



# Marshall Islands Consolidated Legislation

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## Fisheries Enforcement Act [51 MIRC Ch 5]

51 MIRC Ch 5

MARSHALL ISLANDS REVISED CODE 2004

TITLE 51. - MANAGEMENT OF MARINE RESOURCES

CHAPTER 5.

FISHERIES ENFORCEMENT

ARRANGEMENT OF SECTIONS

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This Chapter codifies Parts VIII, IX, X and XI of P.L. 1997-60.

Commencement: 13 October 1997  
Source: P.L. 1997-60

### **PART I - MONITORING, CONTROL AND SURVEILLANCE**

#### **§501. Short Title.**

This Chapter may be cited as the [Fisheries Enforcement Act](#).  
[Short title supplied by Commissioner during codification.]

#### **§502. Enforcement Responsibility.**

- (1) The Authority shall have primary responsibility for fisheries enforcement, including:
  - (a) monitoring, control and surveillance of all fishing operations within the Fishery Waters; and
  - (b) the enforcement of this Title.
- (2) The Authority shall, as appropriate, involve participation by relevant Government departments or offices in fisheries enforcement.
- (3) The Authority may authorize other entities, officials or persons to perform fisheries enforcement functions. **[P.L. 1997-60, §80.]**

### **§503. Appointment of Authorized Officers.**

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

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

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

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

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

(b) for an authorized officer of another party to such agreement, to perform fisheries surveillance and law enforcement functions on behalf of the Republic of the Marshall Islands while on board the vessel or aircraft of that other party, and all provisions of this Title relating to authorized officers shall be applicable to such persons carrying out their duties in the areas of national jurisdiction of the Republic of the Marshall Islands.

(5) Any authorized officer is deemed to be an authorized inspector for purposes of the United Nations Agreement. **[P.L. 1997-60, §812.] [The following parenthetical remarks were included in the Act following this Section: [Subsection (1) is similar to existing section 50(1). Subsection (2) is the same as existing 50(2), and subsection (3) implements Article VI (4) and (5) of the Niue Treaty. Subsection (4) clarifies subsection 2, and subsection (5) refers to Article 21 of the UN Agreement]**

### **§504. Powers of Authorized Officers.**

(1) For the purposes of enforcing this Title, any authorized officer may:

(a) stop, board, remain on board and search any vessel in the Fishery Waters he or she reasonably believes is a fishing vessel, and any fishing vessel registered under the laws of the Republic of the Marshall Islands outside the Fishery Waters, and stop and search any vessel, vehicle or aircraft he or she reasonably believes may be transporting fish or engaging in other activities relating to fishing;

(b) require the master or any crew member or other person aboard to inform him of the name, call sign and country of registration of the vessel and the name of the master, owner, charterer and crew members;

(c) examine the master or any crew member or other person aboard about the cargo, contents of holds and storage spaces, voyage and activities of the vessel;

(d) make such examination and inquiry as may appear necessary to him concerning any vessel, vehicle or aircraft in relation to which any of the powers conferred by this Subsection have been or may be exercised and take samples of any fish or fish product found therein;

(e) require to be produced, examine and take copies of any license, logbook, record or other document required under this Title or concerning the operation of any vessel, vehicle or aircraft;

(f) make an entry dated and signed by him or her in the logbook of such vessel, vehicle or aircraft;

(g) require to be produced and examine any fish, fishing gear or appliance or explosive, poison or other noxious substance;

(h) give directions to the master and any crew member of any vessel, vehicle or aircraft stopped, boarded or searched as may be necessary or reasonably expedient for any purpose specified in this Title or to provide for the compliance of the vessel, vehicle or aircraft, or master or any crew member with the conditions of any license;

(i) endorse any license; and

(j) arrest any person who assaults him or her in the exercise of his or her duties under this Title.

