such other activities as the Director may specify that fall within the scope of this Act, consistent with its objective and principles.
- (4) A person who—
- (a) contravenes an Order made under subsection (2) or permits or uses a vessel, or permits a person acting on their behalf, to contravene such an Order;
  - (b) has fish in his or her possession or under his or her control in a vessel at a time when, or in an area where, the taking of such fish is prohibited by an Order made under subsection (2); or
  - (c) lands, transships, buys, sells, receives or possesses any fish or fish products taken in contravention of an Order made under section (2),

commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment of 2 years, or to both.

#### **Fishing with explosives, chemicals etc and associated activities prohibited.**

**22.** (1) Notwithstanding section 3, this section applies to all persons, vessels, fishing and related activities within the scope of this Act.

(2) No person shall, for the purpose of killing, taking, stunning, stupefying or disabling fish or in any way rendering fish more easily caught—

- (a) use, permit to be used or attempt to use;
- (b) support or facilitate any person to use or attempt to use;
- (c) carry, permit to be carried, possess or control; or
- (d) place in the water or assist in placing in the water,

any chemical, poison or noxious substance, bomb, electrical device, or material, dynamite or explosive substance or device.

(3) No person shall—

- (a) land, tranship, buy, sell, deal in, transport, receive or possess any fish or fish product taken by any means which contravenes this section; or
- (b) fail or refuse to give, on request to any authorised officer, information regarding—
  - (i) an activity described in subsection (2), or the support of or any contribution to such activity; or
  - (ii) the source of the supply of any fish or fish product referred to in paragraph (a).

(4) The Director may, subject to any applicable Fisheries Management Plan or international agreement, grant in writing an exemption from the requirements of subsection (2) for purposes of scientific research for such period of time and subject to such conditions as he or she may determine.

(5) Any person who contravenes subsection (2) without an exemption having been granted by the Director or subsection (3) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 3 years, or to both.

(6) A person who commits a second or subsequent offence under subsection (5) shall be liable on conviction to a fine of no less than twice the previous fine.

(7) In proceedings for an offence under this section, a certificate in writing given by the Director stating the cause of death or injury of any fish, issued in accordance with section 136 and on the advice of an expert or other qualified person is, in the absence of proof to the contrary, conclusive evidence of its contents.

(8) For the purposes of this section, any explosive, poison or other noxious substance found on board any vessel or vehicle is presumed, in the absence of proof to the contrary, to be intended for a purpose referred to in subsection (2).

(9) All fish and fish products seized under this section are forfeited to the State, and any vessel or vehicle used to transport such fish or fish products may be forfeited to the State.

#### **Driftnet fishing activities prohibited.**

**23.** (1) No person shall engage in or assist any driftnet fishing activities in the fisheries waters, or permit or use a vessel for such activities.

(2) No person shall permit, use or assist a vessel that is registered in Saint Christopher and Nevis to participate in or provide support to any driftnet fishing activities in the areas beyond the fisheries waters.

(3) No Saint Christopher and Nevis national shall engage or assist in any driftnet fishing activities in areas beyond the fisheries waters.

(4) Any person who contravenes subsection (1), (2) or (3) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 4 years, or to both, and the fishing vessel and gear used in the offence and all fish on board shall be forfeited to the State.

#### **Tampering with or destruction of property in the fisheries waters prohibited.**

**24.** (1) No person shall, within the fisheries waters, remove any fish from any fishing gear, pond, enclosure or storage device unless he or she is the owner or is acting with the authority of the owner.

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

(3) No person shall tamper with, destroy, damage, remove or take any part of a fish aggregating device, artificial reef, mooring buoy, float, trap or other device which has been authorised and deployed in accordance with this Act and belongs to another person unless such other person has expressly given permission to do so.

(4) Nothing in this section shall limit the powers of an authorised officer or prevent the disposal of unauthorised gear or equipment in accordance with this Act.

(5) Any person who contravenes subsection (1), (2) or (3) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 1 year, or to both.

#### **Use, possession on vessel, import, purchase or sale of prohibited gear.**

**25.** (1) No person shall use for fishing any fishing gear which does not conform to requirements of this Act and no operator of a vessel shall, where it is prohibited, permit such fishing gear on board any vessel in the fisheries waters.

(2) No person shall import, buy or sell a driftnet or any other fishing gear prohibited pursuant to this Act.

(3) Any person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 3 years, or to both, and in addition, the prohibited gear shall be forfeited to the State.

#### **Prohibition of possession and trade in fish, fish products or other fisheries resources taken in contravention of Act.**

**26.** (1) No person shall buy, sell, possess or otherwise trade in fish, fish products, or any other fishery resource taken or obtained in contravention of this Act.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 2 years, or to both, and in addition, all fish or fish products shall be forfeited to the State.

#### **Prohibition of sale or export of adulterated or contaminated fish or fish products.**

**27.** (1) Any person who knowingly sells or exports fish or fish products intended for human consumption shall comply with all applicable food quality, health and sanitation standards and shall not sell or export such fish or fish products if he or she had reasonable cause to believe that they—

- (a) are adulterated;
- (b) are contaminated with or contain a poisonous or harmful substance or pathogenic micro-organisms ;
- (c) have not met lawful inspection standards; or
- (d) are otherwise injurious to human health.

(2) Any person who contravenes subsection (1) commits an offence and on conviction is liable to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 2 years, or to both, and

in addition any fish or fish products that do not comply with the requirements in subsection (1) shall be forfeited to the State.

**Prohibition of interference with inspected fish or fish product.**

- 28.** (1) No person shall, except with the written permission of the Director—
- (a) remove, alter or interfere with a trade description, seal, stamp or other mark applied to a container or a container system unit containing any fish or fish product that has been inspected by an authorised officer;
  - (b) add to, remove from, or otherwise change the composition of any consignment of fish that has been certified as inspected by an authorised person; or
  - (c) unseal or leave unsealed any boxes that have been inspected by an authorised officer.
- (2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 2 years, or to both, and in addition any fish or fish products shall be forfeited to the State.

**Prohibition to deploy, maintain fish aggregating device without permission or in contravention of requirements.**

- 29.** (1) No person shall deploy, maintain, monitor or recover a fish aggregating device or associated electronic equipment in the fisheries waters, and no Saint Christopher and Nevis fishing vessel shall deploy, maintain, monitor or recover a fish aggregating device or associated electronic equipment in areas beyond national jurisdiction, except with the permission of the Director and in accordance with such conditions as may be prescribed, or as the Director may specify or as are otherwise specified in this Act and an applicable access agreement or international conservation and management measure.
- (2) A person who contravenes any conditions or requirements imposed in accordance with subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 2 years, or to both.

**Declaration of and prohibition relating to protected or endangered species.**

- 30.** (1) The Minister may, on the advice of the Director and in consultation with the Department of Environment, by Order in the *Gazette*, declare as protected or endangered any fish—
- (a) that are designated as protected or endangered under an international agreement; or
  - (b) that the Director recommends be declared as protected or endangered, based on the best available scientific evidence.
- (2) No person shall take, land, sell, deal in, transport, receive, buy, possess, import or export any fish or fish product declared as protected or endangered in accordance with this section.
- (3) Any person who contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 6 months, or to both, and in addition, the fish or fish products shall be forfeited to the State.

**Termination of duty free concessions or tax exemptions.**

31. (1) Where the holder of a duty free concession or tax exemption granted by the Minister pursuant to section (7(1)(e)) of this Act does not comply with the terms of an applicable licence or otherwise commits an offence against this Act, the Minister shall, on the advice of the Director, immediately terminate such concession or exemption.

(2) Where a concession or exemption has been terminated in accordance with subsection (1), the Director shall within seven (7) days inform the holder of such termination.

**Activities contrary to the laws of another State.**

32. (1) No person shall, within Saint Christopher and Nevis or in the fisheries waters, on their own account or in any other capacity—

- (a) cause or permit a person acting on their behalf to take, import, export, land, tranship, transport, sell, receive, acquire or buy any fish or fish product that was caught in contravention of the laws of another State; or
- (b) use or permit a vessel to be used to engage in fishing or related activities for a purpose referred to in paragraph (a).

(2) Notwithstanding section 3, this section applies to all persons, vessels, fishing, related activities and other activities governed by this Act.

(3) In this section, “illegal fish or fish product” means fish or fish product taken, possessed, transported or sold in violation of any law or regulation of another State or of any international conservation and management measure, but does not include fish taken on the high seas contrary to the law of another State where Saint Christopher and Nevis does not recognise the jurisdiction of that State over those fish.

(4) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule, or to a term of imprisonment not exceeding 2 years, or to both.

(5) Notwithstanding any other legislation of Saint Christopher and Nevis, mistake of fact is not a defence to a prosecution for an offence under this section.

(6) Where an international agreement with another State provides for a fine, penalty or other determination or any portion of it to be remitted to that State on conviction or other process, such remittance shall be made after all costs and expenses incurred by Saint Christopher and Nevis have been deducted.

**Pollution of the fisheries waters prohibited.**

33. (1) No person shall attempt or cause another person to prepare for the introduction of or introduce into the fisheries waters, directly, indirectly, deliberately or accidentally, any deleterious substance, including substances which may have toxic, hazardous or other harmful properties or effects in relation to fish or the aquatic or marine environment, and which may adversely affect the habitat or health of the fish.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule and be liable for full compensation in respect of any resulting loss or damage as well as the full cost of restoring the affected habitat to its previous state.

## PART 4

## RECORDS, REGISTERS, REGISTRATION AND INFORMATION

**Records, returns, data and information.**

**34.** (1) The Director may, for the purposes of this Act, require any person referred to in subsection (2) to keep, furnish and communicate in such manner and form and at such time as the Director may specify, or as may be prescribed—

- (a) any information, including information relating to fishing, related activities, aquaculture, landing, storage, food safety, processing, buying, selling, imports, exports and other related transactions;
- (b) all relevant returns, certificates and other information to ensure that any fish or fish product may be accurately traced from harvesting through to processing, distribution and sale; and
- (c) accounts, records, returns, documents and any other information in relation to activities falling within the scope of this Act.

(2) The following persons shall keep such accounts and records and furnish such returns, certificates and other information required under this Act, including such information the Director may require pursuant to subsection (1)—

- (a) holders of licences, authorisations or any other form of permission issued under this Act;
- (b) owners, operators, legal representatives, and masters of vessels required to be registered, registered or are licensed or authorised under this Act;
- (c) owners, operators, representatives, agents and masters of fishing vessels that undertake fishing or related activities in the fisheries waters or land fish or fish products at a port in Saint Christopher and Nevis;
- (d) owners and persons in charge of any premises where fish or fish products are received, bought, stored, transported, processed, sold, or otherwise disposed of;
- (e) persons who engage in the harvesting, receiving, buying, selling, transporting, processing, storage, export, import or disposal of fish or fish products;
- (f) persons engaged in aquaculture operations;
- (g) persons who engage in fishing otherwise than for the purpose of sale of the fish caught;
- (g) persons who provide fishing vessels for hire or charter;
- (h) persons who conduct marine scientific research; and
- (i) such other persons who are required to keep and provide the information referred to in subsection (1) by the Director in accordance with this Act.

(3) The Director may, for the purposes of verifying accounts, records, documents and other information required to be kept, furnished or communicated under subsection (1)—

- (a) audit or inspect any accounts, records, documents, data and other information or place where such information may be kept;
  - (b) audit or inspect any vessel, processing plant or other facility to which this Act applies; and
  - (c) require from any person further information regarding any accounts, records, documents, data and other information kept, furnished or communicated under this section in accordance with such time limits as may be specified or prescribed.
- (4) Any person who is required to give, furnish or communicate any accounts, records, documents, data and other information under this Act shall—
- (a) ensure that such accounts, records, and other information are true, complete and accurate; and
  - (b) not provide accounts, records or other information that is in any way false, misleading or inaccurate.
- (5) Any person who—
- (a) fails to keep, furnish or communicate any accounts, records, documents, data and other information as required under subsection (1); or
  - (b) does not facilitate, assist or comply with the requirements for an audit or inspection undertaken under subsection (3),

commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 3 years, or to both.

(6) Any person required to keep, furnish or communicate any accounts, records, documents, data and other information under subsection (1) who contravenes subsection (4) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 3 years, or to both.

(7) If any person convicted of an offence under subsection (5) or (6) holds a licence issued under this Act, then, in addition to the penalties provided for under those subsections, that person's licence shall be cancelled.

#### **Registers of licences, authorisations, vessels, persons, areas, etc.**

**35.** (1) There shall be established and maintained a national register of licences, authorisations, persons and vessels issued under this Act in accordance with such requirements as may be prescribed or required by the Minister.

(2) The register established under subsection (1) shall contain information on activities under the scope of this Act relating to, *inter alia*—

- (a) information on applications for licences, authorisations and other permissions under this Act;
- (b) information on each licence, authorisation and permission issued, renewed, suspended or cancelled under this Act, including the activity, date and duration;
- (c) information on each licensed, authorised and certified person;
- (d) information on each person entitled to duty free concessions or tax exemptions;

- (e) information on registered vessels, including those that may be registered by any other Department of the Government of Saint Christopher and Nevis, facility, and/or licensed, authorised or permitted activity;
- (f) information on each Marine Management Area declared pursuant to this Act;
- (g) any record of non-compliance with the licence, authorisation or permission;
- (h) any record of action taken as a result of non-compliance;
- (i) the requirements of any relevant international conservation and management measures; and
- (j) any other information that the Director reasonably requires consistent with the objective and principles of this Act, for the purposes of an information management system.

(3) The Director shall ensure that the information on each licence and authorisation in the database is sufficient for purposes of fisheries management and monitoring, control and surveillance, and to implement the international and regional agreements to which Saint Christopher and Nevis is party or cooperating non-party.

(4) The Director shall ensure that, as appropriate, non-confidential information is publicly available electronically, and where possible, on a website, and relevant information is released from the database and communicated to other States and regional and international organizations in a timely manner to ensure the discharge of the regional and international obligations of Saint Christopher and Nevis, including as a flag State and as a member of regional fisheries management organizations.

(5) Any person may access any non-confidential information from the register and the Department may charge and publicly notify a reasonable fee for such access.

#### **Registration of vessels to be used for fishing or related activities.**

**36.** (1) Notwithstanding any other national law or authority, any entity authorised by the Government of Saint Christopher and Nevis to register vessels to be used for any fishing or related activities in areas beyond national jurisdiction shall require the applicant to—

- (a) declare whether the vessel will be used for any fishing or related activities;
- (b) provide such information as may be prescribed or required by the Director for the purpose of implementing national law and applicable international—
  - (i) standards and guidelines, including those in relation to illegal, unreported and unregulated fishing and flag State performance;
  - (ii) agreements; and
  - (iii) conservation and management measures; and
- (c) provide a valid and applicable authorisation to fish in areas beyond national jurisdiction issued by the Director.

(2) Where the entity referred to in paragraph (1) is not the Department of Marine Resources the person responsible for the administration of such entity shall, prior to issuing the registration for any vessel that is intended to be used for any



fishing or related activities, ensure transmission of the information received in accordance with subsection (1) (a) and (b) to the Director for his or her review, and shall not permit a registration to be issued except upon approval by the Director.

(3) Upon receipt of the information transmitted pursuant to subsection (2), the Director shall within a reasonable time notify the relevant responsible person whether the information provided by the applicant satisfies applicable requirements, and where it does not shall require—

- (a) appropriate action where further information is required; or
- (b) denial of registration and reasons therefor.

(4) The Director's requirements shall be promptly implemented and such information concerning the implementation as he may require shall be promptly transmitted to him.

(5) The Director may require de-registration of any fishing vessel used for fishing or related activities where there is reasonable evidence that it does not conform to the international standards and guidelines, international agreements and international conservation and management measures taken into consideration under subsection (1)(b) or requirements of this Act, and a relevant entity referred to in paragraph (1) shall comply with such requirement.

#### **Information on legal and administrative action taken in respect of violations of the Act.**

37. The Director shall maintain and make publicly available a record of the outcome of any legal or administrative action taken in respect of any violation against this Act that results in a judgment or administrative determination.

#### **Ownership of information.**

38. Ownership of all information required to be reported, notified or otherwise given to the Government and all information generated by mobile transceiver units or similar device that is part of a vessel monitoring system or Automatic Identification System under this Act is vested in the Government.

