

A BILL

ENTITLED

AN ACT to Repeal the Fishing Industry Act; to provide for the efficient and effective management and sustainable development of fisheries, aquaculture and other related activities in accordance with internationally recognized norms, standards and best practices and to provide for matters connected therewith and incidental thereto.

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BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows: —

PART I—*Preliminary*

1. This Act may be cited as the Fisheries Act, 2018, and shall come into operation on such day as may be appointed by the Minister by notice published in the *Gazette*.

Short title
and
commence-
ment.

Interpreta-
tion.

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

- “access agreement” means an agreement entered into by the Minister, in accordance with section 49 permitting access to the fisheries waters for fishing or any related activity;
- “Appeals Tribunal” means the Tribunal established under Part XII;
- “applicant” means a person who makes an application under this Act;
- “appointed day” means the day appointed by the Minister under section 1;
- “aquaculture” means the cultivation, propagation or farming of fish, whether from egg, spawn, spat or seed, including the rearing of fish lawfully taken from the wild or lawfully imported into Jamaica or by other similar process;
- “aquaculture facility” includes any equipment, area, enclosure, construction or site (whether on land or in water), in which aquaculture is conducted;
- “aquaculture gear” means any equipment used in the conduct of aquaculture, including rope, socking material, collection material, nets, sea pens, tanks, incubation equipment, raceways, transport tanks, containers and buoys;
- “aquaculture management area” means any area declared by the Minister under section 16 to be an aquaculture management area;
- “aquaculture management plan” means a plan approved under section 13 for the management of aquaculture;
- “aquaculture management zone” means an area within an aquaculture management area, declared under section 16 to be an aquaculture management zone, in which fisheries, aquaculture and any related activity is managed;
- “aquaculture product” means fish, or part of a fish, or an aquatic plant or animal, whether dead or alive, which is cultivated,

bred, farmed, propagated, raised or ranched within an aquaculture facility in Jamaica or in the fisheries waters;

“aquatic plant or animal” means a plant or an animal, including where applicable, its eggs and gametes, that at all stages of its development or life cycle, has water as its natural habitat;

“Authority” means the National Fisheries Authority established under section 5;

“authorization” means an authorization granted under Part XI;

“buffer zone” means an area of the fisheries waters established to minimize, eliminate and prevent actual and potential adverse impact to any of the following—

- (a) a fishery management area;
- (b) a fishery management zone;
- (c) an aquaculture management area;
- (d) an aquaculture management zone; or
- (e) a fish sanctuary;

“Chief Executive Officer” means the Chief Executive Officer of the Authority appointed under section 7;

“close season” means the period declared by order by the Minister to be a close season in relation to a fishery or species of fish, during which period the fishery or species of fish to which the order applies shall not be fished;

“commercial aquaculture” means aquaculture for the purpose of sale;

“commercial fishing” means fishing for the purpose of sale;

“conveyance” includes a motor vehicle, an aircraft, a water craft or any other means of transport or any floating device, used to store or transport fish, aquaculture product or any equipment;

“Council” means the National Fisheries Advisory Council appointed under section 10;

“deleterious substance” means a substance that, if added to the fisheries waters, would degrade or alter or form part of a process of degradation or alteration of the quality of the fisheries waters so that it is rendered or is likely to be rendered harmful to fish or fish habitat or to the use by any person of fish that frequent the fisheries waters;

“deposit” includes discharging, spraying, releasing, spilling, leaking, seeping, pouring, emitting, emptying, throwing, dumping or placing;

“document” means, in addition to a document in writing, any thing in which information of any description is recorded;

“drift net fishing” means fishing with the use of a gill net or other combination of nets which are—

- (a) designed to enmesh, entrap or entangle fish, while drifting in the fisheries waters;
- (b) of such length as may be determined by the Minister by Order; and
- (c) not attached to the land or seabed;

“electrical current fishing device” means any electrical current generating device used to directly discharge electrical current to catch, injure, stun or kill fish;

“equipment” means any implement or other thing that can be used in the course of fishing or aquaculture or any related activity, and includes—

- (a) in the case of fishing, any fishing gear, winch, item, device, machine, spear gun, underwater diving apparatus or gear; or
- (b) in the case of aquaculture, any aquaculture gear;

“Exclusive Economic Zone” means the Exclusive Economic Zone established under section 3 of the *Exclusive Economic Zone Act*;

“farming” in relation to any fish, means the controlled propagation, breeding, cultivation, growth, rearing and harvesting of such fish;

“fish” means the whole or part of any aquatic plant or animal, whether piscine or not and includes any mollusc, crustacean, coral, sponge, holothurian or other echinoderm, reptile and marine mammal (including their eggs and all juvenile stages thereof), its products and by-products;

“fish aggregating device” means any device placed in the water to aggregate fish and includes any natural floating object upon which the device has been placed to facilitate its location;

“fish habitat” means the fisheries waters or aquaculture management areas which form the habitat for fish or a particular species of fish;

“fish processing establishment” means any place (other than a fishing vessel or post-harvest handling facility) in which fish or aquaculture product is processed or handled for trade;

“fisher” means a person who is licensed by the Authority to engage in fishing;

“fisheries waters” means—

(a) the—

(i) internal waters;

(ii) archipelagic waters; or

(iii) territorial sea, as defined in the *Maritime Areas Act*;

(b) the Exclusive Economic Zone as established under the *Exclusive Economic Zone Act*;

- (c) inland waters of Jamaica such as rivers and ponds;
and
- (d) such other waters as may be prescribed;

“fishery or fisheries” means one or more stocks of fish, or any fishing operations or related activity based on such stocks which can be treated as a unit for the purpose of management, taking into account any geographical, scientific, technical, recreational, economic and other relevant characteristics;

“fishery inspector” means a person who is—

- (a) a game warden approved as such under the *Wild Life Protection Act*;
- (b) a marine officer under the *Exclusive Economic Zone Act* or the *Maritime Areas Act*;
- (c) an officer of the Natural Resources Conservation Authority duly authorized under section 20 of the *Natural Resources Conservation Authority Act*;
- (d) an authorized officer under the *Aquaculture Inland and Marine Products and By-Products (Inspection and Licensing) Act*;
- (e) a District Constable, a member of the Jamaica Constabulary Force and the Jamaica Defence Force;
- (f) any person designated as a fishery inspector pursuant to Part XIII;

“fishery management area” means an area of the fisheries waters declared by the Minister under section 15, to be a fishery management area;

“fishery management plan” means a fishery management plan approved in accordance with section 12;

“fishery management zone” means a part of a fishery management area declared by the Minister under section 15, to be a fishery management zone;

“fishing” means—

- (a) the locating, catching, taking or harvesting of fish;
- (b) engaging in any related activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
- (c) placing, searching for or recovering any radio beacon, fish aggregating device or associated equipment;
- (d) any operation within the fisheries waters in support of or in preparation of any activity described under paragraphs (a), (b) or (c);
- (e) the use of any vessel or conveyance in relation to any activity described in paragraphs (a), (b), (c) or (d),

but does not include the taking of fish that is farmed in an aquaculture facility;

“fishing rights” means access to fisheries or aquaculture resource granted to a person in accordance with the provisions of this Act;

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

“foreign fishing vessel” means a vessel which is registered or licensed to engage in fishing or any related activity in a State other than Jamaica;

“functions” include powers and duties;

“Fund” means the Fisheries Management and Development Fund established under section 9 of the *Conch (Export Levy) Act*;

“handling”, in relation to fish or aquaculture products, means the touching, lifting, managing, carrying or the doing of any other activity involving contact with the fish or aquaculture products;

“high seas” means all parts of the sea not included in the territorial sea, internal waters, archipelagic waters or the exclusive economic zone of any state;

“international fisheries conservation and management measures” means measures to conserve or manage fisheries or aquaculture, that are adopted and applied by an international organization or under an international agreement to which Jamaica is a party;

“Jamaican ship” has the meaning assigned to it under the *Shipping Act*;

“kraal” means a device of any construction, submerged within the fisheries waters and used to hold live fish;

“local fishing vessel” means a vessel which is—

- (a) wholly owned by one or more persons who are citizens of Jamaica or ordinarily residents of Jamaica;
- (b) wholly owned by a company incorporated under the laws of Jamaica;
- (c) manned by a majority of officers and crew that are citizens of Jamaica or ordinarily residents of Jamaica; or
- (d) not owned by a company under demise;

“master” in relation to a vessel, means the person holding the most responsible position at any given time on board the vessel

but does not include a pilot within the meaning of the *Pilotage Act*;

“net” means a fabric of rope, cord, twine or other material knotted or woven into meshes and designed to take fish;

“noxious substance” means any substance which kills, injures or stupefies fish or is likely to kill, injure or stupefy fish or is otherwise injurious to fish;