(2) Where an authorized officer has reasonable grounds to believe an offense against this Title is being or has been committed, he or she may without a warrant:

(a) enter, inspect and search any premises, other than premises used exclusively as a dwelling-house, in which he or she has reasonable grounds to believe an offense has been or is being committed or fish taken illegally are being stored;

(b) stop, enter and search and stay in or on any vehicle or aircraft which he or she reasonably suspects of transporting fish or fish products;

(c) take samples of any fish found in any vessel or vehicle inspected or any premises searched under this Title;

(d) following hot pursuit in accordance with international law and commenced within the fishery waters, stop, board and search outside the Fishery Waters any fishing vessel which he or she has reasonable grounds to believe has been used in the commission of such offense, exercise any powers conferred by this Title in accordance with

international law, and bring such vessel and all persons and things on board within the Fishery Waters;

(e) seize;

(i) any vessel (including its fishing gear, equipment, stores and cargo), vehicle, fishing gear, nets or other fishing appliances or aircraft which he or she has reasonable grounds to believe has been or is being used in the commission of such offense or in respect of which the offense has been committed;

(ii) any fish or fish products which he has reasonable grounds to believe have been caught in the commission of an offense or are possessed in contravention of this Title;

(iii) any logs, charts or other documents required to be maintained by this Title or under the terms of any license or other authorization or which he or she has reasonable grounds to believe show or tend to show, with or without other evidence, the commission of an offense against this Title; and

(vi) any thing which he or she has reasonable grounds to believe might be used as evidence in any proceedings under this Title;

(f) arrest any person whom he or she has reasonable grounds to believe has committed an offense against this Title.

(3) An authorized officer may, in arresting, any person or fishing vessel which he or she has reasonable grounds to believe has done any act in contravention of this Title:

(a) use such force as is reasonably necessary in the circumstances to effect the arrest;

(b) call upon such person or persons as may be necessary to render assistance in enforcement activities for such time as he may require, and duties owed to authorized officers under this Title shall be owed to such person or persons while acting at the request and under the instructions of such authorized officer.

(4) A written receipt shall be given for any article or thing seized under this Section and the grounds for such seizure shall be stated in such receipt.

(5) Any person arrested without a warrant under this Section shall be taken to a police station and dealt with in accordance with law.

(6) An authorized officer may, for the purposes of enforcing this Title, with or without a warrant or other process:

(a) execute any warrant or other process issued by any court of competent jurisdiction;  
and

(b) exercise any other lawful authority. [P.L. 1 997-60, §82.]

#### **§505. Requirements for seized vessels, etc.**

(1) Where any vessel is seized under this Title:

(a) the master and crew shall take it to such port as the authorized officer shall designate, being the nearest or most convenient port;

(b) the master shall be responsible for the safety of the vessel and each person on board the vessel, including the crew, himself and any authorized officer until the vessel arrives at the designated port.

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

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

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

(5) The authority which seized the vessel shall be responsible for its custody until final judgment or other determination, unless the Attorney-General directs otherwise. [P.L. 199 7-60, §83.]

#### **§506. Removal of parts from seized vessels, etc.**

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

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

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

(4) Any person who contravenes Subsection (3) commits an offense and shall be fined not more than \$20,000 or may be imprisoned up to six months, or both. [P.L. 1997-60, §84.]

#### **§507. Appointment of Authorized Observers.**

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

(2) Any observer authorized pursuant to an access agreement or fisheries management agreement to which the Republic of the Marshall Islands is party, who is not a citizen or has not been appointed in accordance with Subsection (1), shall have such rights and privileges of a citizen as may be required for the performance of his or her duties, and all provisions of this Title relating to authorized observers shall be applicable to such persons. [P.L. 199 7-60, §85.]

#### **§508. Duties to Authorized Observers.**

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

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

(a) board such vessel for scientific, compliance monitoring and other functions, at such time and place as the Director may require;

(b) have full access to and the use of facilities and equipment on board the vessel which the authorized observer may determine is necessary to carry out his or her duties, including:

(i) full access to the bridge, navigation charts, fish on board and areas which may be used to hold, process, weigh and store fish;

(ii) full access to the vessel's records, including its logbooks and documentation for the purposes of records inspection and copying;

(iii) full access to fishing gear on- board;

(iv) reasonable access to navigation equipment and radios;

(c) take and remove from the vessel reasonable samples for the purposes of scientific investigation, and other relevant information;

(d) take photographs of the fishing operations, including fish, fishing gear, equipment, charts and records, and remove from the vessel such photographs or film as he or she may have taken or used on board the vessel;

(e) send or receive messages by means of the vessels communications equipment;

(f) carry out all duties safely;

(g) disembark at such time and place as the Director may require or in accordance with an applicable access agreement.