#### **Confidential information.**

39. (1) For the purposes of this section, "confidential information" means—
- (a) information that the Minister declares to be confidential information under subsection (3); and
  - (b) the information referred to in subsection (5).
- (2) A person carrying out duties or responsibilities under this Act, including the Minister and Director shall not, unless authorised under this Act, reveal confidential information acquired by virtue of their duties and responsibilities to any person not having such duties and responsibilities.
- (3) The Minister may by Order published in the *Gazette*—
- (a) declare any information to be confidential information; and
  - (b) declare that certain general summaries of such information are not confidential information.
- (4) The Director may in writing authorise any person to—
- (a) receive or access confidential information;

- (b) access such premises holding confidential information as he or she may designate or restrict access to such premises.
- (5) The following information is confidential information unless the Minister otherwise directs by Order in the *Gazette*—
- (a) any information or data of a commercial nature provided in records, returns, or other documents required to be kept, furnished or communicated under section 34;
  - (b) any information or other data supplied by a mobile transceiver unit in accordance with this Act; and
  - (c) raw data from scientific research.
- (6) Confidential information may be disclosed—
- (a) to the extent that—
    - (i) disclosure is authorised or required under this Act or any other law; or
    - (ii) the person, providing the confidential information authorised its disclosure; or
  - (b) as may be necessary to—
    - (i) enable the Director to publish statistical information relating to the fisheries sector;
    - (ii) enable other agencies of the State to enforce Saint Christopher and Nevis laws;
    - (iii) promote regional and international cooperation or coordination in monitoring, control and surveillance of relevant activities; or
    - (iv) enable advice to be given to the Minister consistent with the objective of this Act.
- (7) The Director may authorise the release of confidential information—
- (a) relating to the real-time or other position of any vessel, upon request, to any authority for the purposes of assisting with surveillance, search and rescue and other emergency responses; and
  - (b) for purposes the Director believes are supportive of the objective and enforcement of this Act, including reasonable transparency in decision-making.
- (8) Confidential information shall maintain its classification for a period of 3 years from the date that it is declared to be confidential information under subsection (3).
- (9) The Director may extend the classification of confidential information at the expiry of the 3-year period referred to in subsection (8) for one or more periods of up to 3 years, as the Director may deem necessary to achieve the objective of this Act and assist with the enforcement of this Act.

## PART 5

## FISHERIES ACCESS AND MANAGEMENT AGREEMENTS

**Foreign fishing vessels.**

**40.** (1) Unless otherwise provided in this Act, no foreign fishing vessel shall be used for fishing or related activities in the fisheries waters except under and in accordance with an applicable fisheries access agreement.

(2) Subject to subsection (3), the owner and the operator of a foreign fishing vessel that enters the fisheries waters or is used for fishing or related activities in the fisheries waters, except in compliance with a fisheries access agreement, this Act and other Saint Christopher and Nevis legislation, or, where there is no applicable provision, international law, each commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule, or, except as provided in section 135, to a term of imprisonment not exceeding 5 years, or to both.

(3) An owner or operator who contravenes subsection (1) does not commit an offence if he or she enters the fisheries waters or uses such vessel for fishing or related activities in the fisheries waters for a lawful purpose recognised by this Act, Saint Christopher and Nevis legislation or, where there is no applicable provision, by international law as recognized by Saint Christopher and Nevis.

**Fisheries access agreements.**

**41.** (1) The Minister may, in accordance with this Act and applicable national legislation, enter into a written fisheries access agreement to permit any foreign fishing vessel access to the fisheries waters for purposes of fishing or related activities and may impose such terms and conditions as may be prescribed or as he or she may require.

(2) Nothing in a fisheries access agreement shall prejudice or otherwise affect the rights, jurisdiction, sovereignty or sovereign rights of Saint Christopher and Nevis or the exercise of sovereignty over its internal and territorial waters or sovereign rights over its continental shelf and exclusive economic zone.

(3) The terms and requirements of each fisheries access agreement shall comply with—

- (a) all applicable national legislation; and
- (b) each international agreement to which Saint Christopher and Nevis is party, including the legally binding decisions of any regional fisheries management organization in which Saint Christopher and Nevis is a member or cooperating non-member.

(4) Fisheries access shall be permitted solely for the purposes of fishing or related activities in the exclusive economic zone or at a designated port.

(5) The Minister may enter into a fisheries access agreement pursuant to or by way of—

- (a) an international agreement, joint venture or other written agreement or arrangement with—

- (i) other States or regional economic integration organizations, including through bilateral or regional agreements or arrangements;
    - (ii) a fishing association or similar body;
    - (iii) a publicly incorporated company; or
    - (iv) such other persons or bodies as the Minister considers appropriate; or
  - (b) the grant of a fishing right in accordance with such terms and conditions as may be prescribed or the Minister may require.
- (6) The Minister, prior to entering into a fisheries access agreement shall ensure that—
- (a) the fisheries access agreement complies with the standards and requirements of this Act;
  - (b) the Advisory Council has reviewed and made recommendations to the Director on the proposal for the fisheries access agreement, including as appropriate an assessment of costs and benefits, compliance by the other party with international, regional and national laws and standards;
  - (c) the Director has made recommendations to the Minister on the proposal for the fisheries access agreement, taking into account the recommendations of the Advisory Council;
  - (d) clear benefits to Saint Christopher and Nevis have been established for entering into the fisheries access agreement;
  - (e) any vessel to be used for fishing or related activities under the agreement, including its operator, master and beneficial owner, has not engaged in or are reasonably suspected to have engaged in illegal, unreported or unregulated fishing in any place prior to application for the licence and, where there have been relevant judicial or administrative proceedings, have not complied with a relevant judgment or determination;
  - (f) the fishing or related activities would not result in any direct or indirect adverse impact to the sustainability of the relevant fisheries resources or the ecosystem;
  - (g) there are clear mechanisms to ensure compliance, including, where the other party is a State, the recognition and effective implementation of all flag State responsibilities; and
  - (h) all measures are taken to ensure the sustainability of the fisheries resources and protection of the marine environment.
- (7) The Minister shall, on the advice of the Director, determine in respect of each proposed fisheries access agreement—
- (a) the estimated value of the fisheries to the other party;
  - (b) the applicable conservation and management measures; and
  - (c) the fee and other required benefits to Saint Christopher and Nevis, excluding development assistance or benefits that are unrelated to the value of the fisheries access.

(8) No licence or other authorisation for fishing or related activities shall be issued to a foreign fishing vessel unless fisheries access has been granted in accordance with this Act authorising such activities by that vessel.

(9) Where the term of a fisheries access agreement is more than one year, it shall be reviewed annually to assess compliance with this Act and the terms and conditions of the agreement in accordance with such criteria as may be prescribed or the Minister may direct, and such review shall include the following criteria, *inter alia*—

- (a) the compliance by the other party with the laws of Saint Christopher and Nevis and the terms of the agreement;
- (b) the costs and realised benefits to Saint Christopher and Nevis under the agreement for the preceding year;
- (c) the estimated value of the continuing fisheries access provided under the agreement; and
- (d) such other matters as may be prescribed or required by the Minister in accordance with this Act.

#### **Fisheries access agreements - terms and conditions.**

**42.** In addition to any other terms or conditions for fisheries access that may be prescribed or required, each fisheries access agreement entered into by the Minister shall require that—

- (a) the other party to the agreement and the operator of any vessels subject to the agreement must fully comply with all legislation of Saint Christopher and Nevis;
- (b) the operator of any vessel subject to the agreement must hold, in respect of their vessel, a valid and applicable licence or authorisation from the State in which the vessel is registered to carry out fishing or related activities in the fisheries waters;
- (c) the requirements of any applicable Regional Register of foreign fishing vessels shall be met;
- (d) the requirements of any decision of an applicable regional fisheries management organisation in which Saint Christopher and Nevis is a member or a cooperating non-member, shall be met;
- (e) no vessel subject to the agreement is an IUU listed vessel, and the agreement shall automatically terminate should any vessel be included on any such list;
- (f) the other party to the agreement and all operators of vessels subject to the agreement shall take all reasonable measures required to ensure compliance with the agreement and this Act;
- (g) in the case of an agreement entered into with a corporation, association or other body acting on behalf of its members or other persons, that the corporation, association or other body is liable for the undischarged liabilities of its members or other persons arising out of any operations under the agreement and the agreement itself, including fees;

- (h) fees, levies and other charges be fully paid at the required time, and the agreement shall automatically terminate on non-payment or late payment;
- (i) the other party to the agreement shall ensure minimum specified benefits to Saint Christopher and Nevis nationals in terms of training and employing such level of qualified nationals as crew members as may be specified by the Minister; and
- (j) in the case of an agreement with a term of more than 1 year, the agreement is subject to an annual review and termination or suspension, in accordance with section 43(1).

#### **Fisheries access agreements - suspension, termination.**

43. (1) The Minister may, on the advice of the Director, suspend or terminate a fisheries access agreement at any time according to its terms or upon material non-compliance by the other party with this Act or any other condition of the agreement. The Minister must give the other party reasonable notice of the termination or suspension to ensure the prompt termination of fishing or related activities.

(2) The Minister may suspend or otherwise limit a fisheries access agreement on—

- (a) the advice of the Director that continued fishing at current levels would pose a risk to the fish stocks based on a precautionary approach; or
- (b) such other ground as may be specified in this Act or the Regulations.

(3) Suspension of an agreement under subsection (1) or (2) may be for such time or until such conditions are met, as the Minister may require.

(4) Where a fisheries access agreement is suspended or limited under subsection (2)(a), such portion of the access fees as may be determined by the Director on the recommendation of the Licensing Committee on a *pro rata* basis for suspended fishing opportunities, may be refunded.

#### **Fisheries management agreements.**

44. The Minister may enter into any fisheries management agreement that has as its objective cooperation in or coordination of fisheries management measures with other States.

## PART 6

### AQUACULTURE REGULATION AND DEVELOPMENT

#### **Aquaculture activities requirements.**

45. (1) No person shall engage in aquaculture activities except in accordance with this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine for commercial aquaculture or subsistence aquaculture respectively not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 1 year, or to both.

**Aquaculture development plan.**

46. (1) The Director shall, in consultation with the Advisory Council, as appropriate, prepare an aquaculture development plan for the Minister's approval with the objective of promoting the sustainable development of aquaculture in Saint Christopher and Nevis in accordance with the principles and objectives of this Act.

(2) The aquaculture development plan shall have a duration of at least five years and shall be renewed, modified or replaced at the end of each five year period.

(3) The aquaculture development plan shall include—

- (a) a statement of the objectives and priorities of the plan and a strategy for achieving those objectives;
- (b) performance indicators to monitor the extent to which the objectives of the plan are being attained;
- (c) a strategy for monitoring progress at least on an annual basis, and as appropriate an evaluation of the implementation of the aquaculture plan that preceded it;
- (d) a description or identification of any area of water which is suitable for aquaculture and the type of aquaculture for which the area is suitable;
- (e) a description of suitable or unsuitable methods for undertaking any type of aquaculture;
- (f) identification of suitable or unsuitable species of fish for aquaculture;
- (g) acceptable drugs and medications that may be used;
- (h) requirements for the importation and manufacture of seed and feed that may be used for aquaculture;
- (i) requirements or standards for water quality, aquaculture waste, escapement, environmental impact assessments and the introduction, transfer, release and harvesting of fish for purposes related to aquaculture;
- (j) a conflict prevention and resolution mechanism; and
- (k) any other matter concerning aquaculture which the Minister or Director considers appropriate.

**Prohibited to deprive community of traditional access to fisheries.**

47. (1) No person shall, by carrying out aquaculture activities, deprive a local community of its traditional access to fishing grounds without good cause.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 2 years, or to both, and in addition shall restore to the local community its traditional access.

**Local government's responsibility to monitor aquaculture activities.**

48. (1) Local governments shall, based on the advice of the Ministry, monitor aquaculture practices and operations in areas under their respective jurisdictions.

(2) Where any person or any local government has cause to believe that any fish in or fish products from any waters used for aquaculture activities are infected

with a disease which can reasonably be foreseen to become, or which has become, of epidemic proportions, he or she or such local government shall notify the Director.

(3) The Director shall, if he or she is satisfied that the fish or fish products subject to notification under subsection (2) are so infected, give notice in writing to the owner of the relevant waters requiring the destruction of all fish or fish products in the said waters or the taking of such other measures as the Director may specify in the notice.

(4) Every person who receives a notice under subsection (3) shall comply with its requirements at his or her own expense, and in default of such compliance, the local authority may enter the relevant facility and take or cause to be taken such measures as may be necessary for complying with the requirements of the notice and any expenses incurred shall be recoverable as a civil debt from the person so notified.

(5) A person who does not comply with the requirements in the Director's notice received pursuant to subsection (3) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 2 years, or to both, and in addition shall be responsible for costs directly associated with the resulting damage.

#### **Introduction, transfer, import, export, release, etc of live, etc fish.**

**49.** (1) No person shall carry out the following activities in relation to commercial aquaculture without authorisation in writing by the Director—

- (a) place or, by act of omission or otherwise, cause to be placed any species of live fish in any place in the fisheries waters, except where—
  - (i) the fish species being so placed previously occurred in the same body of water prior to being fished therefrom; or
  - (ii) a fish farmer stocking his or her pond with fish obtained from another fish farmer with whom he or she shares the same water catchment area;
- (b) introduce or cause to be introduced into Saint Christopher and Nevis or the fisheries waters any species of fish;
- (c) transfer any eggs, fingerlings or seed of exotic or genetically modified species or such adult species of fish from one aquaculture establishment in Saint Christopher and Nevis to another or from any location in Saint Christopher and Nevis to another;
- (d) import or export live fish for the purpose of commercial aquaculture; or
- (e) release into the fisheries waters any fish except for indigenous wild fish caught in Saint Christopher and Nevis.

(2) The activities described in subsection (1) may also be applicable more generally to the fisheries waters where required by public notice.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 5 years, or to both.



**Director's authority to inspect, seize fish designated for import or export or diseased, highly invasive fish or fish species.**

**50.** (1) The Director may inspect or cause to be inspected any fish before or after they are imported for the purpose of aquaculture and inspect or cause to be inspected any fish produced by aquaculture operations that are destined for export.

(2) The Director may seize, hold, quarantine, disinfect or destroy any live fish that have been imported or that are destined for import or export for purposes of aquaculture, and shall take such measures where it is determined that the fish or fish species are diseased or highly invasive.

(3) The owner of an aquaculture facility shall take all reasonable measures to prevent the spread of disease and shall promptly arrange for investigation of any disease that may be reasonably suspected, to determine whether a disease exists and if so to identify the disease.

(4) The owner(s) of an aquaculture facility shall report to the Director in writing the details of any diseased fish within 48 hours of identification of the disease.

(5) The owner(s) or apparent owner(s), or where the owner(s) are not established, any person in control for purposes of import or export of the live fish described in subsection (2) shall be fully liable for all costs of any action taken pursuant to subsection (2), including holding, quarantining, disinfecting or destruction.

(6) A person who contravenes subsection (3) or (4) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 5 years, or to both.

**Aquaculture waste.**

**51.** (1) Each person engaged in commercial aquaculture in Saint Christopher and Nevis shall ensure that aquaculture waste—

- (a) does not cause an unsightly or offensive condition at the licence area;
- (b) is secured or treated in a manner designed to prevent it being blown, washed or swept off the area used by such person for aquaculture; and
- (c) is handled, stored and treated in such a way as to minimize sanitary and health risks.

(2) Where any person fails or apparently fails to fulfil the conditions set out in subsection (1), the Director, in consultation with relevant environmental protection authorities, may notify such person in writing of the requirement to take measures to restore the applicable area to such standard as the Director may specify within a stated period of time, and may upon inspection require such person to redesign the applicable area.

(3) Each person who is notified by the Director pursuant to subsection (2) shall promptly fulfil the requirements set out in the notification.

(4) A person who contravenes subsection (1) or (3) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 5 years, or to both, and in addition shall be responsible for compensation for the costs of restoring the applicable area as required pursuant to subsection (2).

**Escapement.**

**52.** (1) Each person engaged in commercial aquaculture in Saint Christopher and Nevis shall take appropriate measures to prevent or minimise the risk of the escape of aquaculture stock into the wild.

(2) Where there has been an escape of hatchery reared aquaculture stock or damage to a farming structure, equipment or facility that may lead to the escape of hatchery reared aquaculture stock, the operator of the relevant aquaculture facility shall take immediate measures to minimise the damage and to repair any damage caused to the extent possible.