“observer” means any person designated by the Minister as an observer under Part XIV;

“open season” means the period outside of a close season and includes any period for which no close season has been declared in relation to a fishery or a species of fish;

“operator” means—

- (a) in the case of a vessel, any person who is in charge of, responsible for the operations of, directs or controls the vessel, including the owner, master or charterer of the vessel;
- (b) in the case of an aquaculture facility, any person who is in charge of, or responsible for the operations of or directs and controls the operations of, the aquaculture facility, including the owner or manager of the aquaculture facility;
- (c) in the case of a facility that handles fish or aquaculture products for processing, sale, trade, storage, consumption or any related activity, any person who is in charge of or responsible for the operations of or directs and controls the facility, including the owner of the facility;

“owner” means the person discharging or claiming the right or accepting the obligation to exercise or discharge any of the powers or duties of an owner, whether on his own behalf or

on behalf of another, and includes a person who is the owner jointly with one or more other persons and any manager, director and secretary of any corporation which is an owner;

“quota” means a proportional share of fisheries resources or fishing rights allocated to a person under this Act;

“quota management plan” means a plan established by the Authority for the management of a fishery or species of fish which sets limits on yield or effort and related activities that are developed in order to ensure the sustainable management and development of the fishery or species of fish;

“recreational fishing” means fishing by any method allowed which does not constitute commercial fishing;

“related activity” means—

(a) as it relates to fishing, activities including—

- (i) the trans-shipping of fish to or from any vessel or conveyance;
- (ii) the landing of fish from any vessel or conveyance;
- (iii) the storing or transporting of fish taken from the fisheries waters up to the time it is first landed;
- (iv) the storing, packaging or processing of fish;
- (v) the refueling or supplying of any fishing vessel or conveyance;
- (vi) the performing of other activities in support of fishing;
- (vii) attempting or preparing to do any of the acts referred to in subparagraphs (i) to (vi);

- (b) as it relates to an aquaculture activity, includes—
- (i) the performing of any activity in support of aquaculture;
 - (ii) the use and disposal of aquaculture waste products; or
 - (iii) activities involved in making provision for or attempting or preparing to carry out any of the activities specified in subparagraphs (i) and (ii);

“relevant enactment” means the—

- (a) *Aquaculture, Inland and Marine Products and By-Products (Inspection and Licensing) Act*;
- (b) *Beach Control Act*;
- (c) *Endangered Species (Protection, Conservation and Regulation of Trade) Act*;
- (d) *Shipping Act*;
- (e) *Exclusive Economic Zone Act*;
- (f) *Natural Resources Conservation Authority Act*;
- (g) *Wildlife Protection Act*;
- (h) *Maritime Areas Act*;
- (i) *Morant and Pedro Cays Act*; and
- (j) any other enactment that the Minister may, by order, declare to be a relevant enactment for the purposes of this Act;

“relevant offence” means an offence specified by the Minister, by order, published in the *Gazette*;

“repealed Act” means the *Fishing Industry Act*;

“trans-ship” means transferring fish from one vessel or conveyance to another vessel or conveyance and the term “trans-shipment” shall have a corresponding meaning;

“trap” means an enclosure, not being a net, designed to take fish, whether or not such enclosure is fixed to the shore;

“vessel” has the same meaning assigned to it under the *Shipping Act* and includes a fishing vessel;

“vessel monitoring system” means any system that is capable of monitoring the position and activities of a vessel, for the purpose of the effective management of fisheries, including, but not limited to, the determination of the identity of the vessel, its location, course, speed and special codes.

PART II—*Objects and Guiding Principles of Act*

Objects of Act.

3. The objects of this Act are to provide for and promote the effective management and sustainable development of fisheries, aquaculture and any related activity in accordance with—

- (a) regional and internationally recognized norms, standards and best practices; and
- (b) an ecosystem approach which addresses the multiple needs and desires of society without jeopardizing the options for future generations to benefit from the full range of goods and services provided by aquatic ecosystems.

Guiding principles for management.

4. The exercise of the functions under this Act shall be guided by the following principles—

- (a) fisheries resources shall be managed as a renewable asset so as to ensure utilization of the resources at optimum sustainable yield;
- (b) the aquatic environment shall be managed—
 - (i) as an asset for current and succeeding generations; and

- (ii) to ensure the protection of fishery and aquaculture resources and human health;
- (c) the precautionary principle shall be applied;
- (d) subject to paragraphs (a), (b) and (c), the utilization of fishery and aquaculture resources to achieve economic growth, human resource development, employment creation and a sound ecological balance, consistent with Jamaica's national development objectives;
- (e) relevant regional or international obligations and applicable rules of international law;
- (f) the user-pays principle shall be applied, where applicable;
- (g) to the extent practicable, stakeholder participation in the management of fishery and aquaculture resources shall be promoted;
- (h) responsible management of fishery and aquaculture resources, based on the best available scientific information shall be promoted;
- (i) aquaculture development that is ecologically sustainable and which allows for the rational use of natural resources shared by aquaculture and other activities shall be ensured.

PART III—*Administration*

Establishment and Functions of the National Fisheries Authority and the National Fisheries Advisory Council

5.—(1) There is hereby established a body to be called the National Fisheries Authority which shall be a body corporate to which section 28 of the *Interpretation Act* applies.

Establishment and functions of Authority and Board. First Schedule.

(2) The provisions of Part A of the First Schedule shall have effect as to the operation of the Authority and otherwise in relation thereto.

(3) The Authority shall be responsible for the management and development of fisheries and aquaculture in accordance with the provisions of this Act.

(4) Without limiting the provisions of subsection (3), the functions of the Authority shall include—

- (a) the conservation of fisheries;
- (b) the assessment of aquaculture and fisheries;
- (c) the collection, compilation, analysis and interpretation of statistics on fisheries, aquaculture and related activities;
- (d) ensuring the viability of coastal, marine and other aquatic environments;
- (e) the determination and allocation of allowable fishing rights and quotas;
- (f) where applicable, determining the total allowable catch for a fishery or species of fish;
- (g) the monitoring, control, surveillance and enforcement of any activity relating to fisheries, aquaculture and any related activity;
- (h) the imposition of measures to prevent, deter and eliminate illegal, unreported and unregulated fishing;
- (i) the preparation and periodic review of fishery management plans and aquaculture management plans;
- (j) the granting, suspension, cancellation and revocation of licences, authorization, permits and the allocation of fishing rights and quotas under this Act or any Regulations made under this Act;
- (k) the facilitation and implementation of any obligation under international law, regional and international agreements, or arrangements to which Jamaica is a party;
- (l) the management, development, designation and zoning of the fisheries waters, fishing beaches, fishing and aquaculture facilities;

- (m) the zoning, designation, regulation and development of areas reserved for fishing and aquaculture;
- (n) providing public education in matters relating to fisheries and aquaculture; and
- (o) such other matters as are necessary or expedient for giving effect to the purposes and provisions of this Act.

(5) In performing its functions under subsections (3) and (4), the Authority may—

- (a) enter into agreements or arrangements, on such terms and conditions as the Authority considers necessary;
- (b) initiate, carry out or support, by financial means or otherwise, research which, in the opinion of the Authority, is relevant to any of its functions;
- (c) conduct seminars and provide appropriate training programmes and consulting services and gather and disseminate information relating to its functions; and
- (d) impose fees and other charges payable in respect of any service provided by the Authority.

(6) The Authority has, in addition to the powers conferred on the Authority under this Act and any other law, full powers to do all things that are necessary or convenient to be done for or in connection with the performance of its functions and the achievement of its objects and guiding principles.

6.—(1) The Authority shall be governed by a Board and the provisions of Part B of the First Schedule shall have effect as to the constitution of the Board and otherwise in relation thereto.

Board of the
Authority.
First
Schedule.

(2) The Board shall—

- (a) be responsible for providing general control and guidance over the exercise of the functions of the Authority; and
- (b) undertake any other functions as may be conferred on it by this Act or any other enactment.

Chief
Executive
Officer.

7.—(1) There shall be a Chief Executive Officer of the Authority who shall—

- (a) be the head of the staff of the Authority;
- (b) be responsible for carrying out the functions and managing the affairs of the Authority; and
- (c) advise the Board on any matter relating to the Authority.

(2) The Chief Executive Officer shall be appointed by the Board, subject to the approval of the Minister, on such terms and conditions as the Board thinks fit.

(3) A person shall not be qualified for appointment as Chief Executive Officer if the person—

- (a) is bankrupt within the meaning of the *Insolvency Act*; or
- (b) has been convicted of an offence involving dishonesty or moral turpitude.

(4) The Chief Executive Officer shall vacate his office if any circumstances arise that, if he were not Chief Executive Officer, would, by virtue of subsection (3), cause him to be disqualified for appointment as such.