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

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

(a) travel costs to and from the vessel;

(b) such salary as may be notified by the Director, being the full amount of such salary;

(c) full insurance coverage.

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

(6) Any person who contravenes Subsection (1), (2), (3) or (5) commits an offense and upon conviction the shall be fined not more than \$50,000 or be imprisoned for up to six months, or both. [P.L. 199 7-60, §86.]

**§509. Duties to Authorized Officers and Authorized Observers.**

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

(2) Every person commits an offense who:

(a) assaults, obstructs, resists, delays, refuses boarding to, intimidates or fails to take all reasonable measures to ensure the safety of or otherwise interferes with an authorized officer, or authorized observer in the performance of his or her duties;

(b) incites or encourages any other person to assault, resist or obstruct any authorized officer or authorized observer while carrying out his or her powers or duties, or any person lawfully acting under the authorized officer's orders or in his or her aid;

(c) uses threatening language or behaves in a threatening or insulting manner or uses abusive language or insulting gestures towards any authorized officer or authorized observer while in the execution of his or her powers of duties, or any person lawfully acting under an authorized officer's orders or in his or her aid;

(d) fails to comply with the lawful requirements of any authorized officer or observer;

(e) fails to take all reasonable measures to ensure the safety of an authorized officer or authorized observer as appropriate in the performance of his or her duties.

(f) furnishes to any authorized officer or authorized observer any particulars which, to his knowledge are false or misleading in any respect;

(g) personates or falsely represents himself or herself to be an authorized officer or authorized observer or who falsely represents himself or herself to be a person lawfully acting under an authorized officer's orders or in his or her aid;

(h) personates or falsely represents himself or herself to be the master or other officer of a fishing vessel;

(i) resists lawful arrest for any act prohibited by this Title;

(j) interferes with, delays or prevents by any means, the apprehension or arrest of another person having reasonable grounds to believe that such person has committed an act prohibited by this Title;

(k) is in breach of any other duty to an authorized officer or authorized observer required under this Title; and upon conviction shall be fined not more than \$100,000 and may be imprisoned up to six months, or both.

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



the powers conferred on such person by this Title shall be deemed to be obstructing that officer, person or observer.

(5) Every person who, being a master, owner, charterer, agent or company established under the laws of the Republic of the Marshall Islands of a fishing vessel which transports an authorized officer, inspector or observer outside the fishery waters and causes him or her to disembark outside the territory or jurisdiction of Republic of the Marshall Islands, commits an offense and shall be jointly and severally liable on conviction to a fine not exceeding \$50,000 plus all costs of repatriation including board and lodging while out of Republic of the Marshall Islands and direct transportation to Republic of the Marshall Islands. [P.L. 1997-60, §87.]

#### **§510. Identification of Authorized Officers and Authorized Observers.**

An authorized officer or authorized observer, when exercising any of the powers conferred by this Title, shall on request produce identification to show he or she is an authorized officer or authorized observer under this Title. [P.L. 1997-60, §88.]

#### **§511. Transponders may be required.**

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

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

(2) Any machine:

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

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

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

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

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

(5) Any person may give a certificate stating:

- (a) his or her name, address and official position;

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

(6) Section 548 shall apply to a certificate given under this Section as if it had been a certificate given under Section 547 and any reference therein to Section 547 shall be read as a reference to this Section.

(7) Any person who intentionally, recklessly or unintentionally destroys, damages, renders inoperative or otherwise interferes with a machine aboard a vessel which automatically feeds or inputs information or data into a transponder, or who intentionally feeds or inputs information or data into a transponder which is not officially required or is meaningless commits an offense and upon conviction shall be fined not more than \$100,000 or may be imprisoned up to six months, or both. [P.L. 1997-60, §89.]