(3) Each person engaged in commercial aquaculture in Saint Christopher and Nevis shall, within 12 hours after becoming aware of the escape of hatchery reared aquaculture stock or damage to a farming structure in relation to a facility over which he or she exercises management or control or to other equipment that may lead to the escape of hatchery reared aquaculture stock, notify the Director of the escape or damage, including the following—

- (a) the species of fish affected;
- (b) the date or an estimate of the date on which the escape or damage took place;
- (c) the number and biomass or an estimate of the number and biomass of the fish that have escaped;
- (d) the age or developmental stage of the fish at the time of their escape; and
- (e) details of the circumstances in which the escape or damage took place.

(4) Each person to whom the provisions of subsection (3) apply shall, within 7 days after becoming aware of the escape or damage referred to in subsection (3), notify the Director in writing of the action taken to deal with it.

(5) A person who contravenes subsection (1), (2), (3) or (4) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 3 years, or to both.

**Use of drug, chemical etc restricted.**

**53.** (1) No person shall use in a commercial aquaculture facility any drug, pharmaceutical, antibiotic or other chemical for the treatment of fish diseases or for the enhancement of fish growth without the written approval of the Director.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 5 years, or to both.

**Information etc. on wild, genetically modified species.**

**54.** The Director shall have the authority to collect information and data on wild and genetically modified species for the purpose of assessing the impact of aquaculture.

**Interfering with aquaculture facility prohibited.**

**55.** (1) No person shall, without a valid and applicable aquaculture licence—

- (a) interfere with or harvest the product of an aquaculture facility without the written authority of the licensee;
- (b) place any object in the water, or promote or undertake any activity in a manner so as to obstruct an aquaculture operation being carried out by another person;
- (c) destroy, damage, displace or alter the position of any equipment lawfully deployed in connection with an aquaculture licence; or
- (d) without lawful excuse cause the release of any product of an aquaculture facility.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 5 years, or to both and in addition shall fully compensate the relevant licensee for any damage which is the direct result of his or her contravention.

#### **Transboundary aquaculture ecosystems.**

**56.** Subject to applicable regional and international law, the Minister shall initiate dialogue with other riparian States to ensure that governments and aquaculture farmers are obliged to protect transboundary aquatic ecosystems from, *inter alia*—

- (a) escapement of aquaculture species into shared water bodies;
- (b) waste from aquaculture activities;
- (c) diseases that are likely to become or have reached epidemic proportions; and
- (d) effluent that might affect transboundary aquatic ecosystems.

#### **Regulations for aquaculture.**

**57.** The Minister may, taking into account the recommendations of the Director in consultation with the Advisory Council, and for purposes of sustainable management of aquaculture, take measures by Order in the *Gazette* or by regulations in relation to, *inter alia*—

- (a) fish hatchery standards;
- (b) qualifications of persons authorised to offer aquaculture extension services;
- (c) the mode of establishment of fish cages or any such form of aquaculture establishment in the fisheries waters;
- (d) aquaculture extension systems;
- (e) fish disease surveillance, control and management in aquaculture establishments;
- (f) the use of biotechnology to increase productivity;
- (g) codes of practice for fish farmers;
- (h) accreditation requirements for any class of persons for engaging in specified aquaculture-related activities; and
- (i) any other measure that he or she deems necessary for the proper management of aquaculture.

## PART 7

## POST HARVEST ACTIVITIES AND TRADE

**Competent authority.**

**58.** (1) The Ministry of Agriculture shall be the competent authority for post harvest activities in the fisheries sector, and shall exercise its authority and functions in collaboration with the Department of Marine Resources.

(2) The functions of the competent authority shall be to—

- (a) monitor the production of fish products and fish feed with a view to assessing risks to humans;
- (b) control fish handling, landing, transportation, processing and marketing;
- (c) work in collaboration with other Government agencies in matters related to this section;
- (d) assess and approve plans and structures of intended fishery enterprises;
- (e) carry out inspections of operational fishery enterprises for compliance with fish safety regulations issued by the Minister;
- (f) provide for all procedures to be followed for compliance with provisions under paragraph (e);
- (g) specify conditions for the placing on the market of fish, fish products and fish feed;
- (h) maintain a register of fishery enterprises approved by the competent authority;
- (i) issue health certification of fish, fish products and fish feed;
- (j) grant approval for the fishery enterprises that meet applicable requirements prescribed by the Minister; and
- (k) perform such other functions as may be necessary or expedient for food safety conditions of fish products in accordance with this Act.

(3) The Department of Marine Resources may establish and operate a laboratory to support the Competent Authority in exercising its functions.

(4) The Competent Authority shall specify hygienic conditions for—

- (a) combating parasites in fish and fish products;
- (b) staff working in fish processing establishments;
- (c) fresh fish products;
- (d) thawing of fish products; and
- (e) freezing of fish products.

(5) The Competent Authority shall, in collaboration with relevant Departments of the Government of Saint Christopher and Nevis, as appropriate, prescribe standards for hygienic and quality placements in the market, set and adopt minimum standards for safety and quality assurance and ensure that the standards are applied throughout the fishing industry.

(6) The Competent Authority may issue regulations prescribing conditions necessary for ensuring that consumers are supplied only with safe, wholesome and unadulterated fish and fish products including—

- (a) prescribing specifications for fish processing establishments, cold rooms, ice plants, fish transportation vehicles, boats and landing stations;
- (b) prescribing conditions for the activities of dealers of fish and fish products;
- (c) requiring fish processing establishments to prepare, implement and monitor quality management programmes;
- (d) the implementation of requirements, such as the Hazard Analysis and Critical Control Point (HACCP) and Codex Alimentarius systems, for export markets;
- (e) performing microbiological, chemical, and physical analyses on fish and fish products before they are released for human consumption;
- (f) certifying the quality of fish and fish products through issuance of a sanitary certificate before they are placed on the market;
- (g) prohibiting the sale of certain types of fish and fish products;
- (h) establishing a traceability system of fish and fish products at any stage from the source; and
- (i) prescribing the manner in which fish and fish products placed on the market shall be labelled.

#### **Collaboration on post harvest activities.**

**59.** (1) The Department of Marine Resources shall collaborate with Ministries responsible for health, commerce and industry, including the Ministries of Agriculture, Trade and Tourism, Health and Safety and Finance, and other relevant Government agencies to ensure regulation of the import, handling, sale, transport, storage, treatment, processing of fish, with the objective of promoting the value of fish and fish products and minimising or preventing risks to human health.

- (2) Regulations promulgated pursuant to subsection (1) may, *inter alia*—
- (a) require any person who imports fish or fish products to obtain a fish import licence and a business licence;
  - (b) require any person who operates a fish processing establishment to obtain a fish processing establishment licence for that establishment;
  - (c) require any person who transports fish for commercial purposes beyond the borders of a parish by road, rail or any other method, to obtain a fish transportation licence;
  - (d) require any person who sells or otherwise deals in fish, on either a retail or wholesale basis, other than cooked fish that is sold directly for final consumption, to obtain a business license and a food handlers' permit; and
  - (e) set out procedures for the grant of such licenses and the conditions to which they are to be subject.

**Fish trade and marketing.**

60. The Department of Marine Resources shall collaborate with the Competent Authority and Ministries responsible for commerce and industry, including the Ministries of Agriculture, Trade and Tourism, Health and Safety and Finance, other relevant Government agencies and the private sector, with the objective of ensuring hygienic fish trade, marketing and distribution of fish.

**Harmonisation of fish safety and quality standards.**

61. The Minister in consultation with, as appropriate, the Ministers responsible for agriculture, trade and tourism, health and safety and finance, may enter into arrangements or agreements with other States relating to shared fishery resources for the purpose of harmonisation of fish trade, marketing and safety and quality standards.

## PART 8

## REGISTRATION, CERTIFICATION AND LICENSING

**Registration, certification required.**

62. (1) No licence or authorisation shall be issued pursuant to this Act unless the licence applicant described in subsection (2) or as may be prescribed submits an application for registration to the Director containing such information as the Minister may require by Order in the *Gazette* or may prescribe, and the registration is accepted.

(2) The following licence applicants shall require registration pursuant to subsection (1), and shall ensure that all information is given in accordance with this Act and is kept up to date—

- (a) fishers who are nationals of Saint Christopher and Nevis;
- (b) such gear or mobile transceiver units as may be required by Order in the *Gazette* or prescribed;
- (c) commercial divers, who shall also be required to submit a certification from a professional diving organization;
- (d) vessels used for fishing or related activities, and as required any associated gear, including fish aggregating devices used in association with the vessel;
- (e) persons who operate fish processing facilities;
- (f) persons who operate aquaculture or an aquaculture facility; and
- (g) such other persons or items as may be required by Order in the *Gazette* or prescribed.

(3) Any person who does not provide information in accordance with this Act or keep it up to date commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 2 years, or to both.

**Licences, authorisations required.**

**63.** (1) No person shall engage in any of the following activities without a valid and applicable licence or authorisation issued in accordance with this Act—

- (a) fishing or using a fishing vessel for fishing or related activities in the fisheries waters, including diving for commercial fishing purposes, commercial sport fishing and recreational fishing;
- (b) using a Saint Christopher and Nevis fishing vessel for fishing or related activities in areas beyond the fisheries waters, including fishing on the high seas or in waters under the jurisdiction of another State;
- (c) operating fish and fish product processing establishment or storage facilities;
- (d) aquaculture;
- (e) the export or import of live fish or other fish products;
- (f) research into fisheries, fishery resources or related activities within the fisheries waters;
- (g) introduction into the fisheries waters of any genetically modified fish;
- (h) deployment, maintenance, monitoring and retrieval, of any fish aggregating device and associated electronic equipment or as appropriate fishing around such a device;
- (i) such activities as may be prescribed for exploration and exploitation of nonliving marine resources or otherwise in relation to the seabed and subsoil over which Saint Kitts and Nevis exercises jurisdiction or sovereign rights; and
- (j) such other activities as may be required by Order in the *Gazette* or other notification in accordance with this Act, in a Fisheries Management Plan or prescribed.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 5 years, or to both.

**Buying, selling, storage and processing of fish and fish products for export.**

**64.** (1) No person shall, for purposes of buying, selling, storage and processing of fish and fish products for export—

- (a) engage in any activity relating to fish processing for the purposes of export without a licence;
- (b) buy fish from an unlicensed storage facility or an unlicensed fish processing facility; or
- (c) buy or sell fish where there are reasonable grounds to believe that it has been caught as a result of illegal, unreported or unregulated fishing activities.

(2) Any person who contravenes subsection (1)(a) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 5 years, or to both.

(3) Any person who contravenes subsection (1)(b) or (c) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 2 years, or to both.

#### **Grant and renewal of licences and authorisations.**

65. (1) The Director may grant or renew licences and authorisations on the recommendation of the Licensing Committee pursuant to this Act, and as may be required under any applicable Fisheries Management Plan, fisheries management agreement, international agreement, international conservation and management measure or other agreement or arrangement entered into by the Minister in accordance with section 7.

(2) The Director shall, in granting or renewing a licence or authorisation under subsection (1), act in accordance with such procedures, guidelines and transparent and accountable standards as may be required or prescribed under this Act.

(3) The Director shall, after granting and issuing a licence or authorisation, promptly inform all relevant enforcement authorities.

(4) Where the Director declines to grant or renew a licence or authorisation, he or she shall state in writing reasons for the decision, and promptly transmit them to the applicant.

(5) The Director shall not grant or renew a licence or authorisation if the vessel or person subject to the licence has been found not to be compliant with this Act and has not fully satisfied a relevant judgement or determination.

(6) Where the Director does not notify the applicant of a decision to grant or renew a licence or authorisation within 60 days of receipt of the application, the application shall be deemed to have been denied and the applicant shall have the right to appeal the decision under section 12.

#### **Standards for approval of licences and authorisations.**

66. In granting or renewing licences and authorisations under this Act, the Licensing Committee shall, in making its recommendation to the Director, take into account the extent to which the relevant State, operator, owner or other relevant person, or a vessel, as appropriate, has—

- (a) complied with this Act and other relevant legislation of Saint Christopher and Nevis, and all applicable licensing terms and conditions, Fisheries Management Plans, Access Agreements and international conservation and management measures;
- (b) complied with all relevant national requirements for seaworthiness and safety;
- (c) provided all required data and information;
- (d) provided all vessel attributes promptly and accurately, including through any applicable observer and vessel monitoring system requirements;
- (e) complied with any applicable registration requirements;
- (f) complied with other applicable sub-regional, regional and international obligations, and such other standards as may be approved by the Minister; and
- (f) the ability to comply with this Act.



**Grounds for denial or non-renewal of licences and authorisations.**

**67.** (1) A licence or authorisation shall not be granted or renewed where it is determined by the Licensing Committee or Director that—

- (a) the standards set out in section 67 have not been met; or
- (b) the applicant has not—
  - (i) complied with the terms of an existing or previous licence or any other requirement under this Act; and
  - (ii) submitted to due process under this Act in respect of the non-compliance or satisfied any applicable judgment or determination.

(2) If the information in an application for or renewal of a licence or authorisation is found to be false, misleading or inaccurate in any material sense, the Director may decline to grant or renew the licence.

(3) A licence or authorisation shall not be granted or renewed unless all fees payable under this Act are paid at the required time.

(4) The Director shall not grant or renew the licence for any foreign fishing vessel previously licensed for fishing on the high seas by a foreign State if that vessel undermined the effectiveness of international conservation and management measures and—

- (a) the foreign State suspended the previous licence, and the suspension has not expired; or
  - (b) the foreign State, within the last 3 years preceding the application for a licence under this section, withdrew the previous licence.
- (5) The restriction in subsection (4) does not apply if—
- (a) the ownership of the vessel has changed since the vessel undermined the effectiveness of international conservation and management measures; and
  - (b) the new owner has provided evidence to the Director that, in the opinion of the Director, demonstrates that the previous owner has no further legal, beneficial or financial interest in the vessel.

**Application for licences and authorisations.**

**68.** (1) Except where otherwise prescribed, an application for a licence or authorisation under this Act shall—

- (a) contain such information as may be prescribed and any additional, information that may be required by the Director;
- (b) be in such form as may be approved by the Director;
- (c) be accompanied by such application fee as may be prescribed or as may be required by the Director by Order in the *Gazette*; and
- (d) be made in accordance with such procedures and other requirements as may be approved by the Director.

(2) Where the Licensing Committee or Director determines that an application does not comply with subsection (1) or that the information submitted with the application is incomplete, false, misleading or inaccurate—

- (a) the Director may return the application to the applicant, stating the reasons for the determination and advising that a revised application may be submitted within a specified time period; or
- (b) the application may be denied.

**Terms and conditions of licences and authorisations.**

69. (1) A licence or authorisation granted under this Act—

- (a) shall be subject to the terms and conditions provided in this Act or prescribed, and to such other terms and conditions as may be specified by the Director from time to time;
- (b) may, upon reasonable notice determined by the Director, be subject to any amended or additional conditions consistent with the objective and principles of this Act as may be—
  - (i) prescribed; or
  - (ii) specified by the Director;
- (c) enters into force on the date specified in it;
- (d) remains in force until the date on which it expires in accordance with the period approved by the Director for the class of licence to which it belongs, unless sooner revoked or suspended in accordance with this Act.

(2) The holder of a licence or authorisation issued under this Act shall—

- (a) comply with the terms and conditions of the licence or authorisation;
- (b) comply with this Act, the laws of Saint Christopher and Nevis, any applicable Access Agreement and any applicable international conservation and management measure;
- (c) comply with all relevant provisions of the laws of Saint Christopher and Nevis relating to navigational standards, seaworthiness and the safety of vessels at sea; and
- (d) not engage in any activities under the scope of this Act, except in accordance with the licence or authorisation,

(3) The holder of a licence or authorisation issued in relation to a fishing vessel having a wheelhouse shall ensure that the original licence or authorisation, or a certified scanned electronic version or certified copy of it is on board and in the wheelhouse at all times during the period of validity and the master shall, upon request, produce it to an authorised officer or other person authorised under this Act.

(4) The holder of a licence or authorisation for any activity licensed under this Act, other than for fishing vessels, shall—

- (a) display a certified copy of the licence in its registered business office; and
- (b) upon request, produce the licence to an authorised officer or other person authorised under this Act to inspect it.

(5) A licence granted under this Act is not transferable, except as may be otherwise provided in a Fisheries Management Plan.