(5) The Chief Executive Officer may be removed from office if he—

- (a) is suffering from a mental disorder within the meaning of the *Mental Health Act*;
- (b) becomes incapable of satisfactorily discharging the functions of his office;
- (c) is bankrupt within the meaning of the *Insolvency Act*;
- (d) is convicted of any offence involving dishonesty or moral turpitude;
- (e) fails, without reasonable excuse, to carry out any of the functions conferred or imposed on him under this Act or any requirements specified in his contract of employment; or

- (f) is proven to have brought disrepute to the Authority through misconduct.

(6) The Chief Executive Officer may, at any time, resign his office by instrument in writing addressed to the Board and the resignation shall take effect from the date on which the Board receives the instrument or the date specified in the instrument, whichever is earlier.

(7) Where a vacancy arises in the office of Chief Executive Officer, a suitable person may be designated to act in that office during such vacancy until an appointment is made.

(8) Where, by reason of illness, absence from Jamaica or other sufficient cause, the Chief Executive Officer is unable to perform his functions under this Act—

- (a) he may, after consultation with the Board, appoint an officer of the Authority to perform those functions for a period not exceeding two months; or
- (b) if the Chief Executive Officer is unable, or fails to appoint a person under paragraph (a), or if it is necessary to make such an appointment for a period in excess of two months, the appointment shall be made by the Board in the same manner as specified in subsection (2).

8.—(1) The Chief Executive Officer may delegate any of his functions under this Act, other than the power to delegate, to a fishery inspector, observer, a member of staff of the Authority or such other person as the Chief Executive Officer considers appropriate. Delegation of functions.

(2) Every delegation under subsection (1) is revocable and the delegation of a function shall not preclude the performance of that function by the Chief Executive Officer.

9. The Minister may, after consultation with the Authority, give to the Authority such directions of a general character as to the policy to be followed by the Authority in the performance of its functions as appears to the Minister to be necessary in the public interest and the Authority shall give effect to these directions. Ministerial directions.

*Appointment and Functions of National Fisheries
Advisory Council*

Appointment
of Council.

10.—(1) The Minister shall appoint a body to be called the National Fisheries Advisory Council.

(2) The Council shall comprise of such members who shall be appointed by the Minister, in such manner as he considers necessary, by instrument in writing from persons who have expertise in fisheries, aquaculture and other related fields.

Functions of
Council.

11. The functions of the Council shall be to advise the Minister on—

- (a) policies in relation to all matters relating to fisheries, aquaculture and any related activity;
- (b) the need for any amendment to this Act or its Regulations;
- (c) fishery management plans, aquaculture management plans and on the review of those plans; and
- (d) any other matter to which consultation of the Council is required under this Act or which may be referred to the Council by the Minister.

PART IV—*Management of Fisheries*

Management Plans and Management Measures

Fishery
management
plans.

12.—(1) Subject to the provisions of this section, the Authority shall prepare and keep under review, fishery management plans in relation to—

- (a) each fishery management area, fishery management zone; or
- (b) each fishery or species of fish.

(2) The purpose of each fishery management plan shall be, *inter alia*, to promote the sustainable management and development of fishery resources within a fishery management area or fishery management zone or in relation to a fishery or species of fish.

(3) In preparing each fishery management plan, the Authority shall—

- (a) take such steps as are necessary to ensure that sufficient information is available concerning the fishery management area, fishery management zone, fishery or species of fish to which the plan relates;
- (b) take into consideration the best scientific information available in respect of the fishery management area, fishery management zone, fishery or species of fish to which the plan relates; and
- (c) apply the precautionary principle.

(4) A fishery management plan may—

- (a) identify the fishery management area, fishery management zone to which the plan relates and specify any conditions that are attached to the fishery management area or fishery management zone;
- (b) identify each applicable fishery or species of fish, as the case may be, and its characteristics, including its state of exploitation;
- (c) specify the objectives to be achieved in the management of a fishery or species of fish;
- (d) specify the management strategies to be adopted in the management of the fishery or species of fish;
- (e) specify the limitations, if any, to be applied to licences, authorizations, permits, fishing rights and quotas granted under this Act or any Regulations made under this Act;
- (f) identify possible adverse environmental effects on the operation of fishing activities;
- (g) specify the statistical and other data required to be given or reported to the Authority for the effective management of a fishery or species of fish; and

- (h) include any other information as the Authority may consider necessary.

(5) In the preparation or review of a fishery management plan, the Authority shall consult with persons engaged in fishing, aquaculture and such related activities as appear to the Authority to be necessary.

(6) A fishery management plan or review of such plan shall be submitted to the Minister for his approval and upon approval by the Minister, the plan shall be published in the *Gazette*.

(7) The Authority shall take such steps as are necessary to ensure that a fishery management area, fishery management zone, fishery or species of fish, as the case may be, is managed in accordance with the fishery management plan that has been approved and published in accordance with this section.

(8) The Authority shall cause the fishery management plan to be reviewed periodically as it considers necessary, so however that, the intervals between reviews shall not exceed five years.

Aquaculture
management
plans.

13.—(1) Subject to the provisions of this section, the Authority, shall prepare and keep under review aquaculture management plans.

(2) An aquaculture management plan shall, in relation to an aquaculture activity—

- (a) identify the applicable aquaculture management areas or aquaculture management zones and specify any attendant conditions necessary to be attached thereto;
- (b) specify the objectives to be achieved and the strategies to be adopted in an aquaculture management area or an aquaculture management zone;
- (c) specify generally, conditions, if any, to be applied to licences, authorizations, permits or quotas or other fishing rights within the aquaculture management area or aquaculture management zone;
- (d) identify any possible adverse environmental effects on the operation of an aquaculture activity, or any related activity,

or caused by an aquaculture activity within an aquaculture management area or aquaculture management zone;

- (e) specify the statistical and other data required to be given or reported;
- (f) establish quarantine and control mechanisms; and
- (g) include such other activities as the Authority considers necessary.

(3) In preparing an aquaculture management plan, the Authority shall—

- (a) take such steps as are necessary to ensure that sufficient information is available concerning the aquaculture activity that is subject to the aquaculture management plan;
- (b) take into consideration the best scientific information available regarding an aquaculture activity; and
- (c) apply the precautionary principle.

(4) In preparation or review of an aquaculture management plan, the Authority shall consult with persons engaged in fishing, aquaculture and such related activities as appear to the Authority to be necessary.

(5) An aquaculture management plan or review of such plan shall be submitted to the Minister for his approval and upon approval by the Minister, the plan shall be published in the *Gazette*.

(6) The Authority shall take such steps as are necessary to ensure that an aquaculture management area, aquaculture management zone or an aquaculture activity is managed in accordance with the aquaculture management plan which has been approved and published in accordance with this section.

(7) The Authority shall cause an aquaculture management plan to be reviewed periodically, as it considers necessary, so however that, the intervals between review shall not exceed five years.

*Declaration of Special Fishery Research Area, Fishery
Management Area, Fishery Management
Zones and Buffer Zones*

Declaration
of special
fishery
research area.

14. The Minister may, after consultation with the Authority, by order, declare any area in Jamaica or in the fisheries waters to be a special fishery research area.

Declaration
of fishery
management
areas, fishery
management
zones and
buffer zones.

15.—(1) For the better management and development of fisheries and the viability of the environment, the Minister may, after consultation with the Authority, by order, declare—

- (a) an area of the fisheries waters to be a fishery management area in relation to a fishery or species of fish or any method of fishing as may be specified in the order;
- (b) a part of a fishery management area to be a fishery management zone in relation to a fishery or species of fish or any method of fishing, as may be specified in the order; and
- (c) any area or each of the areas around or adjacent to a fishery management area or fishery management zone to be a buffer zone.

(2) An order made under subsection (1) may regulate the activities in the declared—

- (a) fishery management area;
- (b) fishery management zone; or
- (c) buffer zone,

and subject to such conditions as the Minister, after consultation with the Authority, may consider appropriate, stipulate fishing activities that are restricted or prohibited in the fishery management area, fishery management zone or buffer zone.

(3) Notwithstanding the provisions of subsection (2), the Minister may, in any particular case, approve an activity that would

otherwise be a fishery restricted activity within a fishery management area, fishery management zone or buffer zone, after considering—

- (a) an environmental impact assessment, a social impact assessment or any other scientific assessment prepared in relation to the fishery management area, fishery management zone or buffer zone, in order to determine the impact of the proposed activity and an appropriate mitigation plan;
- (b) the national interest;
- (c) Jamaica's obligation under international law or regional or international agreements or arrangements to which Jamaica is a party;
- (d) any other matter which the Minister considers appropriate.

(4) A fishery management area or fishery management zone may be used for the purpose of—

- (a) protecting and conserving the fishery in the declared area or zone;
- (b) managing the fishery resources for commercial fishing;
- (c) determining the total allowable catch or the allocation of fishing rights in relation to a fishery, species of fish or aquaculture activity;
- (d) managing aquaculture;
- (e) managing recreational fishing; and
- (f) generating fishery products and by-products.