**§512-520. Reserved.**

## PART IX - MISCELLANEOUS

### **§521. Information and documentation to be true, complete and accurate.**

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

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

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

(4) Any person who contravenes Subsections (1) (2) or (3) commits an offense and upon conviction shall be fined not more than \$10,000, or be imprisoned up to six months, or both. [P.L. 1997-60, §90.]

### **§522. Stowage of Gear.**

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

(2) The operator of any fishing vessel used in contravention of Subsection (1) commits an offense and upon conviction shall be fined not more than \$100,000. [P.L. 1997-60, §91.]

### **§522. Fish samples.**

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

(2) Any person who contravenes Subsection (1) commits an offense and upon conviction shall be fined up to \$5,000 or be imprisoned up to three months, or both. [P.L. 1997-60, §92.]

#### **§524. Contamination of the Fishery Waters.**

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

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

(a) non-biodegradable trash or debris;

(b) the discharge of a poison, chemical or noxious substance, including but not limited to oil, petroleum, solvents, metals or sewage;

(c) the introduction of disease to the Fishery Waters.

(3) Any person who contravenes Subsection (1) commits an offense and upon conviction shall be fined up to \$500,000 and in addition the Court may order that such person shall be liable for the costs of any clean-up or damage arising from such contamination. [P.L. 1997-60, §93.]

#### **§525. Liability of Operator.**

In any proceedings under this title, the act or omission of any crew member of a fishing vessel or in association with a fishing vessel shall be deemed to be that of the operator of that fishing vessel. [P.L. 1997-60, §94.]

#### **§526. Civil liability of officers of companies.**

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

(2) It shall be an affirmative defense to liability under this Section for the officer to prove by a preponderance of the evidence that he or she used due diligence to secure compliance with the title or that the violation or offense was committed without that officer's knowledge, consent, collusion or collaboration. [P.L. 1997-60, §95.]

#### **§527. Application of other laws.**

No permit issued under this title shall relieve any fishing vessel or its operator or crew of any obligation or requirement imposed by other laws, including those concerning navigation, customs, immigration or health, unless so indicated in those laws. [P.L. 1997-60, §96.]

#### **§528. Application of laws of other States.**

(1) It shall be unlawful for any person to import, export, transport, sell, receive, acquire or purchase

any fish or fish product taken, possessed, transported or sold in violation of any law or regulation of another State upon implementation, on a reciprocal basis, of a fisheries management agreement between the Government and such other State or States, in which such activities are agreed to be unlawful.

(2) The Authority shall implement the fisheries management agreement described in Subsection (1) by regulation, and may require, inter alia, record keeping and reporting for each day of fishing activity, whether the fishing took place in the jurisdiction of the Fishery Waters or not. [P.L. 1997-60, §97.]

### **§529. Subsequent offenses.**

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

(a) be required to pay the maximum fine required under this Title for the second and any subsequent offenses;

(b) have any applicable license or permit suspended for a period up to six months. [P.L. 1997-60, §98.]

### **§530. Banning Order.**

In addition to any other fine or penalty provided under this Title, the Court may order any person to be banned from fishing in the Fishery Waters for a period up to three years if that person has committed multiple offenses against this Title. [P.L. 1997-60, §99.]

**NB: [Section numbers 531-540 and 554-560 were 'Reserved' in the last revision. These numbers have now been assigned to the succeeding provisions of this Act, to conform to the sequence above (Rev.2003)]**

## **PART X - JURISDICTION, LEGAL PROCEEDINGS AND EVIDENCE**

### **§541. Jurisdiction of the Court.**

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

(a) by any person within the Fishery Waters;

(b) outside the Fishery Waters by any citizen or person ordinarily resident in Republic of the Marshall Islands; or

(c) by any person on board any fishing vessel registered in the Republic of the Marshall Islands; shall be dealt with and judicial proceedings taken as if such act or omission had taken place in Republic of the Marshall Islands within the jurisdiction of the High Court of the Republic of the Marshall Islands.

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

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

(4) The Court may at any time enter restraining orders or prohibitions; issue warrants, process in rem or other processes; prescribe and accept satisfactory bonds or other security; and take such other actions as are in the interests of justice. [P.L. 1997-60, §100.]