(6) Notwithstanding any other legislation of Saint Christopher and Nevis, mistake of fact is not a defence to a prosecution for an offence under this section.

(7) Any person who contravenes subsection (2), (3) or (4) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment for a period not exceeding 2 years, or to both.

(8) If a person is convicted of an offence under subsection (7), then, in addition to the penalties provided for in that subsection, the person's licence may be suspended or cancelled.

### **Reporting.**

**70.** (1) The operator of a licensed or authorised vessel, or of such other fishing vessels as may be prescribed or as the Director may require, shall maintain log books and make such reports relating to fishing or related activities at such times, containing such information and in such format as may be prescribed or the Director may require.

(2) The operator of a foreign fishing vessel, not licensed pursuant to this Act or an applicable Access Agreement and navigating through the fisheries waters shall report its name, International Radio Call Sign, flag registration, International Maritime Organization number assigned by its flag State, the date and time, position to 1 minute of arc, complement, intended activity, and catch on board, to the Director or his nominee electronically or manually, upon entry into and departure from the fisheries waters and at such other times as the Minister may require by Order in the *Gazette* or as may be prescribed.

(3) Other reports in respect of any activity under the scope of this Act may be prescribed or required by the Director.

(4) Any person who fails to provide a report as required under subsection (1), (2) or (3) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 3 years, or to both.

### **Fees, charges or levies.**

**71.** A licence or authorisation granted or renewed under this Act shall be subject to payment of—

- (a) an application fee;
- (b) an issuing fee, renewal fee or periodic fee as may be prescribed, or as may be required by the Director, for that class of licence;
- (c) any fee as may be prescribed, or as may be required by the Director, for that class of licence or authorisation; and
- (d) such other fees, charges or levies as are set out in this Act, or as may be prescribed or required by the Minister by Order in the *Gazette*.

### **Suspension or cancellation of a licence or authorisation.**

**72.** (1) The Director may suspend for a specified period of time or cancel a licence or authorisation on the recommendation of the Licensing Committee, in accordance with such procedures as may be prescribed, for any of the following reasons—

- (a) the holder has contravened—

- (i) this Act or the terms and conditions specified in the licence or authorisation;
  - (ii) any applicable Fisheries Management Plan, Access Agreement, international conservation and management measure or if an international agreement so requires;
- (b) the holder has not submitted to the required legal or administrative process, discharged an applicable fine or penalty or complied with the requirements of an applicable determination;
- (c) the Director, having regard to the nature and seriousness of the contravention, considers it appropriate to suspend or cancel the licence;
- (d) another State suspends or cancels the licence of a Saint Christopher and Nevis fishing vessel that has been issued a licence or authorisation to fish in that State's waters;
- (e) there has been a change in circumstances affecting the eligibility criteria required for the licence;
- (f) there has been a material change since the grant of the licence under such conditions as may be prescribed or the Director may determine;
- (f) it is necessary to do so to ensure the sustainable use of the fisheries resource or to implement any conservation and management measures;
- (g) the seaworthiness and safety standards required under section 67 (b) are not met at all times;
- (h) information included in the application for the grant or renewal of the licence is found to be false, misleading or inaccurate; or
- (i) for such other reasons as may be prescribed.
- (2) The Director shall suspend or cancel a licence or authorisation, in accordance with such procedures as may be prescribed, where—
- (a) this Act, or any applicable Fisheries Management Plan, Access Agreement or international conservation and management measure so requires; or
  - (b) in the case of a foreign fishing vessel, the licence issued by the flag State has been suspended or revoked.
- (3) The suspension or cancellation of any licence or authorisation shall be promptly communicated by the Director to the licence holder by way of a written notice.
- (4) No person whose licence or authorisation is suspended or cancelled under subsection (1) or (2) is entitled to the refund of any fee, levy, or other charge paid in respect of the licence.
- (5) Notwithstanding subsection (4), a pro rata refund, based on the duration of the suspension, shall be made in respect of a licence or authorisation suspended or cancelled under subsection (1)(f).
- (6) Any person who engages in any activity for which the licence or authorisation was granted after receiving notice of suspension or cancellation pursuant to this section commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 5 years, or to both.

**Appeal from a decision to suspend or cancel a licence or authorisation.**

73. A person may appeal against a decision made by the Director in accordance with such procedures that may be prescribed if—

- (a) the person submitted an application for the grant or renewal of a licence and the Director refused the application or is deemed to have refused the application; or
- (b) the person held a licence that was suspended or cancelled by the Director.

## PART 9

## REQUIREMENTS FOR FISHING AND OTHER ACTIVITIES

**Compliance with requirements and terms of licence or authorisation.**

74. (1) No person shall, except in accordance with a valid and applicable licence or authorisation granted under this Act—

- (a) on his or her own account or in any other capacity, engage in any activity contrary to section 64 (1);
- (b) cause or permit a person acting on his or her behalf to engage in any activity; or
- (c) use or permit a vessel to engage in fishing or a related activity,

that is of a kind or type, or at a time, or in a place or manner, for which a licence or authorisation is required under this Act.

(2) For the purposes of this section, where a vessel is used in the commission of an offence, the operator, master and charterer of the vessel shall be deemed each to have committed the offence.

(3) Notwithstanding any other legislation of Saint Christopher and Nevis, mistake of fact is not a defence to a prosecution for an offence under this section.

(4) Any person who acts or omits to act otherwise than under the authority of any licence in contravention of subsection (1) commits an offence and on conviction, is liable to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 10 years, or to both, except that a person cannot be charged with or convicted of the same offence under both section 64(1) and subsection (1)(a) of this section.

**Gear stowage and reporting.**

75. (1) The operator of a—

- (a) fishing vessel in any place in the fisheries waters where it is not licensed for fishing or related activities; or
- (b) Saint Christopher and Nevis fishing vessel when navigating in areas beyond fisheries waters where it has not been authorised for fishing or related activities pursuant to this Act,

shall ensure that all gear on board is at all times stowed or secured in such a manner that it is not readily available for fishing while the vessel remains unlicensed or unauthorised to engage in fishing or related activities in such area.

(2) The Director shall work cooperatively with other agencies in the implementation of subsection (1) and may, in consultation with such agencies, issue notices for the purpose of this section.

(3) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 3 years, or to both.

### **Requirements for Saint Christopher and Nevis fishing vessels in areas beyond national jurisdiction.**

76. (1) No person shall use a Saint Christopher and Nevis fishing vessel—

- (a) in areas under the national jurisdiction of other States except in accordance with the laws of that State; or
- (b) to engage in any activity on the high seas or in areas of national jurisdiction of other States that—
  - (i) does not comply with an applicable Access Agreement; or
  - (ii) undermines the effectiveness of international conservation and management measures in an area to which such measures apply.

(2) All Saint Christopher and Nevis nationals and the operators of Saint Christopher and Nevis fishing vessels operating in areas beyond national jurisdiction shall comply with—

- (a) applicable international conservation and management measures; and
- (b) the laws of other States, when in areas under the jurisdiction of such States.

(3) Where any Saint Christopher and Nevis fishing vessel is used in contravention of subsection (1) or (2), the operator of such vessel commits an offence, and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 5 years, or to both.

(4) Where any Saint Christopher and Nevis national contravenes subsection (2) he or she commits an offence, and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 5 years, or to both.

### **Requirements for import and export of live fish.**

77. (1) Prior to issuing a licence for the import or export of live fish, the Director may require a risk assessment to be carried out in accordance with such requirements as may be prescribed or approved by the Minister—

- (a) in the case of import, of the possible effects of the possible release of such fish into the wild;
- (b) in the case of export, of the potential impact of the export of live fish on any Saint Christopher and Nevis fishery; and
- (c) in any case, on any matter which may be required by the Director.

(2) The licence applicant shall bear the full costs of the risk assessment required under subsection (1), and any quarantine which may be necessary for the import or export of live fish.

(3) An assessment under subsection (1) shall be carried out by a qualified and independent person approved by the Director.

(4) No licence shall be granted for the import of live fish unless the applicant furnishes a certificate of health from the exporting country.

(5) The Director shall not issue a licence for the import or export of live fish unless all requirements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora adopted in Washington on 3 March 1973 are fully met in relation to the import or export.

(6) Any person who exports or imports live fish without a valid and applicable licence commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 1 year, or to both.

#### **Transshipment at sea.**

**78.** (1) No person shall engage in transshipment activities at sea in the fisheries waters, and in addition in respect of any Saint Christopher and Nevis national or fishing vessel, in areas beyond national jurisdiction, except in accordance with an authorisation required under section 76.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 3 years, or to both.

#### **Requirements for Transshipment.**

**79.** (1) The operator of a fishing vessel intending to engage in, or engaging in transshipment activities shall comply with such requirements as may be prescribed or required by Order in the *Gazette*.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule.

#### **Requirements for fish and fish products processing and storage facilities.**

**80.** (1) The operator of a fish and fish product processing and storage facility shall—

- (a) comply with all relevant health, sanitation and environmental laws and standards of Saint Christopher and Nevis legislation; and
- (b) not accept any fish for processing or storage that has been identified as caught during illegal, unreported or unregulated fishing activities or was carried by an IUU listed vessel.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 3 years, or to both.

## PART 10

## MONITORING, CONTROL AND SURVEILLANCE

## Division 1

*Appointment and powers of authorised officers***Interpretation of Part 10.**

**81.** In this Part, unless the contrary intention appears—

- (a) “authorised person” shall have the meaning given in section 2; and
- (b) “vessel” includes vehicle and aircraft, and “operator” includes the driver of a vehicle and pilot of an aircraft.

**Appointment of authorised persons.**

**82.** (1) There shall be appointed authorised persons, including authorised officers, inspectors and observers for carrying out functions relating to monitoring, control surveillance and enforcement in accordance with the objective, principles and provisions of this Act.

(2) Authorised officers or person may be appointed—

- (a) in accordance with the Constitution, in the case of public officers; or
- (b) otherwise by the Minister in writing,

for the purpose of administering, monitoring and enforcing this Act and such other relevant laws and measures within and beyond areas of fisheries waters that fall within the scope of this Act, any applicable international agreement or international conservation and management measure.

(3) Every authorised officer or person of another State exercising duties within fisheries waters pursuant to an agreement or arrangement to which Saint Christopher and Nevis is a party must be appointed in accordance with subsection (1) and shall comply with this Act, the laws of Saint Christopher and Nevis and the instructions of the Director.

(4) Any public service officer who is an officer of the Department of Marine Resources, Coast Guard, Customs or Police acting within the limits of his or her authority is deemed to be an authorised officer *ex officio* for the purposes of this Act.

(5) The Minister may, on the recommendation of the Director, by Order in the *Gazette*—

- (a) specify the members or class of members of the Coast Guard, Customs Office and Police Force included in the definition of “authorised officer”; and
- (b) limit the performance or exercise of the powers and functions of any authorised officer to a specific area or period of time.

(6) The Minister shall ensure that any person appointed as an authorised officer or person has the training or experience necessary to discharge his or her functions and responsibilities pursuant to this Act.



**Authority and general powers and duties of authorised officers.**

**83.** (1) An authorised officer may do such acts and things and give such directives as are reasonably necessary for the purposes of performing or exercising his or her functions, powers and duties under this Act.

(2) An authorised officer may use such force as is reasonably necessary to exercise his or her powers under this Act.

(3) An authorised officer may, in circumstances where the need for assistance in enforcing this Act is immediate and overwhelming, require any person to assist him or her to bring a vessel to a place in—

(a) Saint Christopher and Nevis in accordance with this Act; or

(b) another State where permission has been given by the State,

and that person is deemed to be an authorised officer for the purposes for which, and time during which, he or she is required to act.

(4) Where an authorised officer is required to undertake duties in areas beyond fisheries waters, unless provided otherwise in an international agreement, the provisions of this Act are applicable as if the duties were performed within the fisheries waters.

(5) An authorised officer shall carry out his or her duties in accordance with this Act and shall not—

(a) accept a bribe;

(b) withhold evidence; or

(c) act inconsistently with the standards required in subsections (1), (2) or (3).

(6) Any person who contravenes subsection (5) (a), (b) or (c) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 3 years, or to both.

**Identification of authorised officers.**

**84.** (1) An authorised officer exercising any power conferred by this Act shall, upon request, identify himself or herself and produce evidence that he or she is an authorised officer.

(2) The production of an identification document issued to an authorised officer shall, unless the contrary is proved, be sufficient authority for the authorised officer to do anything which he or she is authorised by this Act to do.

**Powers of entry and search.**

**85.** (1) An authorised officer may, for any purpose falling within the scope of this Act, without a warrant at any reasonable time—

(a) stop, enter, board, stay on board, examine and search any vessel to which this Act or any international agreement applies, including a Saint Christopher and Nevis fishing vessel inside or outside fisheries waters;

(b) enter, examine and search any premises or place—

- (i) in or on which he or she has reason to suspect may be found evidence of an offence against this Act; or
- (ii) that it is necessary or expedient to enter or search to ascertain whether an offence against this Act has or is being committed;
- (c) stop any person and examine any record, article, container, gear, apparatus, device or fish in the possession of that person; and
- (d) pass across any land or body of water,

and may examine and search any document, record, article, container, gear, equipment, apparatus, device, container, fish and contents of any kind found therein or thereon.

(2) An authorised officer may detain any person, vessel, parcel, package, record, document, article, gear, equipment, apparatus, device, container, fish or thing for such period as is reasonably necessary to enable the authorised officer to carry out an examination or search under this section.

(3) An authorised officer may, in respect of premises used exclusively as a dwelling house, only conduct searches and seizures in accordance with this section with a warrant issued by a Magistrate or Judge, and the provisions of this section shall apply with the necessary modifications.

(4) Notwithstanding subsection (3), an authorised officer may enter and conduct searches and seizures without a warrant in premises that are part of, or attached to, a dwelling house that the authorised officer reasonably suspects are used for activities falling within the scope of this Act.

#### **Power to take, detain, remove and secure information and evidence.**

**86.** (1) An authorised officer may, for purposes and activities falling within the scope of this Act—

- (a) inspect, take, detain and secure samples, documents, logbooks or other information, or copies thereof, from any vessel, premises, facilities or other place, other than premises used exclusively as a dwelling house, but including premises that are part of or attached to a dwelling house used for activities falling within the scope of this Act;
- (b) make or take copies of any record, and for this purpose may take possession of and remove any records from the place where they are kept, for such period of time as is reasonable in the circumstances;
- (c) if necessary, require a person to produce, or assist the authorised officer to produce in a useable form, information recorded or stored in a document;
- (d) require any person associated or apparently associated with a vessel, premises, facilities or other place or activity falling within the scope of this Act to provide such information as may be reasonably required for the monitoring or enforcement of this Act; and
- (e) otherwise remove and secure any item that may reasonably be considered to be evidence of an offence against this Act.

(2) Where an authorised officer is questioning a person for the purposes of subsection (1)(d), he or she may—

- (a) require the person being questioned to provide answers including any explanation or information concerning any vessel or any place or thing

or fishing method, gear, apparatus, record, document, article, device, or thing relating to the taking, sale, purchase, or possession of any fish; and

- (b) require that person or any other person to produce any permit, authority, approval, permission, licence, certificate or other document issued in respect of any vessel or person.

(3) Nothing in subsection (1) or (2) shall be construed so as to require any person to answer any question that may incriminate that person.

(4) Any person who does not comply with the requirements of the authorised officer pursuant to subsection (2) without reasonable grounds commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 2 years, or to both.

#### **Power of arrest.**

**87.** (1) An authorised officer may, if he or she believes on reasonable grounds that a person is committing or has committed an offence against this Act, or if a person assaults him or her or any other authorised officer or observer while exercising his or her powers or duties under this Act, or offers a bribe to an authorised officer or observer—

- (a) order that person to immediately cease and desist;
- (b) request that person to supply to the authorised officer that person's name, date of birth, residential address and occupation and may request that person to supply such verification of those details as it is reasonable in the circumstances to require; and
- (c) arrest that person without warrant.

(2) Where an authorised officer arrests a person under subsection (1), the authorised officer shall cause the person to be delivered into the custody of a member of Saint Christopher and Nevis Police Force as soon as practicable and that person shall thereafter be dealt with in accordance with the law, except that the duties relating to the laying and filing of an information shall be carried out by the arresting authorised officer and not by a member of the Police Force.