(5) The Minister may, by order—

- (a) prohibit the fishing of and any related activity in relation to any species of fish in a fishery management area, fishery management zone or buffer zone, or any designated part thereof, notwithstanding any open season for the relevant fishery or species of fish;

- (b) prescribe the equipment, the fishing vessel and the amount of personnel to be allowed in any fishery management area, fishery management zone or buffer zone or any designated part thereof.

(6) The Authority may, in order to enable better identification of fishery management areas, fishery management zones and buffer zones, use—

- (a) any method of demarcation and marking of the fishery management areas, fishery management zones or buffer zones; or
- (b) such technology or marking method as it considers appropriate.

(7) For the purposes of this section, “fishery restricted activity” means any activity which, if carried out, may have the potential to interfere with, pollute or otherwise negatively affect the associated ecosystem or the fishery resources in a fishery management area, fishery management zone or buffer zone.

Declaration of aquaculture management areas, aquaculture management zones and buffer zones.

16.—(1) The Minister may, after consultation with the Authority, by order, declare—

- (a) an area, whether in Jamaica or in the fisheries waters, to be an aquaculture management area;
- (b) an area within an aquaculture management area to be an aquaculture management zone;
- (c) any area or each of the areas around or adjacent to an aquaculture management area or aquaculture management zone or facility, to be a buffer zone.

(2) An order made under subsection (1) may regulate the activities in—

- (a) an aquaculture management area;
- (b) an aquaculture management zone; and

- (c) a buffer zone, and subject to such conditions as the Minister, after consultation with the Authority, may consider appropriate, stipulate aquaculture activities that are restricted or prohibited in the aquaculture management area, aquaculture management zone or buffer zone.

(3) Notwithstanding the provisions of subsection (2), the Minister may approve an activity that would otherwise be an aquaculture restricted activity within an aquaculture management area, aquaculture management zone, or a buffer zone after considering—

- (a) an environmental impact assessment, a social impact assessment or any other scientific assessment prepared in relation to the aquaculture management area, aquaculture management zone or a buffer zone so as to determine the impact of a proposed activity and an appropriate mitigation plan;
- (b) the national interest;
- (c) Jamaica's obligations under any international law, regional or international agreements or arrangements to which Jamaica is a party;
- (d) the aquaculture management plan, or fishery management plan, where applicable for that fishery or species of fish within the aquaculture management area, aquaculture management zone or buffer zone;
- (e) any other matter as the Minister considers appropriate.

(4) The Authority may, in order to enable identification of aquaculture management areas, aquaculture management zones or their buffer zones use—

- (a) any method of demarcation and marking of the aquaculture management areas, aquaculture management zones or buffer zones; or
- (b) such technology or marking method as it considers appropriate.

(5) An aquaculture management area, aquaculture management zone or buffer zone may be used for the purpose of—

- (a) protecting and conserving a fishery or a species of fish in the declared aquaculture management area, aquaculture management zone or buffer zone;
- (b) managing the fisheries resources for commercial fishing;
- (c) managing aquaculture;
- (d) managing recreational fishing; and
- (e) generating fishery products and by-products.

(6) For the purposes of this section, “aquaculture restricted activity” means any activity which, if carried out in an aquaculture management area, aquaculture management zone or buffer zone may have the potential to interfere with the aquaculture activity and pollute or otherwise negatively affect the aquaculture management area, aquaculture management zone or buffer zone.

*Declaration of Fish Sanctuary, Protection of Fish,
Pollution Prevention and Close Seasons*

Declaration
of fish
sanctuary and
buffer zones.

17.—(1) The Minister may, for the protection of the ecosystem, fisheries resources or in the national interest, from time to time, by order, declare—

- (a) any area to be a fish sanctuary; or
- (b) any area or each of the areas around or adjacent to a fish sanctuary to be a buffer zone.

(2) An order made under subsection (1) may regulate the activities in a fish sanctuary and a buffer zone and may, subject to such conditions as the Minister, after consultation with the Authority considers appropriate, stipulate any activity in a fish sanctuary or a buffer zone that is restricted or prohibited in the fish sanctuary or buffer zone.

(3) Notwithstanding the provisions of subsection (2), the Minister, after consultation with the Authority, may approve an activity

that would otherwise be a restricted activity in a fish sanctuary or buffer zone, after considering—

- (a) an environmental impact assessment, a social impact assessment or any other scientific assessment prepared in relation to the fish sanctuary or buffer zone so as to determine the impact of the proposed activity and an appropriate mitigation plan, where applicable;
- (b) the national interest;
- (c) Jamaica's obligations under any international law, regional or international agreements or arrangements to which Jamaica is a party;
- (d) any other matter which the Minister considers appropriate.

(4) The Authority may authorize the use of a fishing vessel or any equipment in any area declared by the Minister to be a fish sanctuary or a buffer zone subject to such conditions as the Authority may deem necessary.

(5) The Authority may, in order to enable identification of fish sanctuaries or their buffer zones use—

- (a) any method of demarcation and marking of the areas or zones;
or
- (b) such technology or marking method as it considers appropriate for the demarcation and marking.

(6) For the purposes of this section “restricted activity in a fish sanctuary or buffer zone” means any activity which if carried out in the fish sanctuary or buffer zone may have the potential to interfere with the fish sanctuary or buffer zone or pollute or otherwise negatively affect the management of the fish sanctuary or buffer zone.

18.—(1) Where the Authority considers that it is necessary to ensure the free passage of fish or the protection of fish or a fish habitat, the owner or any other person who has the charge, management or control

Authority to ensure free passage of fish.

of an obstruction, object or activity that is detrimental to the free passage or protection of a fish or fish habitat shall, by order of the Authority and within a reasonable time as stipulated therein and in accordance with any specifications issued by the Authority—

- (a) remove the obstruction or object or cease or vary the activity;
- (b) construct a fish way or a passage way for the free movement of the fish;
- (c) implement a system of catching the fish before the obstruction or object and transporting the fish beyond the obstruction, object or activity and releasing them back into the water;
- (d) install a fish stop or a diverter to prevent the destruction of the fish or to assist in the free passage of fish;
- (e) install a fish guard, screen, covering, netting or any other device to prevent the passage of fish into any water intake, ditch, channel or canal;
- (f) maintain the flow of water that the Authority considers sufficient to permit the free passage of fish; or
- (g) permit the escape, into the water below the obstruction, object or activity at all times into a quantity of water that the Authority considers sufficient for the safety of the fish by facilitating the flooding of the fish habitat to an appropriate depth.

(2) Pursuant to subsection (1), the owner or person who has the charge, management or control of any obstruction, object or activity shall, as the case may require, and on the request of the Authority—

- (a) during the construction, installation, modification or repair of the obstruction, object or activity, make such provision that the Authority considers necessary for the free passage of fish or the protection of fish or fish habitat;
- (b) operate and maintain the obstruction, object or activity in good and effective condition and in accordance with any specifications of the Authority; and
- (c) modify or repair the obstruction, object or activity in accordance with any specifications of the Authority.

19.—(1) Notwithstanding any other provision in this Act, the Authority may authorize the installation and maintenance of fish guards, screens, coverings, netting or other devices in streams and waterways to prevent fish being held in captivity from escaping or for any other purpose that the Authority considers to be in the national interest.

Devices to prevent escape of fish.

(2) A person commits an offence where the person—

- (a) damages any fish guard, screen, covering, netting or other device; or
- (b) removes or authorizes the removal of any fish guard, screen, covering, netting or other device without the consent of the Authority.

20.—(1) A person shall, without delay, notify the Authority of any harmful activity, alteration, disruption or destruction of a fish habitat or of a serious and imminent danger of such an occurrence, if the person at any material time—

Duty to notify Authority of alteration, disruption, etc., of fish habitat.

- (a) owns or has the charge, management or control of any work or undertaking which resulted in or may result in the alteration, disruption or destruction of a fish habitat; or
- (b) causes or contributes to the occurrence or the danger of the occurrence.

(2) A person shall, without delay, notify the Authority of the deposit of any deleterious substance or of any serious and imminent danger of such an occurrence, if the person at any material time—

- (a) owns or has the charge, management or control of—
 - (i) the deleterious substance; or
 - (ii) the work or undertaking that resulted in or may result in the deposit of the deleterious substance or the danger of the deposit of such substance; or
- (b) causes or contributes to the occurrence or the danger of the occurrence.

(3) A person under subsections (1) and (2) shall, as soon as possible in the circumstances, take all reasonable measures consistent

with public safety and with the conservation and protection of fish and fish habitat to prevent the occurrence or to counteract, mitigate or remedy any adverse effects that result, or may reasonably be expected to result, from such an occurrence.