### **§542. Civil Proceedings.**

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

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

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

(4) It shall be the duty of the Attorney-General to initiate all proceedings under this Section and to recover the amount imposed as a civil penalty. [P.L. 1997-60, §101.]

### **§543. Adjudication Proceedings.**

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

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

(3) If the person or business enterprise admits in writing to the violation, the Director may handle this matter under the Summary Administrative Proceedings provisions in Section 544.

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

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

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

(7) The Authority may promulgate regulations regarding the conduct of the proceedings. [P.L. 1997-60; §102.]

### **§544. Summary Administrative Proceedings.**

(1) Subject to Subsection (4) the Director may, where:

(a) he or she has determined that any person has violated this Title; and

(b) such person has, in writing:

(i) admitted to having committed such violation; and

(ii) consented to summary administrative proceedings after being

fully informed about these proceedings,

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

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

(a) not engage in fishing or carry out any other activity in the fishery waters until the amount of the penalty has been paid in full;

(b) be deemed to have consented to any seizure which took place in accordance with this Title in relation to the offense subject to the Summary Administrative Proceedings, and to have waived any right to a probable cause hearing.

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

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

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

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

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

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

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

(10) Any person who violates a valid order pursuant to the terms of this Chapter commits an offense. **[P.L. 1997-60, §103.]**

#### **§545. Liability for non-payment of penalties.**

All pecuniary penalties not specifically designated as fines and all forfeitures incurred under or imposed pursuant to this Title, and the liability to forfeiture of any article seized under the authority thereof, and all rents, charges, expenses and duties and all other sums of money payable under this Title may be sued for, determined, enforced and recovered by suit or other appropriate civil proceedings in the name of the Director as the nominal plaintiff; and all such proceedings shall be deemed to be civil proceedings; and the fact that a bond or other security has been paid shall not be pleaded or made use of in answer to or in stay of any such proceedings. **[P.L. 1997-60, §104.]**

**§546. Liability for loss or damage.**

A person who commits an offense against this Title may, upon conviction, be liable for any loss or damage caused by the offense and the amount of the loss of such damage may be awarded by the court as restitution in addition to, and recovered in the same manner as a fine. [P.L. 1997-60, §105]

**§547. Certificate evidence.**

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

- (a) a specified vessel was or was not on a specified date or dates a local fishing vessel or a foreign fishing vessel;
- (b) a specified vessel or person was or was not on a specified date or dates the holder of any specified license, authorization or certificate of registration;
- (c) an appended document is a true copy of the license or certificate of registration for a specified vessel or person and that specified conditions were attached to such document;
- (d) a particular location or area of water was on a specified date or dates within the fishery waters, or within a closed, limited, restricted or in any other way controlled area of the fishery waters, or an area of the fishery waters subject to specified conditions;
- (e) an appended chart shows the boundaries on a specified date or dates of the fishery waters, territorial sea, closed or limited areas or other areas or zones delineated for any specified purpose;
- (f) a particular item or piece of equipment is fishing gear;
- (g) the cause and manner of death of or injury to any fish,
- (h) an appended document is a true copy of an approved charter agreement, an access agreement or fisheries management agreement;
- (i) a call sign, name or number is that of or allotted under any system of naming or numbering of vessels to a particular vessel;
- (j) a particular position or catch report, a copy of which is appended, was given in respect of a specified vessel. [P.L. 1997-60, §106.]

**§548. Validity and procedures for certificates.**

(1) Unless the contrary is proved, a document purporting to be a certificate given under Section 547 shall be deemed to be such a certificate and to have been duly given.

(2) Where a certificate issued under Section 547 is served upon a defendant seven or more days before its production in court in any proceedings under this Title, the certificate shall, unless the contrary is proved, be sufficient evidence of all the facts averred in it.

(3) Where a certificate issued under Section 547 is served upon a defendant fourteen or more days before its production in court and the defendant does not, within seven days of the date of service, serve notice of objection in writing upon the prosecutor, then the certificate shall, unless the court finds the defendant is unduly prejudiced by any failure to object, be conclusive proof of all the facts averred in it.