#### **Power to give direction.**

**88.** Where an authorised officer reasonably believes that a vessel is being or has been used in contravention of this Act, a Fisheries Management Plan, an international conservation and management measure or any agreement entered into under this Act, the officer—

- (a) may take the vessel as soon as reasonably practicable to the nearest, available port in Saint Christopher and Nevis or a port in such other State as may be agreed between the master, the authorised officer and such other State;
- (b) may remain in control of the vessel at such port and make such investigations for such period as is reasonably necessary to determine whether there is sufficient evidence of IUU fishing or related activities; and
- (c) shall permit the master to depart from the port, within 72 hours after arrival in port, where, after investigation, there is not sufficient evidence to prove that the master or vessel has contravened the Act.

**Seizure of vessels, aircraft and items.**

- 89.** (1) For the purposes of this section—
- (a) a vessel's equipment, gear, furniture, appurtenances, stores, and cargo are deemed to form part of the vessel; and
- (2) An authorised officer may seize—
- (a) any vessel or other conveyance, fishing gear, implement, appliance, material, container, goods, equipment or thing which the authorised officer believes on reasonable grounds is being, has been or is intended to be used in the commission of an offence against this Act;
  - (b) any fish or fish product (and any other fish with which such fish are intermixed) that the authorised officer believes on reasonable grounds are being or have been taken, killed, transported, bought or sold or have been found in the possession of any person in contravention of this Act;
  - (c) any article, record or thing that the authorised officer believes on reasonable grounds may provide evidence of an offence against this Act;
  - (d) any passport and seaman's record book—
    - (i) of the master and crew of a vessel directed to return to and remain in port pursuant to this Act until the vessel is permitted to depart;
    - (ii) of any person arrested, until that person is brought before a court; or
    - (iii) pursuant to any order of the Court; and
  - (e) any other item which the authorised officer has reasonable grounds to believe—
    - (i) has been or is being used to commit an offence against this Act;
    - (ii) has been forfeited under this Act; or
    - (iii) has been unlawfully removed from custody under this Act.
- (3) An authorised officer shall deliver anything seized under subsection (2) into such custody as the Director may identify.
- (4) A written notice of the seizure shall be given to the person from whom any article or thing was seized or to any other person whom the authorised officer believes is the owner or person otherwise entitled to possession of the article or thing seized, and the grounds for such seizure shall be stated in the notice.

**Removal of parts from seized vessels.**

- 90.** (1) An authorised officer may remove any part from the vessel seized pursuant to this Act for the purpose of immobilising that vessel.
- (2) Any part or parts removed under subsection (1) shall be kept safely and returned to the vessel upon its release.
- (3) No person, otherwise than acting in accordance with a written direction from the Director, shall—
- (a) possess or arrange to obtain any part or parts removed under subsection (1);

- (b) possess or arrange to obtain or make any replacement or substitute part or parts for those removed under subsection (1); or
- (c) fit or attempt to fit any part or parts or any replacement or substitute part or parts to a vessel immobilised pursuant to this Act.

(4) Any person who contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 6 months, or to both.

## Division 2

### *Appointment, functions and duties of observers and fish quality control inspectors*

#### **Observer programme.**

**91.** (1) The Director may establish an observer programme, including for purposes of cooperation with an observer programme established under a fisheries management agreement or by a relevant regional fisheries management organizations for the purpose of collecting, recording and reporting reliable and accurate information for scientific, conservation, management and compliance purposes including—

- (a) the species, quantity, size, age and condition of fish taken;
- (b) the methods by which, the areas in which, and the depths at which, fish are taken;
- (c) the effects of fishing methods on fish and the environment;
- (d) all aspects of the operation of any vessel;
- (e) processing, transportation, transshipment, storage or disposal of any fish or fish products;
- (f) monitoring the implementation of management measures and applicable international conservation and management measures; and
- (g) any other matter that may assist the Director to obtain, analyse or verify information for fisheries scientific, conservation, management and compliance purposes.

(2) Observers may be deployed, as may be directed by the Director in accordance with this Act, any applicable international agreement or international conservation and management measure, on any vessel used for fishing, transshipment, transportation or landing of fish within and beyond the fisheries waters or any other use as may fall within the scope of this Act.

(3) The Director may require as a condition of a licence issued under this Act that the operator of a fishing vessel shall comply with any requirement that may be imposed pursuant to the observer programme.

(4) An operator who does not comply with any requirements given by the Director in accordance with subsection (3) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule.

(5) Where an operator is convicted of an offence under subsection (4), the applicable licence in respect of the vessel or operator shall be cancelled and no

further licence shall be issued for at least 1 year from the date of commission of the offence.

#### **Appointment of observers.**

**92.** (1) The Director may, in accordance with such standards and procedures as may be prescribed or approved by the Minister, appoint in writing—

- (a) observers for the purposes of the observer programme established under section 91(1);
- (b) observers of other States for the purposes of implementing an agreement or arrangement to which Saint Christopher and Nevis is a party, including a fisheries management agreement, or any international conservation and management measure.

(2) Observers of other States exercising duties within fisheries waters pursuant to an agreement or arrangement to which Saint Christopher and Nevis is a party must be appointed in accordance with subsection (1) and shall comply with this Act, the laws of Saint Christopher and Nevis and the instructions of the Director.

(3) Observers of other States exercising duties on a Saint Christopher and Nevis fishing vessel on the high seas and pursuant to a fisheries management agreement or international conservation and management measure shall act consistently with such agreement or measure.

(4) An observer shall, upon request, identify himself or herself and produce evidence that he or she is an observer.

(5) An observer of another State who does not comply with subsection (2) or (3), or any observer who does not comply with subsection (4), the legislation of Saint Christopher and Nevis and the instructions of the Director commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule.

#### **Application of Act to observers beyond fisheries waters.**

**93.** (1) An observer who performs duties under this Act in areas beyond the fisheries waters or duties under any international agreement, fisheries management agreement or international conservation and management measure is, unless the contrary is provided, subject to this Act, and every operator, crew member and other relevant person shall meet their responsibilities and duties under this Act to such observer.

(2) Any observer having Saint Christopher and Nevis nationality who is performing his or her duties pursuant to this Act in the jurisdiction of any other State shall comply with the laws of that jurisdiction.

(3) An observer of Saint Christopher and Nevis who does not comply with subsection (2) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule.

#### **Duty of operators, licence holders, and crew members to assist observers.**

**94.** (1) The licence holder, operator, master and each crew member of any vessel on which an observer is placed shall allow and assist the observer, in the performance of his or her duties, to—

- (a) board such vessel at such time and place as the Director may require;

- (b) receive and transmit messages and communicate with the shore and other vessels by means of the vessel's communications equipment;
  - (c) take photographs of the fishing operations, including fish, gear, equipment, documents, charts and records, and remove from the vessel such photographs or film as the observer may have taken or used on board the vessel;
  - (d) gather such other information relating to fisheries as may be required for purposes of carrying out the objectives of this Act; and
  - (e) disembark at such time and place as the Director may require or in accordance with an applicable Access Agreement, fisheries management agreement or international conservation and management measure, provided that such disembarkation is in accordance with the safe operation of the vessel.
- (2) Subsection (1) shall apply—
- (a) when the vessel is in the fisheries waters or at any place where fish taken from the fisheries waters is unloaded or transhipped as required by or authorised under the applicable licence, Access Agreement or international conservation and management measure; and
  - (b) in the case of a Saint Christopher and Nevis fishing vessel operating under a licence to fish in the high seas in areas subject to international conservation and management measures, when the vessel is on the high seas—
    - (i) in an area subject to such measures; or
    - (ii) otherwise in accordance with such measures or the applicable licence.

(3) An operator or a crew member of, or a licence holder in respect of, any vessel on which an observer is placed in accordance with this Act commits an offence if he or she contravenes subsection (1) and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule.

#### **Conditions for observers.**

**95.** (1) The operator and licence holder in respect of any vessel on which an observer is placed shall provide free of charge to that observer full board, accommodation, work space and access to any cooking and toilet facilities and amenities, at officer level or at a similar standard approved in writing by the Director.

(2) An operator or licence holder of a vessel who contravenes subsection (1) commits an offence and is liable, on conviction to a fine not exceeding the maximum amount described in the Second Schedule, and in addition the applicable licence may be suspended or cancelled.

#### **Observer costs.**

**96.** (1) The Director may, in order to recover the costs of operating the observer programme, impose fees on operators of vessels or licence holders in respect of all or any class or category of vessels licensed under this Act or licensed vessels in any fishery at such level and in such manner as may be prescribed or the Director may require, in accordance with any relevant policy which may be adopted by the Minister.

(2) If a licence holder does not pay the fees imposed pursuant to subsection (1) within the time specified in the licence, or if no time is specified in the licence within a reasonable period of time as specified by the Director in writing, the Director may cancel the licence holder's licence.

#### **Notice of intention to place observer.**

97. (1) Before placing any observer on a vessel, the Director shall give the operator or licence holder reasonable notice of his or her intention to place an observer on the vessel.

(2) The operator of a licensed vessel shall, for purposes of observer placement and deployment—

- (a) notify the Director at the beginning of each licensing period of any port or ports where it intends to base operations, and if placement is not possible at such port or ports be responsible to the Director for all and any extra costs incurred in observer placement; and
- (b) notify the Director and such other person who may have responsibility for administration of a relevant observer programme pursuant to an international agreement, fisheries management agreement or international conservation and management measure of the intended time of entry into and subsequent departure from port at such reasonable time prior to such entry as the Director or such other person may direct.

(3) Any person who fails to notify the Director or other person as required by subsection (2) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule, and in addition the applicable licence may be suspended or cancelled.

#### **Appointment of fish quality control inspectors.**

98. The Director may, in accordance with such standards and procedures as the Minister may approve, appoint by Order in the *Gazette* fisheries inspectors for the purpose of inspecting and monitoring activities which fall within the scope of this Act.

#### **Authority and power of fish quality control inspectors.**

99. (1) Each inspector shall have the authority in relation to any place, facility, and surroundings or vessel falling within the scope of this Act which has been, is being, or is intended to be used for the commercial storage or processing of fish or fish products to—

- (a) enter it;
- (b) require any person associated or apparently associated with it to provide such information as may be reasonably required for the inspection and certification of fish or fish products;
- (c) examine any plan, record or other document that is found in or on, or that is provided in respect of it, that he or she has reason to believe has been used, is being used or is intended to be used for or in relation to fishing, or the storage or preparation of fish or fish products;



- (d) inspect and take reasonable samples as may be required for scientific purposes, documents and records, or copies of any documents or records, and other information from it; and
- (e) require the seizure, segregation or disposal of any fish or fish product that he or she has reason to believe does not conform to standards for fish quality control under this Act.

(2) Any person who does not comply with the requirements of a fish quality control inspector under subsection (1)(e) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 2 years, or to both.

### Division 3

#### *Protection and obstruction of authorised persons*

##### **Definition of authorised persons.**

**100.** For the purposes of this Division, “authorised person” includes authorised officers, observers and fish quality control inspectors appointed in accordance with this Act.

##### **Protection of authorised persons from liability.**

**101.** (1) The Department, authorised officers, observers, and officers, employees and persons acting under the authority of the Department, including persons with delegated authority and any persons assisting an authorised officer pursuant to section 66 (3), who act or omit to act while performing or exercising functions, powers or duties under this Act or another legislative authority are not subject to any action, liability, claim or demand for anything done or omitted to be done in good faith, whether negligently or not, in the performance or exercise, or purported performance or exercise, of the function, power, or duty under this Act or another legislative authority.

(2) Where a vessel is being brought to a port in accordance with this Act—

- (a) if required to remain in control of the vessel, the master shall be responsible for the safety of the vessel and of each person on board until the vessel arrives at the designated place; and
- (b) no claim may be made against an authorised person in respect of any death, injury, loss or damage that occurs while the vessel is being brought to such place.

(3) The State is not liable for any act or omission of an authorised person or person assisting an authorised officer, unless such person would incur liability for the act or omission.

##### **Obstruction of authorised persons.**

**102.** (1) For the purposes of this section, “fails” includes any effort which does not result in meeting the specified requirement.

(2) A person commits an offence who—

- (a) is the operator or a crew member of a vessel, and fails or refuses to allow or assist an authorised person—
  - (i) to safely board the vessel;
  - (ii) to have full access to and use of such facilities, gear and equipment on board as the authorised person may determine is necessary to perform or exercise his or her functions, powers or duties, including the bridge, fish and fish products on board, fishing gear and areas which may be used to hold, process, weigh or store fish;
  - (iii) to have full access to the vessel's records including its logbook, charts and documentation and other information relating to fishing, whether required to be carried and maintained under this Act or otherwise, for purposes of performing or exercising his or her functions, powers or duties under this Act, including records inspection and copying;
  - (iv) to have access to navigational and communications equipment;
  - (v) to take, measure, store on or remove from the vessel and retain, such reasonable samples or whole specimens of any fish as may be required for scientific purposes; and
  - (vi) to safely disembark from the vessel;
- (b) fails or refuses to allow, obstructs or hinders an audit, inspection, examination or search that is authorised under this Act;
- (c) fails or refuses to facilitate by all reasonable means an authorised person's entry into and any inspection of—
  - (i) any premises, facility or export facility, including storage areas and suspected storage areas, facilities or locations;
  - (ii) any fish or fish products, fishing gear, equipment or records;
- (d) fails or refuses to comply with a lawful instruction or direction given by an authorised person;
- (e) denies a request made by an authorised person in the course of performing or exercising his or her functions, powers or duties under this Act, including a request for access to records, documents, areas, gear and equipment and a request that equipment be turned on;
- (f) fails or refuses to give the person's birth name, date of birth and place of abode to an authorised person, when lawfully required to do so;
- (g) when lawfully required to give information to an authorised person, gives information which is false, incorrect or misleading in any material respect;
- (h) resists lawful arrest for any act prohibited by this Act;
- (i) interferes with, delays or prevents by any means, the apprehension or arrest of another person by an authorised person, if the authorised person has reasonable grounds to believe that the person has committed an offence under this Act;
- (j) fails or refuses—

- (i) to allow an authorised person to carry out his or her duties safely;  
or
  - (ii) to take all reasonable measures to ensure the safety of an authorised person as appropriate in the performance of his or her functions or duties;
  - (k) impersonates an authorised person or falsely represents himself or herself to be an authorised officer or a person lawfully acting under the Director's instructions or in aid of an authorised officer;
  - (l) impersonates or falsely represents himself or herself to be the master or an officer, or not to be the master or an officer, of a fishing vessel;
  - (m) if requested by an authorised officer, fails to sail a seized vessel to a place or port place designated by the authorised officer and fails to ensure the safety of all those on board;
  - (n) bribes or intentionally attempts to bribe an authorised person;
  - (o) interferes with an authorised person in the performance of his or her duties;
  - (p) in any other way obstructs or hinders an authorised person in the performance or exercise of his or her functions, powers or duties under this Act;
  - (q) is in breach of any other duty to an authorised person as required under this Act;
  - (r) obstructs, resists, hides, delays, refuses boarding or other access to, intimidates or kidnaps—
    - (i) an authorised person who is carrying out his or her duties or exercising his or her powers under this Act or as a consequence of his or her having done so; or
    - (ii) any person lawfully acting under an authorised officer's instructions or in his or her aid or as a consequence of his or her having done so, or aids, incites, or encourages another person to do so;
  - (s) assaults, uses abusive or threatening language or insulting gestures or behaves in a threatening or insulting manner towards an authorised person who is performing or exercising his or her functions, powers or duties under this Act or as a consequence of his or her having done so, or towards any person lawfully acting under the authorised officer's instructions or in his or her aid, or aids, incites or encourages another person to do so.
- (3) Any person who contravenes—
- (a) any of subsections (2)(a) to (q), except for subsection (2)(i), is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule; or
  - (b) subsection (2)(i), (r) or (s) is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule.
- (4) It shall be a defence to any prosecution under subsection (2)(a)(i) if it is proved that compliance with the requirement for safe boarding of the relevant vessel

would have placed the safety of the vessel or the lives of its crew in imminent and overwhelming danger for reasons unrelated to such boarding.

#### Division 4

##### *Requirements for vessel monitoring systems and use of ports*

##### **Vessel monitoring systems.**

**103.** (1) The Director may establish and operate vessel monitoring systems for the purpose of monitoring the compliance of fishing vessels with this Act.