(4) As soon as the circumstances allow after the occurrence or after having knowledge of the danger of the occurrence under subsection (1), the person shall provide the Authority with a written report on the occurrence.

(5) Where the Authority has been notified under subsection (1) or (2) or provided with a report under subsection (4) and is satisfied, on reasonable grounds, that immediate action is necessary pursuant to subsection (3), the Authority may take any of those measures at the expense of the person described in subsection (1) or (2) or require the person to take such measures at his own expense.

(6) A person who fails to comply with the provisions of this section, commits an offence.

Fish habitat
protection
order.

21.—(1) Where the Authority, in relation to any work or undertaking, is of the opinion that—

- (a) any harmful activity, alteration, disruption or obstruction of a fish habitat may occur, is occurring or has occurred; or
- (b) there is a serious or imminent danger of the deposit of a deleterious substance into a fish habitat,

the Authority may, pursuant to subsection (2), issue a fish habitat protection order to the owner or person who has the charge, management or control of the work or undertaking which may cause, is causing or has caused either of the activities specified in paragraph (a) or (b).

(2) A fish habitat protection order may require the person to whom it is directed, to take such measures that the Authority considers necessary, including, but not limited to the following—

- (a) to investigate the work or undertaking;
- (b) to take any action specified by the Authority in the fish habitat protection order to prevent, minimize or remedy the activity;

- (c) to restore the fish habitat to a condition that is satisfactory to the Authority;
- (d) to monitor, measure, contain, remove, store, destroy or otherwise dispose of the deleterious substance, or lessen or prevent further release of, or control the rate of release of the deleterious substance into the environment;
- (e) to install, replace or alter any structure or thing in order to prevent, on an immediate or temporary basis, any harmful alteration, disruption or destruction of the fish habitat;
- (f) to construct, improve, extend or enlarge any structure or thing that is necessary to control or eliminate on an immediate or temporary basis the deposit of the deleterious substance into the fish habitat;
- (g) to report on any matter that is required to be done in accordance with the directions set out in the fish habitat protection order.

(3) A person who fails to comply with a fish habitat protection order commits an offence.

22. The Authority may, in accordance with any conditions imposed by it, destroy or authorize any person to destroy—

Destruction
of aquatic
invasive alien
species.

- (a) any prescribed aquatic invasive alien species; or
- (b) any other species that the Authority considers to be an aquatic invasive alien species.

23.—(1) The Minister may, by order, in any of the circumstances specified in subsection (2), declare any period to be a close season for any fishery or species of fish.

Declaration
of close
season.

(2) The circumstances referred to in subsection(1) are—

- (a) so as to enforce a fishery management plan or aquaculture management plan;
- (b) so as to ensure the protection of the fishery or species of fish, in any case where there is danger to a fishery or species of fish as a result of any environmental condition; or

(c) in the national interest.

(3) Notwithstanding subsection (1), a close season may be specific to a fishery or species of fish within a fishery management area or a fishery management plan.

Power to
impose cess.

24. The Minister may, by order, impose a cess on a fishery, species of fish, an aquaculture or a related activity for the management of that fishery, species of fish, aquaculture or related activity, or for any other activity including research, monitoring, control, surveillance or enforcement activities in relation to the fishery, species of fish, aquaculture activity or related activity.

*PART V—General Requirements Relating to the Granting
of a Licence, Authorization or Permit in
Relation to Fishing and Change of
Ownership of Local Fishing Vessel*

Fishing etc.
without a
licence,
authorization
or permit and
non-
compliance
with
conditions.

25.—(1) Subject to the provisions of this Act, no person shall engage in fishing or any related activity in the fisheries waters or beyond the fisheries waters—

- (a) without the appropriate licence, authorization or permit granted in accordance with this Act as may be prescribed;
- (b) contrary to the terms and conditions of an appropriate licence, authorization or permit granted in accordance with this Act or as may be prescribed; and
- (c) contrary to the provisions of this Act or any Regulations made hereunder.

Second
Schedule.

(2) Subsection (1) shall not apply to a person who engages in fishing using any of the methods specified in the Second Schedule.

(3) No person shall use a vessel to engage in fishing or any related activity in the fisheries waters or beyond the fisheries waters, unless there is in force—

- (a) in the case where the vessel is a local fishing vessel, and where applicable—
 - (i) a commercial fishing vessel licence granted under Part VI;

- (ii) a recreational fishing vessel licence granted under Part VII;
 - (iii) an authorization granted under Part XI; or
 - (iv) such other licence or permit as may be prescribed;
- (b) in the case where the vessel is a foreign fishing vessel, and where applicable—
- (i) a foreign fishing vessel licence granted as part of an access agreement under Part VIII;
 - (ii) a recreational fishing vessel licence granted under Part VII;
 - (iii) an authorization granted under Part XI; or
 - (iv) such licence or permit as may be prescribed;

(4) A Jamaican ship shall not be used by any person to engage in fishing on the high seas except under and in accordance with a high seas fishing vessel licence granted under Part IX.

(5) A person who contravenes subsection (1), (3) or (4) commits an offence.

26.—(1) No person shall use a vessel to engage in fishing or any related activity in the fisheries waters or beyond the fisheries waters, in any manner which may undermine or contravene the effectiveness of any international or regional conservation or management treaty or agreement to which Jamaica is a party.

Prohibition of activities that undermine or contravene international or regional conservation or management treaty or agreement.

(2) Without limiting the provisions of subsection (1), the Minister may, by order, specify certain activities as being activities that undermine or contravene the effectiveness of any international or regional conservation or management treaty or agreement to which Jamaica is a party.

(3) Where a vessel is used in contravention of this section, the owner or operator of the vessel, commits an offence.

Making of regulations for licences, authorizations or permits.

27.—(1) The Minister may, in addition to the licences, authorizations or permits provided for under this Act, prescribe for other classes or types of licences, authorizations or permits.

(2) Pursuant to subsection (1), the Minister may make regulations prescribing—

- (a) the procedure, forms, fees and other requirements in relation to the other licences, authorizations and permits;
- (b) the terms and conditions in relation to the granting of licences, authorizations and permits; and
- (c) other matters to be considered by the Authority in determining whether or not to grant, suspend, cancel or revoke a licence, authorization or permit.

Application and granting of licence, authorization or permit; matters to be considered.

28.—(1) An application for a licence, authorization or permit to engage in fishing shall be made in the prescribed form to the Authority and shall be accompanied by the prescribed fee.

(2) In considering an application made pursuant to this section, the Authority may, as the case may require, and in addition to any additional matters provided for under this Act or any Regulations made under this Act, have regard to all or any of the following—

- (a) in respect of an applicant—
 - (i) whether the applicant has undergone any training or has considerable experience in seamanship, safety at sea, fisheries management or in any other field as may be prescribed by the Minister;
 - (ii) whether the applicant has been convicted of an offence under the repealed Act, this Act or any relevant enactment during the period of five years immediately preceding the date of the application;
 - (iii) where applicable, whether the applicant has been allocated the requisite fishing right or quota as may be prescribed, in relation to a fishery or species of fish;

- (iv) such other matters as may be considered necessary by the Authority;
- (b) in respect of a vessel—
 - (i) whether the vessel is registered in accordance with the *Shipping Act*;
 - (ii) evidence of sea worthiness of the vessel in accordance with the *Shipping Act* and whether the vessel meets the requirements under this Act or any Regulations made under this Act;
- (c) the fishery management plan for the applicable fishery or species of fish to which the application relates;
- (d) Jamaica's obligations under any relevant regional or international treaty or agreement;
- (e) the limits of the total allowable catch in relation to a fishery or species of fish;
- (f) such other matters as may be prescribed or as the Authority may consider necessary.

(3) Subject to the provisions of this Act, the Authority shall, if satisfied that an applicant has complied with the requirements of subsection (1), grant the licence, authorization or permit.

29. A licence, authorization or permit shall be granted in the name of the owner or charterer of the fishing vessel.

Licence, authorization or permit granted in the name of the owner or charterer of fishing vessel.

30.—(1) The Authority may refuse to grant a licence, authorization or permit where—

Refusal to grant a licence, authorization or permit.

- (a) the Authority is satisfied that—
 - (i) an application does not comply with the requirements of this Act, any Regulations made

under this Act or where applicable, an access agreement or arrangement;

- (ii) the required fees have not been paid in accordance with the provisions of this Act, any Regulations made under this Act or where applicable, an access agreement or arrangement;
- (iii) within a period of five years immediately prior to the making of the application—
 - (A) the applicant was the previous holder of a licence, an authorization or permit which was revoked; or
 - (B) the applicant was convicted of an offence under the repealed Act, this Act or any relevant enactment;
- (b) the refusal is necessary in order to give effect to the provisions of a fishery management plan;
- (c) the grant of the licence, authorization or permit would be detrimental to the proper management of a fishery or species of fish;
- (d) in the opinion of the Authority, the grant of the licence, authorization or permit would not be in the public interest; or
- (e) the related application contains representation or information which is false or misleading in a material particular.