- (4) Where any objection is notified under Subsection (3) the certificate shall, unless the contrary is proved, be sufficient evidence of all the facts averred in it.
- (5) Any certificate issued under Section 547 shall be titled 'Certificate Made Under Section 547, Marine Resources Act'.
- (6) Any omission from or mistake made in any certificate issued under Section 547 shall not render it invalid unless the Court considers such omission or mistake is material to any issue in the proceedings concerned, or the defendant is unduly prejudiced thereby.
- (7) Where in any proceedings a certificate made under Section 547 is produced to the Court, the prosecution shall not be obliged to call the maker of the certificate and the Court shall, where material, rely on the facts therein unless the contrary is proved. **[P.L. 1997-60, §107.]**

#### **§549. Certificate as to the location of a vessel.**

- (1) Where in any proceedings under this Title the place or area in which a vessel is alleged to have been at a particular date and time or during a particular period of time is material to an offense charged then a place or area stated in a certificate given by an authorized officer or authorized observer shall be evidence, unless the contrary is proved, of the place or area in which the vessel was at the date and time or during the period of time stated.
- (2) An authorized officer shall in any certificate made in Subsection (1) state -
- (a) his or her name, address, official position, country of appointment and provision under which he or she is appointed;
  - (b) the name and, if known, call sign of the fishing vessel concerned;
  - (c) the date and time or period of time the vessel was in the place or area;
  - (d) the place or area in which it is alleged the vessel was located;
  - (e) the position fixing instruments used to fix the place or area stated in (d) and their accuracy within specified limits;
  - (f) a declaration that he checked the position fixing instruments a reasonable time before and after they were used to fix the position and they appeared to be working correctly; and
  - (g) if a position fixing instrument which is not judicially recognized as notoriously accurate or a designated machine is used, a declaration that he checked the instrument as soon as possible after the time concerned against such instrument.

(3) Section 548 shall apply to a certificate given under this Section as if it had been a certificate given under Section 547 and any reference therein to Section 547 shall be read as a reference to this Section.

(4) For the purposes of this Title 'authorized officer' shall include surveillance officers and those charged with similar responsibilities in other countries. **[P.L. 1997-60, §108.]**

#### **§550. Photographic Evidence.**

- (1) Where a photograph is taken of any fishing or related activity and simultaneously the date and



time and position from which the photograph is taken are superimposed upon the photograph, or the date, time and position are certified on the photograph by an authorized officer and observer, then it shall be presumed unless the contrary is proved that the photograph was taken on the date, at the time and in the position so appearing.

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

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

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

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

(4) Section 548 shall apply to a certificate given under this Section as if it had been a certificate given under Section 547 and any reference therein to Section 547 shall be read as a reference to this Section. **[P.L. 1997-60, §109.]**

### **§551. Presumptions.**

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

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

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

(4) Where in any legal proceedings relating to an offense under this Title:

- (a) an authorized officer gives evidence of reasonable grounds to believe any fish to

which the charge relates were taken in a specified area of the fishery waters;

(b) the Court considers that, having regard to that evidence the grounds are reasonable: all the fish shall be presumed to have been so taken, unless the contrary is proved.

(5) Where in any legal proceedings for an offense under this Title:

(a) an authorized officer gives evidence of reasonable grounds to believe that any fish to which the charge relates were taken by the use of a driftnet;

(b) the Court considers that, having regard to the evidence, the grounds are reasonable; all the fish shall be presumed to have been so taken, unless the contrary is proved.

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

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

(8) Any position fixing instrument on board a vessel or aircraft used for the enforcement of this Title shall be presumed to be accurate.

(9) For the purposes of this Section, a position fixing instrument shall be deemed to be any device which indicates the location of a vessel, including but not limited to any satellite navigation system or global positioning system. [P.L. 1997-60, §110.]

#### **§552. Burden of Proof.**

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

(2) Where a person is charged with the contravention of Section 521, the burden shall be on that person to prove that the information given was true, complete and correct. [P.L. 1997-60, §111.]