(2) The Director shall require as a condition of any licence issued for the purpose of fishing, and may require for other purposes within the scope of this Act, that the operator of the licensed vessel supply, install, maintain and operate, in accordance with any specifications as may be prescribed or as may be required under an international agreement—

- (a) a specified mobile transceiver unit (MTU); or
- (b) another device that forms an integral part of a vessel monitoring system; or
- (c) both.

(3) If a mobile transceiver unit stops working, the operator of the licensed vessel on which it is installed shall immediately—

- (a) notify the Director that the mobile transceiver unit has stopped working; and
- (b) either—
  - (i) cause the vessel to cease fishing and travel to the nearest suitable port within Saint Christopher and Nevis or such other port as is approved by the Director; or
  - (ii) submit manual reports to the Director, every 4 hours, or at such intervals as the Director requires, giving the vessel's name, call sign, position expressed in latitude and longitude to the minutes of arc, and the date and time of the report.

(4) An operator who fails to comply with subsection (3) or a condition required under subsection (2) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 2 years, or to both.

(5) Any person who, without lawful excuse, renders inoperative or otherwise interferes with a mobile transceiver unit so that it does not operate accurately or in accordance with any licence conditions commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 3 years, or to both.

(6) Any person who divulges information from a vessel monitoring system to any other person not authorised to receive such information pursuant to this Act or international agreement commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 1 year, or to both.

**Entry and use of designated ports.**

**104.** (1) No foreign fishing vessel shall enter or use a port in Saint Christopher and Nevis for landing, transshipping, packaging, or processing of fish or for other port services including, without limitation, refuelling and resupplying, maintenance and dry docking, unless—

- (a) the port is designated by the Minister by public notice for use by foreign fishing vessels;
- (b) the operator gives at least 48 hours' advance notice of his or her intention to enter or use the port, or such other advance notice as may be prescribed or as may be required by the Director;
- (c) the operator provides to the Director such information as may be prescribed or as may be required by the Director; or
- (d) the Director issues a written authorisation for entry into and use of the port; and
- (e) where the Director has authorised entry of the vessel into the port and the use of the port, the master of the vessel or the vessel's representative presents the Director's authorisation for entry of the vessel into the port to an authorised officer or other competent officer upon the vessel's arrival at port.

(2) The operator, master or charterer of a vessel that contravenes subsection (1), and any person who supplies or otherwise allows or assists the operator, master, charterer or vessel to contravene subsection (1) commits an offence and on conviction is liable to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 1 year, or to both.

**Vessel may be prohibited from entering port.**

**105.** (1) The Director shall not grant authorisation to a vessel seeking to enter a port under section 105 (1)(d) if he or she is satisfied that the vessel—

- (a) has engaged in illegal, unreported and unregulated fishing or fishing related activities in support of illegal, unreported and unregulated fishing; or
- (b) is an IUU listed vessel.

(2) Notwithstanding subsection (1), the Director may grant authorisation to a vessel referred to in that subsection to enter a port exclusively for the purpose of inspecting it and taking other appropriate actions in conformity with international law which are at least as effective as denial of port entry in preventing, deterring and eliminating illegal, unreported and unregulated fishing and fishing related activities in support of illegal, unreported and unregulated fishing.

**Denial of the use of port to a foreign fishing vessel.**

**106.** (1) The Director shall not issue an authorisation under section 105 (1)(d) for the use of a port in Saint Christopher and Nevis for purposes described in section 105(1) to a foreign fishing vessel that, has entered the port and shall revoke any such authorisation already issued under that section, and shall otherwise deny the use of port to a foreign fishing vessel that holds a valid and applicable licence for fishing or related activities in the fisheries waters, whether or not there has been an inspection of the vessel, if any of the following apply—

- (a) the vessel does not have a valid and applicable authorisation to engage in fishing or fishing related activities required by its flag State;
- (b) the vessel has not been granted a valid and applicable licence to engage in fishing or fishing related activities required by Saint Christopher and Nevis in respect of its fisheries waters;
- (c) the Director is satisfied that the fish on board was taken in contravention of the laws of any other State;
- (d) the flag State of the foreign fishing vessel does not confirm within a reasonable period of time, on the request of the Director, that the fish on board was taken in accordance with applicable requirements of a relevant regional fisheries management organisation; or
- (e) the Director is satisfied on reasonable grounds that the vessel was otherwise engaged in illegal, unreported or unregulated fishing or related activities in support of illegal, unreported or unregulated fishing, and is satisfied that the operator, master or charterer of the vessel cannot establish—
  - (i) that the vessel was operated in a manner consistent with relevant conservation and management measures; or
  - (ii) in the case of provision of personnel, fuel, gear and other supplies at sea, that the vessel that was provisioned was not at the time of provisioning a vessel that had engaged in illegal, unreported or unregulated fishing or an IUU listed vessel.

(2) Notwithstanding subsection (1), the Director shall not deny a vessel the use of port services if the operator, master or charterer of the vessel proves that such services are essential—

- (a) to the safety and health of the crew;
- (b) the safety of the vessel; or
- (c) where appropriate, for the scrapping of the vessel.

(3) Where, following an inspection, there are clear grounds for believing that a vessel has engaged in illegal, unreported and unregulated IUU fishing or fishing related activities in support of such fishing, the Director shall—

- (a) promptly notify the flag State and, as appropriate, relevant coastal States, regional fisheries management organisations and other international organizations, and the State of which the vessel's master is a national of the findings; and
- (b) deny the vessel the use of its port for purposes specified in section 105(1), if these actions have not already been taken in respect of the vessel.

(4) Where the use of a port for any purpose described in section 105(1) has been denied pursuant to subsection (1) or (2), the operator, master and charterer of a vessel that uses a port for such purposes, and any person who supplies or otherwise allows or assists the vessel to use the port for such purposes, commits an offence and on conviction is liable to a fine not exceeding the maximum amount described in the Second Schedule or to a term of imprisonment not exceeding 1 year, or to both.

**Inspection of foreign fishing vessels in port.**

**107.** (1) Authorised officers shall inspect foreign fishing vessels in a designated port area in accordance with such procedures as may be prescribed or as the Director may require.

(2) A report of the inspection of a vessel under this section shall promptly be provided to the Director in such form as may be prescribed or as the Director may require.

(3) The master of a vessel subject to inspection under this section shall give authorised officers all necessary assistance and information, and to present relevant material and documents or certified copies of any material or documents, as required.

**Requirements in relation to Saint Christopher and Nevis vessels in ports of other States.**

**108.** (1) The operator of each Saint Christopher and Nevis vessel shall—

- (a) cooperate fully with inspections carried out in the ports of other States in accordance with their laws and procedures; and
- (b) not land, tranship, package and process fish, and use other port services, in a port State identified by a relevant RFMO as not acting in accordance with, or in a manner consistent with, applicable international or regional instruments relating to port State measures.

(2) Where there are clear grounds to believe that a Saint Christopher and Nevis vessel has engaged in IUU fishing or fishing related activities in support of such fishing and is seeking entry to or is in the port of another State, the Director shall, as appropriate request such State to inspect the vessel or take other measures consistent with applicable international or regional instruments.

(3) Where, following port State inspection in the port of another State, there are clear grounds to believe that a Saint Christopher and Nevis vessel has engaged in IUU fishing or fishing related activities in support of such fishing, the Director shall cause the matter to be immediately and fully investigated and, upon sufficient evidence enforcement action to be taken without delay in accordance with this Act.

## PART 11

## DISPOSAL, RELEASE AND FORFEITURE OF SEIZED ITEMS

**Disposal of perishable seized items.**

**109.** (1) Subject to subsection (3), any perishable item, including fish and fish products, that has been seized or confiscated pursuant to this Act is subject to disposition by the Director, who may, after consultation with the Director of Public Prosecutions—

- (a) sell or authorise its sale;
- (b) otherwise dispose of the item at such time and place as the Director determines; or
- (c) destroy the item.

(2) The Director shall notify the owner or apparent owner of any perishable item seized at a reasonable time before selling the item in accordance with subsection (1), and such owner or his or her nominee may be present at the sale.

(3) Where the Director cannot ascertain the true ownership of an item at the time of seizure, he or she must make reasonable enquiries to ascertain the true owner, and if he or she has not ascertained the true owner within a reasonable time, taking into account the perishability of the item seized, the Director may sell, dispose of or destroy the item in accordance with subsection (1).

(4) A purchaser for valuable consideration of any item sold under this section shall derive good and unencumbered title in respect of that item.

(5) All items seized pursuant to this Act, and the proceeds from the sale of such items, shall be held in trust by the Director until—

- (a) the Director of Public Prosecutions decides not to lay any information or charge in respect of any alleged offence which relates to the seizure of the item;
- (b) the Court—
  - (i) has completed its proceedings in respect of a charge or information laid for an offence which relates to the seizure of the item; and
  - (ii) has issued an Order in relation to the proceeds of sale of the item.

(6) The decision whether or not to lay any information or charge in respect of an alleged offence in relation to any item seized under this Act shall be made as soon as reasonably practicable after the item is seized, taken possession of or detained.

(7) The Director or an authorised officer lawfully exercising any power under this Act is not liable for any spoilage or deterioration in the quality of any fish or other item seized, taken possession of or detained.

#### **Release of seized items upon bond or other security.**

**110.** (1) A person from whom any item was seized pursuant to this Act or the owner or person entitled to possession of such item may, within 60 days after the seizure, apply to the Court for the release of the item.

(2) Upon receipt of an application under subsection (1) relating to the seizure of a foreign fishing vessel, the Court shall order—

- (a) that the owner or operator of the vessel pay into Court a bond, surety or other security having regard to—
  - (i) the fair market value of the vessel and any items including fish and fish products on board;
  - (ii) the maximum fine that apply for the offences or alleged offences that led to the seizure of the foreign fishing vessel; and
  - (iii) the costs likely to be recovered by the prosecution if a conviction is entered; and
- (b) that the vessel to be released upon receipt of the bond, surety or other security, subject to such conditions as the Court sees fit,

unless the vessel is reasonably required as evidence in court proceedings or for any further investigation of offences under this Act.



(3) Upon receipt of an application under subsection (1) that does not relate to the seizure of a foreign fishing vessel, the Court may order—

- (a) that the owner or operator of the item pay into Court a bond, surety or other security having regard to—
  - (i) the fair market value of the item and, in the case of a vessel, any other items including fish and fish products on board the vessel;
  - (ii) the maximum fine that apply for the offences or alleged offences that led to the seizure of the item; and
  - (iii) the costs likely to be recovered by the prosecution if a conviction is entered; and
- (b) the item to be released upon receipt of the bond, surety or other security and subject to such conditions as the Court sees fit.

(4) In the event of an appeal from an order of forfeiture, the Court may, pending the final disposition of the appeal and of any retrial or rehearing on remand—

- (a) continue any bond, surety or other security deposited in accordance with subsection (2) or (3); or
- (b) require an additional bond, surety or other security to be deposited with it.

(5) Exoneration of any bond, surety or other security deposited in accordance with subsection (2) or (3) is conditional upon—

- (a) the return of the released item to the Court without any impairment of its value; or
- (b) final disposition of or discontinuation of proceedings under this Act and payment of any fines, penalties and other determination imposed by the Court.

(6) An item seized under this Act, or a bond, surety or other security paid under subsection (2) or (3) shall be held until any proceedings under this Act have been disposed of or discontinued and any fines, penalties and other determinations imposed have been paid.

(7) Where a bond, surety or other security has been paid under subsection (2) or (3) and the item has been released—

- (a) the sum paid in respect of the value of the vessel or property shall be forfeited from the bond, surety or other security;
- (b) any fine or penalty ordered upon the conviction of any person who committed an offence which led to the seizure of the item shall be paid from the bond, surety or other security; and
- (c) any order for costs against a person accused of committing an offence against this Act which led to the seizure of the item shall be applied against the bond, surety or other security.

**Failure to comply with the conditions of a bond or other security.**

**111.** Where a person to whom an item is released under section 110 (2) or (3) fails to comply with the conditions of the bond or security posted for release of that item—

- (a) the Director may direct the item to be re-seized at any time; or

- (b) the bond or security shall be automatically forfeited.

**Release of seized items.**

**112.** (1) Subject to subsection (2), the Director shall immediately release an item seized under section 89, or immediately release the proceeds from the sale of such item, to the person entitled to the item in accordance with the Proceeds of Crime Act, Cap, 4.28, and where—

- (a) the Director of Public Prosecutions decides not to lay an information or charge;
- (b) the persons charged with the offences that led to the forfeiture of the item have all been acquitted; or
- (c) all Court proceedings relating to offences which led to the seizure of the item have been finally disposed of without any order for forfeiture having been made in accordance with this Act.

(2) The Court may direct—

- (a) that the release of any item seized, or proceeds from the sale of the item under subsection (1), be contingent on payment of all fines, penalties orders for costs and other determinations imposed in respect of any offence; and
- (b) that failing the payment referred to in subsection (1) within the time allowed, the item, seized be sold and the balance of the proceeds of sale be returned to the owner, his or her nominee or the apparent owner in accordance with this Act, after deducting all fines, penalties, orders, costs and other determinations imposed and the costs for the sale.

(3) Notwithstanding anything in this section, where an authorised officer returns to the water at the time of seizure any fish seized pursuant to this Act that he or she believes to be alive, the authorised officer has no criminal liability, or civil liability to the person from whom the fish was seized, in the event of a decision being made not to lay an information or charge in respect of the fish, or of the person being acquitted of the charge.

**Forfeiture.**

**113.** Where a court convicts a person of an offence against this Act, it may order the forfeiture of any of the following—

- (a) any fish, fish product, non-living marine resource, vessel including its gear, furniture, accessories, stores, cargo and aircraft, gear, equipment, explosive or noxious substance or other item taken, used or otherwise involved in the commission of the offence;
- (b) where a vessel was used in the commission of the offence, any fish on board the vessel at the time of the offence;
- (c) where an export storage facility was used in the commission of the offence, any fish or fish product or item in the facility at the time of the offence;
- (d) where an aquaculture facility was used in the commission of the offence, any fish or fish product or item in the facility at the time of the offence;

- (e) where any fish has been sold under section 112, the proceeds of the sale of the fish.

**Disposal of forfeited item.**

**114.** (1) Any item or security forfeited under this Act becomes the property of the State.

(2) Where any fish or fish product which is subject to a ban imposed under this Act or any regulation or Order is seized and confiscated by an authorised officer, it shall be forfeited and become the property of the State.

(3) Any person who is aggrieved by a decision made by an authorised officer subject to subsection (2) may apply to a court for relief.

PART 12

JURISDICTION, PROCEDURE, FINES AND LIABILITIES

**Jurisdiction and standing.**

**115.** (1) Any act or omission committed in areas beyond the national jurisdiction of Saint Christopher and Nevis to which this Act applies which constitutes a contravention of this Act shall be dealt with and judicial proceedings taken as if such act or omission had taken place in Saint Christopher and Nevis within the jurisdiction of the High Court.

(2) Where an authorised person appointed under this Act is exercising any powers or performing duties conferred on him or her by this Act beyond the fisheries waters in connection with any act or omission of any person in contravention of this Act, that act or omission shall be deemed to have been committed within the jurisdiction of the High Court as described in subsection (1).

(3) Standing in any relevant court shall be afforded to any authorised person appointed or performing duties under this Act or designated under a relevant international agreement or international conservation and management measure to bring action against any person for any act or omission that—

- (a) occurs within the jurisdiction of the High Court as described in subsection (1);
- (b) is actionable under this Act or any other law of Saint Christopher and Nevis; or
- (c) is a violation of an Access Agreement, international agreement or international conservation and management measure pursuant to which the authorised person was authorised, notwithstanding the nationality or permanent residence of such authorised person.

**Procedure.**

**116.** (1) An offence against this Act shall be prosecuted before a court, except where summary administrative proceedings are taken in accordance with Part 13 of this Act.

(2) An authorised officer may lay an information and conduct prosecutions for fisheries offences, and the State may sue for and recover fees, levies and charges due and payable under this Act.

(3) The limitation on the laying of an information imposed under any Act shall not apply to an offence under this Act.

(4) Where the Director believes on reasonable grounds that there has been any violation of this Act and requests in writing the Director of Public Prosecutions to prosecute such violation or violations, the Director of Public Prosecutions shall respond in writing to the Director within 7 days of such request, stating whether or not such prosecution will be undertaken, and where the decision is—

(a) to commence such prosecution, state the time within which this will occur; or

(b) not to prosecute, state the reason.