(2) Where the Authority refuses to grant a licence, authorization or permit under this Act, it shall, within fourteen days of making its decision, inform the applicant in writing, stating the reasons therefor.

(3) A person whose application for a licence, authorization or permit has been refused may appeal to the Appeals Tribunal.

Conditions of
licences,
authoriza-
tions or
permits.

31.—(1) A licence, authorization or permit may, as the case may require, be subject to such conditions as may be prescribed or endorsed

on the licence, authorization or permit or as may be specified in this Act, including—

- (a) the type and method of fishing and the type and quantity of fishing gear to be used to engage in fishing or any related activity;
- (b) the areas within which fishing or any related activity is authorized;
- (c) the periods during which fishing or any related activity is authorized;
- (d) the target species and amount of fish authorized to be taken or captured, including any restrictions on minimum species, sizes and by-catch;
- (e) restrictions relating to the trans-shipment, refueling or supplying of other fishing vessels or any other activity in support of fishing operations;
- (f) the landing, processing and marketing of fish caught under the licence, authorization or permit, including the construction of shore-based facilities;
- (g) the reporting of information in such form and such frequency as may be specified by the Authority;
- (h) the placement of observers on board fishing vessels;
- (i) the marking of fishing vessels with such letters and numbers as may be assigned to that fishing vessel by the Authority; and
- (j) the installation of automatic location communicators and other specified machinery or equipment necessary for the operation of a vessel monitoring system in respect of the fishing vessel.

(2) The Authority may, at any time, where it is satisfied that it is expedient for the proper conservation and management of the fisheries resources, vary or rescind any conditions attached to a licence, authorization or permit.

(3) Where the Authority varies or rescinds any conditions attached to any licence, authorization or permit the Authority shall, as soon as practicable, notify the holder of the licence, authorization or permit thereof.

(4) Where the owner or operator of a fishing vessel fails to comply with the conditions of any licence, authorization or permit, the Authority may cancel the licence, authorization or permit.

Non-transferability of licence, authorization or permit.

32. A licence, authorization or permit issued under this Act shall not be transferable.

Licence, authorization or permit to be on person while engaging in fishing.

33.—(1) A person who has been granted a licence, authorization or permit under this Act shall, at all times, while he engages in fishing in the fisheries waters or beyond the fisheries waters, carry upon his person the licence, authorization or permit.

(2) Any person who contravenes subsection (1) commits an offence.

(3) The owner or operator of a fishing vessel shall ensure that the original licence, authorization or permit that is granted to the fishing vessel, remain on board the fishing vessel at all times, during the period of validity of the licence, authorization or permit and it shall be the responsibility of the owner or the operator of the fishing vessel to produce, upon request, the licence, authorization or permit.

(4) Where it is not practicable for the original licence, authorization or permit in relation to the fishing vessel to remain on board the fishing vessel, a certified copy of the licence, authorization or permit shall suffice.

(5) The owner or operator of a fishing vessel who fails to comply with subsection (3) or (4), commits an offence and failure to comply with this condition on more than two occasions may result in the seizure of the fishing vessel in accordance with the provisions of this Act, in addition to any penalty which may be imposed.

34. Subject to section 38 and unless otherwise provided for in any Regulations made under this Act, a licence, authorization or permit shall be valid for such period as may be specified in this Act or in the licence, authorization or permit.

Duration of licence, authorization or permit.

35.—(1) Where a licence, authorization or permit granted under this Act or any Regulations made under this Act is lost, defaced or destroyed, the holder of the licence, authorization or permit shall forthwith notify the Authority and the Authority may, if satisfied as to the loss, defacement or destruction thereof and on payment of the prescribed fee, grant to the holder, a substitute licence, authorization or permit, as the case may require.

Loss *etc.* of licence, authorization or permit.

(2) A licence, authorization or permit granted in accordance with subsection (1) shall be clearly marked “Duplicate” and a note shall be made in the Register setting out the reason for the granting thereof.

36.—(1) Where a local fishing vessel—

- (a) is lost;
- (b) becomes permanently unserviceable and is no longer seaworthy;
- (c) has had its physical appearance altered; or
- (d) is no longer intended to be used as a local fishing vessel,

Procedure where local fishing vessel is lost, destroyed or permanently unserviceable, *etc.*

the owner of the local fishing vessel shall forthwith report the matter to the Authority.

(2) Where, in relation to a local fishing vessel, the Authority receives a report pursuant to subsection (1)(b), (c) and (d), the Authority shall cause a fishery inspector to inspect the local fishing vessel and issue a report thereon and, on being satisfied of the matters stated in the report in relation to any of the circumstances specified under subsection (1) in relation to the fishing vessel, the Authority shall, cancel the licence and amend the Register accordingly.

(3) The owner of a local fishing vessel who contravenes subsection (1) commits an offence.

Fees and
other
charges.

37.—(1) The grant of a licence, authorization or permit shall be subject to the payment of a prescribed fee.

(2) A licence, authorization or permit granted under this Act to a foreign fishing vessel shall be subject to other fees or charges as may be provided for in an access agreement or arrangement entered into in accordance with Part VIII.

(3) All fees relating to licences, authorizations and permits may be determined according to the value of the species of fish sought and the overall length, gross tonnage, type of gear or any other method related to the harvesting potential of the fishing vessel or fishing gear.

(4) A licence, authorization or permit shall not be granted unless the applicable fees have been paid in relation thereto.

Suspension,
cancellation
and
revocation of
licence,
authoriza-
tion or
permit.

38.—(1) The Authority may suspend, for such period as the Authority considers necessary, a licence, authorization or permit granted under this Act if the Authority is satisfied that—

- (a) the holder of the licence, authorization or permit has furnished information which is false, incomplete or incorrect in connection with an application made in relation to the licence, authorization or permit;
- (b) the suspension is necessary or expedient in order to—
 - (i) give effect to a fishery management plan or an aquaculture management plan; or
 - (ii) provide for the proper management of a fishery or species of fish which is not subject to a fishery management plan;
- (c) the fishing vessel to which the licence, authorization or permit relates has been used in contravention of—
 - (i) this Act;
 - (ii) a condition of the licence, authorization or permit;
 or

- (iii) an applicable access agreement or arrangement;
- (d) the holder of the licence, authorization or permit has breached a provision of this Act, any Regulations made under this Act or a condition of the licence, authorization or permit and it is necessary to give the holder an opportunity and sufficient time to comply with—
 - (i) the Act, any Regulations made under this Act or any relevant enactment; or
 - (ii) the condition of the licence, authorization or permit.

(2) The Authority may cancel a licence, authorization or permit granted under this Act if—

- (a) the holder of the licence, authorization or permit notifies the Authority in writing that he intends to cease the operations for which he has been granted the licence, authorization or permit for the period stated in the notice and surrenders the licence, authorization or permit to the Authority; or
- (b) an administrative error in the issuing of the licence, authorization or permit has been discovered, and—
 - (i) it is necessary to do so in order to correct the error; and
 - (ii) but for the error and having regard to all the circumstances, the licence, authorization or permit would not have been granted.

(3) The Authority may revoke a licence, authorization or permit granted under this Act, where—

- (a) the holder of the licence, authorization or permit was convicted of a relevant offence, an offence under this Act, the repealed Act, or any relevant enactment, within a period of five years immediately before the granting of the licence, authorization or permit and this information was not disclosed to the Authority at the time of the making of the application;

- (b) facts which were not known by the Authority at the time of the granting of the licence, authorization or permit have come to the attention of the Authority and are such that, had they been known at the time of making the application, and having regard to all the circumstances, would have resulted in the licence, authorization or permit not having been granted;
- (c) the holder of the licence, authorization or permit has failed to meet the requirements of a fishery management plan or an aquaculture management plan.

(4) The Authority may, in addition to the provisions of subsections (1), (2) and (3), suspend, cancel or revoke a foreign fishing vessel licence in accordance with the terms of an applicable access agreement or arrangement entered into in accordance with Part VIII.

(5) Before suspending, cancelling or revoking a licence, authorization or permit, the Authority shall issue a notice in writing to the holder of the licence, authorization or permit of the proposed suspension, cancellation or revocation, stating the reasons therefor and requiring the holder—

- (a) in the case of a breach which can be remedied, to remedy the breach within the time specified in the notice; or
- (b) in any other case, to provide reasons as to why the licence, authorization or permit shall not be suspended, cancelled or revoked.

(6) The holder of the licence, authorization or permit, who is served with a notice under subsection (5) shall, after remedying the breach, notify the Authority in writing that the breach has been remedied and specify any actions taken to remedy the breach.