#### **§553. Destruction of Evidence.**

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

(2) Any person who contravenes Subsection (1) commits an offense and upon conviction shall be fined not more than \$50,000 or may be imprisoned up to six months, or both. [P.L. 1997-60, §112.]

#### **§§ 554 -560. Reserved.**

### **PART XI - FORFEITURE AND DISPOSITION OF SEIZED OR CONFISCATED PROPERTY**

### **§561. Forfeiture of property.**

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

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

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

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

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

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

(7) In the event there is an appeal from an order for forfeiture, the Court may continue any such bond, surety or other security deposited in accordance with Subsection (6) during the pendency of the appeal and any retrial or rehearing on remand or may require additional security to be deposited with the Court. [P.L. 1997-60, §113.]

### **§562. Disposition of seized or confiscated fish or fish products.**

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

(2) The Director shall notify the owner (or apparent owner) of the perishable goods seized of the sale, and such owner or his or her nominee may be present at the sale. [P.L. 1997-60, §114.]

### **§563. Disposition of forfeited or seized goods.**

(1) Notwithstanding any other provision of this Title, any vessel, vehicle, aircraft or other item ordered to be forfeited under this Title may be disposed of in such manner as the Director may decide after the

expiration of the time provided for the filing of a Notice of Appeal.

(2) Any vessel, vehicle, aircraft or other item seized under this Title but not forfeited in any legal proceedings may be held by the Government of the Republic of the Marshall Islands until all fines, orders for costs and penalties imposed under this Title have been paid and failing payment within the time allowed be sold and the balance of the proceeds returned to the owner or apparent owner in accordance with this Title after deduction of all fines, orders for costs, penalties imposed under this Title and costs of sale. [P.L. 1997-60, §115.]

#### **§564. Unlawful removal of item in custody.**

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

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

(3) Any person who contravenes Subsection (2) commits an offense and upon conviction shall be fined not more than \$100,000 and shall be liable for the full market value of the vessel, vehicle, aircraft or other item. [P.L. 1997-60, §116.]

#### **§565. Liability for property in custody.**

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

(2) Any person who does not maintain properly in accordance with Subsection (1) commits an offense and upon conviction shall be fined not more than \$500,000. [P.L. 1997-60, §117.]

#### **§566. Release of Seized Goods.**

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

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

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

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

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

(a) a finding by the Court that the vessel, vehicle, aircraft or other item has not been used in or connected with in the commission of an offense under this Title; or

(b) where the Court finds that the vessel, vehicle, aircraft or other item has been used in or connected with the commission of an offense under this Title:

(i) payment in full within 30 days of the judgment of the Court of any fine imposed by the Court and any costs ordered to be paid by the Court; and

(ii) where the Court so orders, delivery to the Court of the vessel, including its fishing gear, furniture, appurtenances, stores and cargo, and of any fish ordered to be forfeited without any impairment of their value, or payment of the monetary value thereof as determined by the Court.

(6) Nothing in Subsection (1) shall require a Court to release any vessel, vehicle, aircraft or other item if it might be required as an exhibit in court proceedings or is reasonably required for any further investigations of offenses against this Title. [P.L. 1997-60, §118.]

### **§567. Holding of seized goods.**

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

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

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

(4) Where any vessel, vehicle, aircraft or other items has been released upon the lodging of a bond or security, the Court may order any convicted defendant and the owner of the vessel, vehicle, aircraft or other item concerned, whether or not he is a defendant, to pay the difference between the bond or amount lodged in respect of the forfeited property and the aggregate value of the forfeited property. [P.L. 1997-60, §119.]

### **§568. Application of bond, etc.**

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

(a) the discharge of any forfeiture ordered under this Title;

(b) the payment of all fines or penalties for offenses against this Title or penalties imposed under this Title arising out of the use of or in connection with the vessel, vehicle, aircraft or other item;

(c) the full satisfaction of all costs involved in maintaining and keeping secure the vessel and its equipment during legal proceedings;

(d) the discharge of all orders for costs in proceedings under this Title arising out of the use of or in connection with the vessel, vehicle, aircraft or other item;

(e) return as provided in this Title. **[P.L. 1997-60, §120.]**

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