(5) Notwithstanding any provision of this Act or other legislation of Saint Christopher and Nevis—

(a) the Director may recommend to the Director of Public Prosecutions that prosecution of an authorised person be undertaken where there are reasonable grounds to believe that such person has committed an offence under this Act or other legislation of Saint Christopher and Nevis; and

(b) the Permanent Secretary of the Department responsible for fisheries, aquaculture and marine resources may recommend to the Director of Public Prosecutions that prosecution of the Director be undertaken where there are reasonable grounds to believe that the Director has committed an offence under this Act or other legislation of Saint Christopher and Nevis.

### **General offences.**

**117.** (1) Every person who contravenes or fails to comply with this Act or any notice, direction, restriction, requirement or condition given, made or imposed under this Act, other than a requirement to pay a sum of money, commits an offence under this section.

(2) Every person who commits an offence under any section of this Act for which no other penalty is provided is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule.

### **Maximum fines and guidelines.**

**118.** (1) Unless otherwise provided in this Act, the maximum fines for contraventions of this Act are set out in the Second Schedule.

(2) In setting the fine or determination in judicial or administrative proceedings taken pursuant to this Act, such fine shall not be greater than the maximum level shown in the Second Schedule. They shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities.

(3) In particular, the relevant judicial or administrative proceeding shall take into account the following criteria—

(a) the seriousness of the offence, taking into consideration the—

- (i) maximum level of fine;
  - (ii) international and national best practices in relation to serious offences, including their definition in international fishery instruments;
  - (iii) degree of impact of the offence on the fishery resources, the environment and the economic and social well being of citizens of Saint Christopher and Nevis;
  - (iv) scope of the offence;
  - (v) duration of the offence;
  - (vi) whether personal injury or loss of life was involved; and
  - (vii) associated offences, if multiple offences were committed;
- (b) the situation of the offender, taking into consideration—
- (i) the material and other benefits received as a result of commission of the offence;
  - (ii) whether it is a first offence;
  - (iii) whether multiple offences are involved;
  - (iv) whether the offender was acting alone or associated with others in committing the offence;
  - (v) the likelihood that the offender will repeat the offence;
  - (vi) the impact of the level of fine on the offender; and
  - (vii) an aggravated penalty shall be required for offences involving assault, obstruction or bribery of an authorised officer, observer or fish quality inspector, damage to gear or vessels, personal injury, loss of life, illegal fishing or damage to the environment.

(4) All fines in the Second Schedule are maximum fines shown in Eastern Caribbean Dollars. The fines may be converted into United States Dollars, at the discretion of the relevant Court or summary administrative proceeding, using the official international rate of exchange given by the St Kitts-Nevis-Anguilla National Bank on the date the decision in the matter is handed down by the Court or a determination is made in summary administrative proceedings.

(5) The Second Schedule may be amended by Regulation.

#### **Deprivation of Monetary Benefits.**

**119.** Where a person is convicted of an offence under this Act, and the court is satisfied that as a result of committing the offence that person acquired monetary benefits or monetary benefits accrued to that person, the court may order that person to pay a fine in an amount equal to the court's finding of the amount of such monetary benefits, notwithstanding the maximum amount of the relevant fine.

#### **Notification.**

**120.** (1) Any notification required under this Act must be in writing.

(2) Except as otherwise specified in this Act, if under this Act any notice or other document is to be given, served on or furnished to any person, that notice or other document may be—

- (a) given to the person personally;
- (b) given personally to any other person authorised to act on behalf of the person;
- (c) in the case of a notice or document to be given or served in the course of or for the purpose of any proceedings for an offence under this Act, given to such person as the Court may direct;
- (d) except in the case of a notice or document referred to in paragraph (c), sent by post to the person, or any other person authorised to act on that person's behalf, at the person's usual or last known place of business or abode;
- (e) except in the case of a notice or document referred to in paragraph (c), sent by electronic transmission to the person, or any other person authorised to act on the person's behalf, at the person's usual or last known address, and for the purpose of this paragraph—
  - (i) “electronic transmission” means any transmission of information, sent electronically; and includes any transmission sent by facsimile, electronic mail, or electronic data transfer; and
  - (ii) “address” includes a facsimile number or an electronic mail address.

(3) Where the operator of a foreign fishing vessel is a defendant in a prosecution for an offence against this Act, then, notwithstanding any other law, service on the defendant of any summons or other documents may also be effected—

- (a) by being delivered personally to the agent of the vessel on behalf of the defendant or being brought to the notice of the agent if that agent refuses to accept it on behalf of the defendant;
- (b) by being sent to the agent of the vessel, by registered letter to that agent on behalf of the defendant at the agent's last known or usual place of residence or that agent's place of business; or
- (c) where no agent has been nominated in respect of any foreign vessel, by being delivered or sent under paragraph (a) or (b) to the master of the vessel.

(4) Any notice or document so sent by post or electronic transmission is deemed to have been given, served or received 7 working days after the date on which it was posted or sent, unless the person to whom it was posted or sent proves that, otherwise than through that person's fault, the notice or document was not received.

#### **Imprisonment of non-nationals.**

**121.** Where an offence under this Act has been committed in the exclusive economic zone by a person who is a national of another State, that person may not be sentenced to a term of imprisonment in the absence of any agreement to the contrary between Saint Christopher and Nevis and the State of which that person is a national.

#### **Continuing offences.**

**122.** On each day that an offence continues, a separate offence shall be deemed to have been committed.

**Costs incurred by State.**

**123.** (1) Upon application by the State, the Court may, on conviction for an offence under this Act, order the owner and as applicable the charterer of a vessel, body corporate or other entity involved in the offence, jointly and severally, to bear the cost or expenditure incurred by the State, in connection with—

- (a) the seizure of a foreign vessel for an offence against this Act;
- (b) the prosecution for an offence in accordance with this Act; and
- (c) the repatriation of the master or crew of any vessel seized under this Act.

(2) The amount of any costs or expenditure ordered by the Court under subsection (1) may be recovered in the same manner as a fine.

(3) Nothing in subsection (1) shall be deemed to allow for the recovery of any cost or expenditure that has already been recovered pursuant to any other order made under this Act.

**Higher maximum penalty for bodies corporate.**

**124.** (1) If a body corporate is convicted of an offence against this Act, a fine of up to three times the maximum fine specified for the offence may be imposed.

(2) The Court shall, in imposing a fine pursuant to subsection (1), report fully in writing on details of the expert evidence upon which its judgment was based.

**Banning order.**

**125.** (1) In addition to any other fine or penalty provided under this Act, the Court or a Summary Administrative Panel may order any person to be banned from fishing in the fisheries waters or engaging in any other activity for which a licence is required under this Act for a period up to 5 years if that person has—

- (a) committed an offence against section 67(3), 71(4), 75(2) or in respect of breaches of sections 99(2)(j), (1), (o), (p); or
- (b) committed a second or subsequent offence against this Act.

(2) Every person, including the operator of any vessel, commits an offence if he or she contravenes or fails to comply with an order made under subsection (1), and on conviction is liable to a fine not exceeding the maximum amount described in the Second Schedule or a term of imprisonment not exceeding 4 years, or to both.

**Default penalty for non-payment.**

**126.** In addition to any fine or penalty imposed under this Act, the Court may order a default penalty for non-payment of fines, not to exceed 1 percent per day of the total amount of the fine or penalty.

**Liability for non-payment of pecuniary penalties.**

**127.** The following amounts may be sued for, determined, enforced and recovered by suit or other appropriate civil proceedings in a court of competent jurisdiction in the name of the State, and all such proceedings shall be deemed to be civil proceedings—

- (a) pecuniary penalties not specifically designated as fines;

- (b) forfeitures incurred under or imposed pursuant to this Act, and the liability to forfeiture of any article seized under the authority of this Act;
- (c) all rents, charges, expenses and duties; and
- (d) all other sums of money payable under this Act.

**Liability for loss or damage.**

**128.** A person who commits an offence against this Act may, on conviction, be liable to Saint Christopher and Nevis for—

- (a) any loss or damage caused by the offence;
- (b) any costs incurred in detecting, apprehending, investigating or prosecuting the offence; and
- (c) any costs incurred in detaining or seizing any property, fish, article or thing in respect of that offence,

and the amount of compensation for such loss, damage or costs may be awarded by the Court as restitution in addition to, and recovered in the same manner as a fine.

**Liability of companies and officers of companies.**

**129.** (1) Except as provided in this section, if an employee, officer or agent of a partnership, corporation, firm, company or any other business enterprise commits an offence under this Act, the partnership, corporation, firm, company or any other business enterprise also commits the same offence if—

- (a) the employee, officer or agent was acting within the scope of his or her employment or authority, or apparent employment or authority; and
- (b) the partnership, corporation, firm, company or other business enterprise—
  - (i) expressly or impliedly authorised the act or omission that constituted the offence; or
  - (ii) had direct or indirect knowledge of the act or omission that constituted the offence.

(2) Except as provided in subsection (3), every director or other person concerned with the management of a body corporate, partnership, corporation, firm, company or other business enterprise engaged in activities governed by this Act commits an offence if an offence under this Act is committed by any member or employee of that entity.

(3) It shall be a defence to liability under this section for the director or other person concerned with the management of the entity to prove that—

- (a) he or she used due diligence to secure compliance with this Act; or
- (b) the offence was committed without his or her knowledge, consent, collusion or collaboration.

**Liability of operators.**

**130.** (1) In any proceedings under this Act, the act or omission of a crew member of a fishing vessel or a person working in association with a fishing vessel is deemed to be that of the operator of the vessel, unless otherwise expressly provided.



(2) The operation of subsection (1) does not absolve the crew member or other person of any liability he or she may have under this Act.

#### **Liabilities of principal for actions of agent.**

**131.** (1) Where a person, “the principal”, is required by or under this Act to do or refrain from doing anything, every act or omission of any person acting or purporting to act as agent for the principal in respect of any such requirement is deemed for the purposes of this Act to be the act or omission of the principal, unless the principal proves that the person purporting to act as agent had no authority, either express or implied, to act as the principal’s agent in carrying out the act or omission.

(2) The operation of subsection (1) does not absolve the principal of any liability he or she may have under this Act.

### PART 13

#### SUMMARY ADMINISTRATIVE PROCEEDINGS

#### **Decision to proceed administratively.**

**132.** (1) The Director may, with the written consent of the Director of Public Prosecutions, proceed administratively against any person who has or may have committed an offence under this Act, if that person consents in writing to the Director proceeding administratively.

(2) The Director shall promptly notify the person charged that he or she may, within 7 working days of receiving such notification, either consent to or refuse summary administrative proceedings.

(3) Where the person charged consents to summary administrative proceedings, the person shall notify the Director in writing that he or she—

- (a) admits to having committed the offence that he or she is charged with committing; and
- (b) consents to the charge being dealt with by summary administrative proceedings.

(4) Upon notifying the Director of his or her consent to summary administrative proceedings under subsection (3), the person charged shall—

- (a) be deemed to have consented to any seizure which took place in accordance with this Act in relation to the offence that is subject to the summary administrative proceedings, and to have waived any right to a probable cause hearing; and
- (b) not engage in fishing or any related activity in the fisheries waters until an administrative penalty assessed under section 133(1) has been paid in full.

(5) Upon receiving the notification given under subsection (3), the Director—

- (a) shall notify the Director of Public Prosecutions that the matter is being dealt with in accordance with this Part; and
- (b) may consult the Attorney-General on the handling of the matter under this Part.

(6) On receipt of a notification under subsection (5), the Director of Public Prosecutions may refrain from prosecuting the person charged with an offence under this Act while the matter is being dealt with under this Part, unless in his or her opinion there is a public interest in proceeding with the prosecution.

(7) Where the person fails to respond to the Director's written notice within 7 working days, the Director shall refer the matter to the Director of Public Prosecutions.

#### **Summary administrative proceedings.**

**133.** (1) The Director may, upon receiving the notification under section 133(3), cause a Compounding Agreement to be drawn up in consultation with the Attorney General to formalise the terms and conditions upon which the Director will accept on behalf of Saint Christopher and Nevis from the person charged, an administrative penalty, the amount of which—

- (a) shall be determined in accordance with any report that may be prepared by the Director in consultation with the Attorney General regarding the details of the offence and applicable fine or penalty levels;
- (b) must not exceed the maximum fine or penalty prescribed, plus the fair market value of any fish caught illegally;
- (c) also includes such amount that may be necessary to deprive the person, of monetary benefits acquired or saved by the person as a result of the commission of the offence based on an assessment by an expert that would otherwise be acceptable in a court of law; and
- (d) may include the costs to the State described in section 124(1) (a) to (c), which provisions apply with the necessary modifications.

(2) Summary administrative proceedings shall be null and void if the full amount of the penalty determined under subsection (1) is not paid within 14 days of the notification of such penalty assessment to the person subject to the proceedings, and the matter shall immediately be referred to the Director of Public Prosecutions for prosecution.

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

(4) The Compounding Agreement under subsection (1) may provide that any item used or involved in the commission of the offence be confiscated or forfeited.

(5) A person who engages in fishing or related activities while prohibited from so doing by subsection (4)(b) commits an offence and is liable to a fine not exceeding the maximum amount described in the Second Schedule and in addition the costs to the State described in section 124(1) (a) to (c), which provisions apply with the necessary modifications.

#### **Evidence of participation in summary administrative proceedings not to be used in prosecution.**

**134.** The fact that a person charged with an offence consented to summary administrative proceedings under this Part and any admission made under section 131 (3) shall not be used against that person in the prosecution of the offence under this Act pursuant to—

- (a) a decision of the Director of Public Prosecutions under subsection 133(6); or
- (b) referral of a matter to the Director of Public Prosecutions for prosecution under section 134(2).

**Summary payment of administrative fine.**

**135.** A person may pay an administrative fine for such specified offences, in accordance with such procedures, at such time, and in such amounts and to such authority as may be prescribed, and no further legal proceedings shall be taken in respect of that offence.

PART 14

EVIDENCE

**Certificate evidence.**

**136.** The Director or any person designated in writing by the Director, including an authorised officer, may give a certificate stating that—

- (a) a specified vessel was or was not on a specified date a Saint Christopher and Nevis fishing vessel, a locally based foreign fishing vessel or a foreign fishing vessel;
- (b) a specified vessel or person was or was not on a specified date the holder of any specified licence, authorisation or certificate of registration;
- (c) an appended document is a true copy of the licence or certificate of registration for a specified vessel or person and that specified conditions were attached to such document;
- (d) a particular location or area of water was on a specified date within the fisheries waters, or within, a closed, limited, restricted or in any other way controlled area of the fisheries waters, or an area of the fisheries waters subject to specified conditions;
- (e) an appended chart shows the boundaries on a specified date of the fisheries waters, closed or limited areas or other maritime areas or zones delineated for any specified purpose;
- (f) a particular item or piece of equipment is fishing gear;
- (g) the cause and manner of death of, or injury to, any fish is as stated;
- (h) an appended document is a true copy of a valid and applicable charter agreement, Access Agreement or fisheries management agreement;
- (i) a call sign, name or number is that of or allotted under any system of naming or numbering of vessels to a particular vessel;
- (j) an appended position or catch report or other record was given in respect of a specified vessel;

- (k) a specified fishing vessel is or is not on a list of illegal, unreported and unregulated fishing vessels maintained by a regional fisheries management organization;
- (l) a specified vessel, mobile transceiver unit or other item fulfils or does not fulfil registration requirements under this Act, an applicable Access Agreement or international conservation and management measures;
- (m) an appended document is a true certificate of calibration of a specified measuring device;
- (n) an offence was committed against the laws of another State, as declared in an appended copy of a statement signed by competent authorities of such State;
- (o) specified international conservation and management measures are in force, as declared in an appended copy of a statement signed by the Director, or equivalent, of the international organization or arrangement which adopted such measures;
- (p) a certification as to the condition of fish given under this Act was made in accordance with this Act and by the person who is signatory to the certificate;
- (q) a photograph is a true and accurate representation of what it is meant to represent;
- (r) a photograph was taken by a specified person; or
- (s) any specified return, log, record or information required to be kept or furnished under this Act was or was not kept or furnished,

#### **Certificate of location of vessel.**

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

(2) An authorised officer must, in any certificate made under subsection (1), state—

- (a) his or her name, address, official position, country of appointment and the authority under which he or she is appointed;
- (b) the name and call sign, if known of the fishing vessel concerned;
- (c) the date and time or period of time that the vessel was in the place or area;
- (d) the place or area in which it is alleged the vessel was located;
- (e) the position fixing instruments used to fix the place or area stated in (d) and their accuracy within specified limits;
- (f) that he or she checked the position fixing instruments a reasonable time before and after they were used to fix the position and they appeared to be working correctly; and

- (g) if a position fixing instrument which is not judicially recognised as notoriously accurate is used, that he or she checked the instrument used as soon as possible after the time concerned against an instrument that is judicially recognised as notoriously accurate.