(7) Where the Authority is satisfied that the breach has been remedied, the Authority shall withdraw the notice of suspension, cancellation or revocation, but where the Authority is not satisfied that the breach has been remedied, it shall, as the case may require, suspend, cancel or revoke the licence, authorization or permit.

39.—(1) The Authority shall maintain, in the prescribed form and manner, a Register of all licences, authorizations and permits granted in accordance with the provisions of this Act.

Register of
licences,
authoriza-
tions or
permits.

(2) The Register shall contain the following information—

- (a) the nature of the activity for which a licence, authorization or permit is granted;
- (b) the particulars of a fishing vessel and the activity or facility for which the licence, authorization or permit is granted;
- (c) any action taken in relation to the cancellation, suspension or revocation of a licence, authorization or permit;
- (d) the result of an appeal affecting a licence, authorization or permit;
- (e) any other matters which the Authority may consider necessary or as may be prescribed.

(3) The Register shall be open to inspection by any member of the public, on payment of the prescribed fee, at all reasonable times.

40.—(1) Subject to the approval of the Authority, on the transfer, otherwise than by death, of the ownership of a local fishing vessel, any licence, authorization or permit granted in relation to the local fishing vessel shall not be used to engage in fishing for more than thirty days or such other period as the Authority considers appropriate and, immediately after the thirty-day period or such other period, the new owner of the local fishing vessel shall make an application in the prescribed manner to the Authority which shall contain the following particulars—

Transfer of
ownership of
local fishing
vessel
otherwise
than by
death.

- (a) his name and address;
- (b) proof of transfer of ownership of the local fishing vessel to the satisfaction of the Authority; and
- (c) any other documentation which the Authority may deem necessary.

(2) Where the Authority is satisfied that the ownership of the local fishing vessel has been duly transferred to the new owner and all other requirements stipulated under this Act or any Regulations made under this Act, in relation to the making of an application for a licence, authorization or permit have been complied with, the Authority shall—

- (a) cancel the licence, authorization or permit of the previous owner and grant a licence, authorization or permit to the new owner; and
- (b) enter on the Register, the name and address of the new owner and the date on which the transfer of ownership was effected.

Change of ownership of local fishing vessel on death of owner.

41.—(1) On the death of the owner of a local fishing vessel that has been granted a licence, authorization or permit under this Act, the person who has lawful custody of the local fishing vessel shall, within sixty days of obtaining custody or such other period as the Authority may determine, give notice of that fact to the Authority and the Authority shall give such directions in writing, as it may consider appropriate, as to the use of the local fishing vessel pending the grant of the relevant licence, authorization or permit under this Act.

(2) A person under subsection (1) to whom permission is granted to use the local fishing vessel to engage in fishing pending the granting of the relevant licence, authorization or permit shall, for the purposes of this Act, be deemed to be the owner of the local fishing vessel during the period for which the permission is given.

PART VI.—*Commercial Fishing Vessel Licence*

Furnishing of additional information in relation to application for commercial fishing vessel licence.

42.—(1) Pursuant to section 28, where an application for a commercial fishing vessel licence is made to the Authority, the Authority may—

- (a) by notice in writing, require the applicant to furnish such additional information or document as may be specified in the notice;
- (b) cause a fishery inspector to carry out such investigation or inspection of the fishing vessel to which the application relates as the Authority considers necessary.

(2) The fishery inspector shall submit to the Authority in the prescribed form, a report in respect of an investigation or inspection carried out in accordance with subsection (1)(b).

43. Subject to section 31, the Authority may, upon receipt of payment of the prescribed fee, grant to the applicant a commercial fishing vessel licence in the prescribed form.

Grant of commercial fishing vessel licence.

44. Where a local fishing vessel has been granted a commercial fishing vessel licence under this Act, the Chief Executive Officer shall cause the particulars of the local fishing vessel to be entered into the Register established under section 39.

Local fishing vessel to be registered.

45. Unless suspended, canceled or revoked under section 38, a commercial fishing vessel licence shall be valid for a period not exceeding twelve months or for such other period as may be determined by the Authority or as may be prescribed.

Validity of commercial fishing vessel licence.

PART VII.—*Recreational Fishing Vessel Licence*

46.—(1) Pursuant to section 28, where an application for a recreational fishing vessel licence is made to the Authority, the Authority may, upon receipt of payment of the prescribed fee and subject to subsection (2) and section 31, grant to the applicant, a recreational fishing vessel licence in the prescribed form.

Granting of recreational fishing vessel licence.

(2) Without prejudice to the provisions of section 30, the Authority shall not grant a recreational fishing vessel licence unless it is satisfied that—

- (a) the granting of the recreational fishing vessel licence is in compliance with any programme specified in a fishery management plan;
- (b) the applicant will be able and willing to comply with the terms and conditions of the recreational fishing vessel licence;
- (c) subject to subsection (3), the vessel in respect of which the recreational fishing vessel licence is sought has no record of non-compliance with international fisheries conservation and management measures; or

- (d) the vessel in respect of which the recreational fishing vessel licence is sought has not been cited for having engaged in, or supported illegal, unreported or unregulated fishing.

(3) Pursuant to subsection (2)(c), where the vessel has a previous record of non-compliance with international fisheries conservation and management measures, the recreational fishing vessel licence shall only be granted where the ownership of the vessel has subsequently changed and the new owner provides sufficient evidence to the satisfaction of the Authority that the previous owner has no legal, beneficial or financial interest or control of the vessel.

(4) In this section, a reference to recreational fishing includes a reference to fishing activities in relation to fishing tournaments.

Validity of recreational fishing vessel licence.

47. A recreational fishing vessel licence shall be valid for a period not exceeding twelve months from the date of the grant of the licence or for such other period as may be determined by the Authority or as may be prescribed.

Recreational fishing activity not to be organized without permit.

48.—(1) A person shall not organize or cause to be organised a recreational fishing activity in the fisheries waters except under and in accordance with a permit issued by the Authority.

(2) Regulations shall prescribe the procedure, form, fees, conditions and other requirements in relation to the application for a permit under subsection (1).

(3) A person who contravenes section (1) commits an offence.

PART VIII.—Access Agreements or Arrangements and Foreign Fishing Vessel Licences Provisions

Access agreements and arrangements.

49.—(1) The Minister may, after consultation with the Authority and the Minister with responsibility for foreign affairs, enter into access agreements or arrangements with other states, intergovernmental organizations or associations representing foreign fishing vessel owners or charterers, which provide for the allocation of fishing rights in the fisheries waters to fishing vessels from those states, organizations or associations.

(2) The fishing rights allocated under an access agreement or arrangement entered into under subsection (1) shall be in accordance with any applicable fishery management plan or international fisheries conservation and management measures.

(3) An access agreement or arrangement entered into under subsection (1) shall include provisions—

- (a) establishing the responsibility of the states, intergovernmental organizations or associations representing foreign fishing vessel owners or charterers to take all necessary measures to ensure compliance by its fishing vessels with—
 - (i) the access agreement or arrangement;
 - (ii) this Act, any Regulations made under this Act or any other enactment relating to fishing and any related activity; and
 - (iii) any international fisheries conservation and management measures;
- (b) granting the Minister the right, after consultation with the Authority and the Minister responsible for foreign affairs, to terminate the agreement or arrangement in the case of non-compliance by the other party to the access agreement or arrangement with any requirement of the agreement or arrangement or the provisions of this Act or any Regulations made under this Act or any other relevant enactment; and
- (c) granting the Minister the right, after consultation with the Authority and the Minister responsible for foreign affairs, to suspend the agreement or arrangement on the determination of the Minister that continued fishing at current levels would threaten the fish stocks.

(4) The licence fees and other charges payable under an access agreement or arrangement shall—

- (a) be related exclusively to fisheries access in accordance with this Act; and

- (b) not take into account any developmental assistance benefits provided by the other party to Jamaica which are unrelated to the value of the fisheries access as determined by the Minister.

(5) Where the party to an access agreement or arrangement concluded under this section is an association or organization representing or otherwise acting on behalf of its members, the association or organization shall be liable for the undischarged liabilities of its members arising out of—

- (a) operations in the fisheries waters under the access agreement or arrangement; and
- (b) the access agreement or arrangement, including the payment of fees.

(6) Without limiting the operations of subsection (3)(b), an access agreement or arrangement may be terminated by the Minister, after consultation with the Authority and the Minister responsible for foreign affairs in the national interest.

Furnishing of additional information in relation to application for foreign fishing vessel licence.

50. Pursuant to section 28, where an application for a foreign fishing vessel licence is made to the Authority, the Authority may, by notice in writing, require the applicant to furnish such additional information or document as may be specified in the notice.

Foreign fishing vessel licence not granted under this Part unless access agreement exists.