(3) For the purposes of this section, “authorised officer” includes observers and those charged with similar responsibilities in other States including surveillance officers.

#### **Mobile transceiver units - presumption and certificate.**

**138.** (1) All information or data obtained or ascertained by the use of a mobile transceiver unit required under this Act shall be presumed, unless the contrary is proved, to—

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

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

(2) The presumption in paragraph (1) applies whether or not the information was stored before or after any transmission or transfer.

(3) A mobile transceiver unit installed and operated in accordance with this Act shall be judicially recognised as notoriously accurate.

(4) An authorised officer or other person authorised in writing by the Director, may give a certificate stating—

- (a) his or her name, address and official position;
- (b) that he or she is competent to read the printout or visual display unit of any machine capable of obtaining or ascertaining information from a mobile transceiver unit;
- (c) the date and time the information was obtained or ascertained from the mobile transceiver unit and the details of the information;
- (d) the name and call sign of the vessel on which the mobile transceiver unit is or was located as known to him or her or as ascertained from any official register, record or other document; and
- (e) a declaration that there appeared to be no malfunction in the mobile transceiver unit, its transmissions, or other machines used in obtaining or ascertaining the information.

#### **Photographic evidence - date and time stamped.**

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

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

- (a) the camera taking the photograph is connected directly to the instruments which provide the date, time and position concerned; and

(b) the photograph was taken by an authorised officer or observer or under their supervision.

(3) Any authorised officer or observer who takes or supervises the taking of a photograph described in subsection (1) may give a certificate appending the photograph stating—

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

#### Validity and procedures for certificate.

**140.** (1) Unless the contrary is proved, a document purporting to be a certificate given under this Part is deemed to be such a certificate and to have been duly given.

(2) Where a certificate issued under this Part is served on a defendant 14 or more days before its production in Court and the defendant does not, within 7 days of the date of service, serve notice of objection in writing on the prosecutor, then the certificate is, unless the Court finds the defendant is unduly prejudiced by any failure to object, conclusive proof of all the facts averred in it.

(3) Where a certificate issued under this Part—

- (a) is served on a defendant 7 or more days, but less than 14 days, before its production in Court in any proceedings under this Act; or
- (b) is served on a defendant 14 or more days before its production in Court in any proceedings under this Act and an objection is notified in accordance with subsection (2),

the certificate is, unless the contrary is proved, *prima facie* evidence of all the facts averred in it.

(4) Any omission from or mistake made in a certificate issued under this Part does not render it invalid unless—

- (a) the Court considers such omission or mistake is material to any issue in the proceedings concerned; or
- (b) the defendant is unduly prejudiced by the omission or mistake.

(5) Where in any proceedings a certificate made under this Part is produced to the Court, the prosecution is not obliged to call the maker of the certificate and the Court shall, where material, rely on the facts stated in the certificate unless the contrary is proved.

**Presumptions.**

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

(2) Where, in any legal proceedings under this Act—

- (a) the place in which an event is alleged to have taken place is in issue, the place stated in the relevant entry in the logbook or other official record of any enforcement vessel or aircraft as being the place in which the event took place is presumed to be the place in which the event took place; and
- (b) the production of a written copy or extract of the entry certified by an authorised officer as a true copy of the accurate extract is *prima facie* evidence of an entry in a logbook or other official record of an enforcement vessel or aircraft.

(3) Where in any legal proceedings relating to an offence under this Act—

- (a) an authorised officer gives evidence of reasonable grounds to believe any fish to which the charge relates were taken in a specified area of the fisheries waters; and
- (b) the Court considers that, having regard to that evidence the grounds are reasonable,

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

(4) Where in any legal proceedings for an offence under this Act—

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

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

(5) Where any information is given in respect of any fishing or related activity of a fishing vessel, it is presumed to have been given by the operator, including the master, owner and charterer of the vessel concerned, unless it is proved that it was not given or authorised to be given by any of them.

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

(7) Any position fixing instrument on board a vessel or aircraft used for the enforcement of this Act is presumed to be accurate.

(8) Where the operator of a foreign fishing vessel not licensed pursuant to this Act is navigating through the fisheries waters and refuses or otherwise fails to report information required pursuant to section 76, it shall be presumed, in the absence of evidence to the contrary, that all fish found on board have been caught within the fisheries waters in contravention of this Act.

**Strict liability.**

**142.** In a prosecution for an offence under this Act, it is not necessary for the prosecution to prove that the defendant intended to commit an offence or engage in any conduct that comprises the offence.

**Burden of proof.**

**143.** (1) Where in any proceedings under this Act, a person is charged with having committed an offence involving an act for which a licence is required, the burden is on that person to prove that at the relevant time the requisite licence was held.

(2) Where a person is charged with the contravention of section 32(6), the burden is on the person to prove that the information given was true, complete and correct.

**Interfering with evidence.**

**144.** (1) No person shall interfere with evidence which may be related to an offence under this Act.

(2) Without limiting the generality of subsection (1), no person shall—

- (a) being on board any vessel being pursued, about to be boarded or notified that it will be boarded by an authorised officer, whether within or beyond fisheries waters, throw overboard or destroy any fish, fish product, equipment, document, explosive, noxious substance or other thing with intent to avoid its seizure or the detection of any offence against this Act;
- (b) remove from custody any vessel, fish, fish product, equipment or other item held in custody under this Act, or act or omit to act so that a vessel, fish, fish product, equipment or other item held in custody under this Act may be removed from custody, whether or not he or she knew that the vessel, fish, fish product, equipment or other item was being held in custody;
- (c) destroy, damage, render inoperative or otherwise interfere with any premises or facilities licensed under this Act; or
- (d) where a mobile transceiver unit is required under this Act, whether within or beyond the fisheries waters, destroy, damage, render inoperative or otherwise interfere with any part of such mobile transceiver unit aboard a vessel, or feed or input into a mobile transceiver unit or an applicable vessel monitoring system information or data which is not officially required or is meaningless.

(3) Any person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding the maximum amount described in the Second Schedule, or to a term of imprisonment not exceeding 3 years, or to both.



## PART 15

## MISCELLANEOUS

**Regulations.**

**145.** (1) The Minister may make regulations to carry out and give effect to this Act, including, without limitation—

- (a) managing, regulating or controlling fishing, aquaculture and related activities and the possession, processing, and disposal of fish or fish products;
- (b) prescribing requirements, processes and other relevant matters for licensing and licenses within the scope of this Act;
- (c) regulating the method by which, or the circumstances under which, fish may be held, stored, conveyed or identified, including the use of any containers, marks or labels;
- (d) regulating or prohibiting activities which may have an adverse impact on fisheries resources or the marine, coastal or aquatic environment;
- (e) implementing Fisheries Management Plans prepared under section 19;
- (f) regulating access to, and fishing and other activities in, Marine Management Areas;
- (g) regulating and providing quality standards for the storing, transporting and processing of fish and fish products for domestic consumption and for export;
- (h) regulating, controlling and managing research, surveys, study and education regarding fish, fisheries resources and the marine, coastal and aquatic environments;
- (i) prescribing procedures controlling the processes relating to licensing, authorisations and Access Agreements;
- (j) providing for the marking of vessels licensed under this Act and of nets, traps and other fishing gear and equipment;
- (k) providing for the sale or disposal of unclaimed fishing gear found in the fisheries waters;
- (l) identifying authorised officers and observers authorised to perform duties under this Act;
- (m) monitoring, control and surveillance of fishing and related activities, including rules for procedures for the conduct of boarding and inspection of fishing vessels within and beyond the fisheries waters;
- (n) providing for the account, record, document or information that any person or class of persons may be required to keep or provide for the purposes of this Act, including—
  - (i) the manner and form in which such account, record, document or information is to be kept, furnished or communicated;
  - (ii) the time for or within which such account, record, document or information is to be kept, furnished or communicated;

- (iii) the person by or to whom such account, record, document or information is to be kept, furnished or communicated; and
  - (iv) the places where such account, record, document or information is to be kept, furnished or communicated;
  - (o) prescribing fees, charges, management levies, resource rent, or royalties payable in respect of any matter under this Act;
  - (p) regulating the export and import of live fish, including aquaculture species;
  - (q) providing for the making of orders for any purpose under this Act;
  - (r) prescribing forms and other documents required for by this Act;
  - (s) implementing any provisions of, or giving effect to, any international agreement, including international conservation and management, measures;
  - (t) providing for rewards to be paid to any person who provides information leading to the conviction or settlement of an offence under this Act;
  - (u) providing for procedures and related matters concerning the declaration or revocation of a Marine Management Area;
  - (v) prescribing fines for offences against the regulations consistent with the level of fines in this Act;
  - (w) providing for dredging activities;
  - (x) providing for any matter relating to shipwrecks in the fisheries waters;
  - (y) providing for any matter relating to the exploration and exploitation of the non-living marine resources in the fisheries waters and any additional area of the continental shelf, seabed or subsoil over which rights may be claimed from time to time consistent with international law; and
  - (z) providing for any other matter within the scope of this Act and consistent with its objective and principles.
- (2) The Minister may, in consultation with the relevant authority in respect of each of the following matters, make regulations—
- (a) regulating the construction and import of fishing vessels and prescribing construction standards for fishing vessels;
  - (b) prescribing safety standards and requirements for fishing vessels; and
  - (c) prescribing manning and competency requirements for Saint Christopher and Nevis fishing vessels.
- (3) The Minister, in consultation with the Minister for Finance may make regulations for the proper and effective management of the Fund established under section 16.
- (4) A regulation may specify that it is a regulation to which section 3(2) does not apply, and where it is so specified, the provisions of section 3(2) shall not apply, or shall only apply to the extent specified in the regulation.

**Repeal and savings.**

- 146.** (1) The Fisheries Act 1984 is repealed.
- (2) Notwithstanding such repeal, upon the coming into operation of this Act—
- (a) any valid licence or permission issued under the Fisheries Act 1984 “the repealed Act” continues to be valid under the terms and conditions and for the period originally stated in it, and may be varied, suspended, cancelled or renewed in accordance with this Act;
  - (b) all regulations and orders made under, or continued by, the repealed Act are subject to such modifications and adaptations as may be necessary for conformity with this Act and continue until such time as—
    - (i) new regulations or orders are made under this Act; and
    - (ii) the new regulations or orders repeal the regulations or orders made under the repealed Act; and
  - (c) every international agreement entered into by Saint Christopher and Nevis under the repealed Act continues to apply until it is terminated or expires;
  - (d) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment, and the investigation, legal proceedings or remedy instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repeal had not occurred;
  - (e) all persons who at the commencement date are fisheries officers who have been appointed under the repealed Act shall continue to hold their office or remain in their employment at the same rank and grade in the public service and shall be subject to the provisions of this Act;
  - (f) any fisheries, management and development plans made under the repealed Act shall continue to have effect with the necessary modifications;
  - (g) every person who immediately before the commencement of this Act held office as a member of the Fishery Advisory Council is hereby deemed to be appointed by section 13 of this Act until new members are appointed.
- (3) The Minister may make regulations to provide for matters of a transitional, application or saving nature arising in connection with the repeal of the repealed Act.
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**FIRST SCHEDULE***(Section 2)***MEANING OF ILLEGAL, UNREPORTED AND UNREGULATED FISHING**

In this Act, unless the context otherwise requires, “illegal, unreported and unregulated fishing” has the same meaning that appears in the 2001 FAO International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing, as shown below.

**1. Illegal fishing refers to activities—**

1.1 conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;

1.2 conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or

1.3 in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.

**2. Unreported fishing refers to fishing activities—**

2.1 which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or

2.2 undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.

**3. Unregulated fishing refers to fishing activities—**

3.1 in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or

3.2 in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

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**SECOND SCHEDULE****FINES***Section 117(2)*

	<b>OFFENCE</b>	<b>MAXIMUM FINE</b>
Section and subsection including any part thereof		East Caribbean Dollars
17(5)	Conflict of interest	675,000
18(3)	Conservation and management measures	270,000
20(7)	Marine Management Area	270,000
21(4) (a), (b) or (c)	Fishing and related activities may be subject to prohibition	1,350,000
22(5)	Fishing with explosives, chemicals etc and associated activities prohibited	1,350,000
22(6)	Fishing with explosives, chemicals etc and associated activities prohibited (second or subsequent offence)	2,700,000
23(1), (2), or (3)	Driftnet fishing activities prohibited	2,700,000
24(5)	Tampering with or destruction of property in the fisheries waters prohibited	1,350,000
25(3)	Use, possession on vessel, import, purchase or sale of prohibited gear	675,000
26(2)	Prohibition of possession and trade in fish, fish products or other fisheries resources taken in contravention of Act	675,000
27(2)	Prohibition of sale or export of adulterated or contaminated fish or fish products	2,700,000
28(2)	Prohibition of interference with inspected fish or fish product	1,350,000
29(2)	Prohibition to deploy, maintain fish aggregating device without permission or in contravention of requirements	27,000
30(3)	Declaration of and prohibition relating to protected or endangered species	675,000
32(4)	Activities contrary to the laws of another State	675,000
33(2)	Pollution of the fisheries waters prohibited	2,700,000
34(5)	Records, returns, data and information	675,000
34(6)	Records, returns, data and information	675,000
40(1)	Foreign fishing vessel	2,700,000
45(2)	Aquaculture activities requirements	1,350,000

47(2)	Prohibited to deprive community of traditional access to fisheries	675,000
48(5)	Local government's responsibility to monitor aquaculture activities	135,000
49(3)	Introduction, transfer, import, export, release, etc of live, etc fish	675,000
50(6)	Director's authority to inspect, seize fish designated for import or export or diseased, highly invasive fish or fish species	1,350,000
51(4)	Aquaculture waste	1,350,000
52(5)	Escapement	675,000
53(2)	Use of drug, chemical etc restricted	675,000
55(2)	Interfering with aquaculture facility prohibited	675,000
62(3)	Registration, certification required	1,350,000
63(2)	Licences, authorisations required	1,350,000
64(2)	Fish processing for export without licence	1,350,000
64(3)	Buying, selling, storage and processing of fish and fish products for export	675,000
69(7)	Terms and conditions of licences and authorisations	675,000
70(4)	Reporting	1,350,000
72(6)	Suspension or cancellation of a licence or authorisation	2,025,000
74(4)	Compliance with requirements and terms of licence or authorisation	1,350,000
75(5)	Gear stowage and reporting	1,350,000
76(3)	Requirements for Saint Christopher and Nevis fishing vessels in areas beyond national jurisdiction	1,350,000
76(4)	Requirements for Saint Christopher and Nevis fishing vessels in areas beyond national jurisdiction	1,350,000
77(6)	Requirements for import and export of live fish	675,000
78(2)	Transshipment at sea	2,700,000
79(2)	Requirements for transshipment	1,350,000
80(2)	Requirements for fish and fish products processing and storage facilities	1,350,000
83(6)	Authority and general powers and duties of authorized officers	135,000
86(4)	Power to take, detain, remove and secure information and evidence	270,000
90(4)	Removal of parts from seized vessels	270,000

91(4)	Observer programme	675,000
92(5)	Appointment of observers	135,000
93(3)	Application of Act to observers beyond fisheries waters	135,000
94(3)	Duty of operators, licence holders, and crew members to assist observers	1,350,000
95(2)	Conditions for observers	270,000
97(3)	Notice of intention to place observer	1,350,000
99(2)	Authority and power of fish quality control inspectors	1,350,000
102(3)(a)	Obstruction of authorized persons	1,350,000
102(3)(b)	Obstruction of authorized persons (aggravated)	2,700,000
103(4)	Vessel monitoring systems	1,350,000
103(5)	Vessel monitoring systems	1,350,000
103(6)	Vessel monitoring systems	1,350,000
104(2)	Entry and use of designated ports	2,025,000
106(4)	Denial of the use of port to a foreign fishing vessel	2,025,000
117(2)	General offences	1,350,000
125(2)	Banning order	2,025,000
126	Default penalty for non-payment	270,000
133(5)	Summary administrative proceedings	270,000
144(3)	Interfering with evidence	1,350,000

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