51.—(1) Subject to subsection (2), the Authority shall not grant a foreign fishing vessel licence under section 53 unless there is an agreement or arrangement entered into under section 49.

(2) Notwithstanding subsection (1), the Authority may grant a recreational fishing vessel licence to a foreign fishing vessel, in the absence of any agreement or arrangement specified under subsection (1), where the applicant provides sufficient financial and other arrangement for the fulfillment of all obligations under this Act as the Authority may determine.

(3) Notwithstanding subsection (1), where the foreign fishing vessel has a previous record of non-compliance with international

fisheries conservation and management measures, a foreign fishing vessel licence shall only be granted where the Authority is satisfied that, the ownership of the foreign fishing vessel has changed and the new owner provides sufficient evidence to the Authority that the previous owner or master has no legal, beneficial or financial interest in, or control of the foreign fishing vessel.

52. Without prejudice to the provisions of section 31, the Authority shall refuse to grant a foreign fishing vessel licence unless the Authority is satisfied that—

Refusal to grant foreign fishing vessel licence.

- (a) the applicant has provided such particulars to the Authority in relation to the agent of the foreign fishing vessel as is required pursuant to section 54;
- (b) subject to section 51(3), the foreign fishing vessel does not have a record of non-compliance with international fisheries conservation and management measures;
- (c) the foreign fishing vessel has not been cited for having engaged in, or supported illegal, unreported or unregulated fishing;
- (d) the applicant for the foreign fishing vessel licence has provided sufficient financial and other guarantees for the fulfillment of any obligations as may be determined by the Authority;
- (e) the fishing vessel in respect of which the licence is sought has at the time of making the application for a foreign fishing vessel licence, satisfied all financial obligations in respect of previous fishing activities or related activities in the fisheries waters under a previous licence granted under this Act to the foreign fishing vessel or its owner.

53.—(1) Subject to section 30, the Authority may, on payment of the prescribed fee, grant to the applicant a foreign fishing vessel licence in the prescribed form and the foreign fishing vessel licence shall specify—

Grant of foreign fishing vessel licence and period of validity.

- (a) specie of fish which may be caught by the foreign fishing vessel; and
- (b) the type and quantity of fishing gear, and the method or methods of fishing which may be engaged in by the foreign fishing vessel.

(2) A licence in respect of a foreign fishing vessel shall be granted in the name of the owner or charterer of the foreign fishing vessel.

(3) A foreign fishing vessel licence shall be valid for a period not exceeding twelve months or for such period as may be determined by the Authority or as may be prescribed but shall in no event exceed the period of validity of the applicable access agreement or arrangement.

(4) Where a foreign fishing vessel is used otherwise than in accordance with the conditions of the foreign fishing vessel licence, the owner or operator commits an offence.

Appointment
of agent.

54.—(1) Subject to the provisions of this Part, the owner of a foreign fishing vessel shall, prior to making an application for a foreign fishing vessel licence, appoint an agent, who is resident in Jamaica, with the authority to receive and respond to processes and official communications under this Act on behalf of the owner of the foreign fishing vessel.

(2) The owner of a foreign fishing vessel shall, at the time of making an application for a licence under this Part, notify the Authority in writing, of the appointment, the name and address of the agent, and thereafter of any subsequent change of name or address of the agent.

(3) The service of any document or notice upon an agent appointed in accordance with this section shall be deemed to be served upon the owner of the foreign fishing vessel.

(4) An agent appointed under this section shall not, by virtue only of being appointed an agent, incur any further liability in relation to the foreign fishing vessel or its owner other than that expressly provided for under this Act or by agreement made between the owner and the agent.

Stowage of
fishing gear
of foreign
fishing
vessel.

55.—(1) The fishing gear of a foreign fishing vessel that is not authorized to be used under this Act or a licence granted under this Act shall be stowed in the prescribed manner while the foreign fishing vessel is within the fisheries waters.

(2) Where a foreign fishing vessel is licensed to fish by means of a particular type of fishing gear in any specific area of the fisheries waters, any other fishing gear that is on board the foreign fishing vessel shall be stowed in the prescribed manner while the foreign fishing vessel is within that area or within any other area of the fisheries waters where the foreign fishing vessel is not licensed to fish.

(3) The owner or operator of a foreign fishing vessel who contravenes the provisions of subsection (1) or (2), commits an offence.

PART IX.—*High Seas Fishing Vessel Licence*

56.—(1) A Jamaican ship shall not be used by any person to engage in fishing on the high seas, without having on board the Jamaican ship a valid high seas fishing vessel licence granted by the Authority in respect of the Jamaican ship.

Fishing on high seas prohibited without a high seas fishing vessel licence.

(2) Where a Jamaican ship is used in contravention of subsection (1), the owner or operator of the Jamaican ship commits an offence.

57. Pursuant to section 25, an application for a high seas fishing vessel licence shall be made in the prescribed form and shall specify, *inter alia*—

Application for high seas fishing vessel licence.

- (a) the name, call sign, registration number, name and address of the owner and master of the Jamaican ship;
- (b) the tonnage capacity, gear type, processing equipment and such other pertinent information with respect to the characteristics of the Jamaican ship as the Authority may require; and
- (c) the area of operation, intended ports of discharge, fishery or species of fish to be targeted.

58. The Authority may, upon receipt of payment of the prescribed fee and subject to section 31, grant to the applicant a high seas fishing vessel licence in the prescribed form and manner.

Grant, etc. of high seas fishing vessel licence and conditions thereto.

Refusal to
grant high
seas fishing
vessel
licence.

59.—(1) The Authority shall not grant a high seas fishing vessel licence under section 58 if—

- (a) the Jamaican ship to which the application relates was, prior to its licensing or registration under the *Shipping Act*, previously authorized to be used for fishing on the high seas by another state and the state has suspended the licence, within three years preceding the making of the application under this Part, and the suspension has not yet expired;
- (b) the Authority is not satisfied that Jamaica would be able to ensure the effective observance, by the Jamaican ship, of any national or international fisheries conservation and management agreement to which Jamaica is a party;
- (c) the Jamaican ship has been used to engage in activities which have undermined the effectiveness of national or international fisheries conservation and management measures;
- (d) the Jamaican ship has been used in contravention of the provisions of this Act or any other relevant enactment;
- (e) the Authority is bound to do so under any international agreement to which Jamaica is a party;
- (f) the Jamaican ship is, in the opinion of the Authority, not suitable for fishing or any related activity which is the subject of the licence being applied for.

(2) The exceptions under subsection (1) shall not apply where—

- (a) the ownership of the Jamaican ship has changed and the new owner has provided evidence, to the satisfaction of the Authority that the previous owner has no further legal, beneficial or financial interest in, or control of, the Jamaican ship; or
- (b) the Authority makes a determination that the granting of a high seas fishing vessel licence would not undermine the effectiveness of any national or international fisheries conservation and management agreement.

60. A high seas fishing vessel licence shall be valid for a period not exceeding twelve months from the date of its issuance or such period as may be determined by the Authority or as may be prescribed.

Period of validity of high seas fishing vessel licence.

61.—(1) Without prejudice to the provisions of section 31, a Jamaican ship that has been granted a high seas fishing vessel licence under this Part shall be subject to the following conditions—

Additional conditions relating to high seas fishing vessel licence.

- (a) the Jamaican ship shall display the identification mark assigned to it, by the Authority, in such manner, as may be prescribed;
- (b) the records of the fishing operations of the Jamaican ship shall be kept on board and the records concerning the areas of fishing as may be stipulated in the high seas fishing vessel licence shall be submitted to the Authority; and
- (c) the Jamaican ship shall not engage in any activities which may undermine the effectiveness of any national or international fisheries conservation and management agreement.

(2) The owner or operator of a Jamaican ship who fails to comply with subsection (1) commits an offence.

PART X.—*Commercial Aquaculture*

62.—(1) Subject to the provisions of this Act, a person shall not install or operate a commercial aquaculture facility or engage in commercial aquaculture unless the person—

Engaging in commercial aquaculture activity prohibited without licence.

- (a) is the holder of a commercial aquaculture licence in accordance with the provisions of this Part; and
- (b) has obtained a commercial aquaculture facility licence in respect of the aquaculture facility which the person intends to operate.

(2) A person who contravenes subsection (1) commits an offence.

63.—(1) Pursuant to section 62, an application for a commercial aquaculture licence and a commercial aquaculture facility licence shall be made to the Authority in the prescribed form and shall be accompanied by the prescribed fees.

Application for licences.

(2) The Authority may, by notice in writing, where it considers it necessary or desirable, require an applicant to furnish such additional information or documents as may be specified in the notice.

Investigation and inspection of commercial aquaculture facility.

64.—(1) Upon receipt of the applications under section 63, the Authority shall—

- (a) cause a fishery inspector to carry out such investigation or inspection of the commercial aquaculture facility to which the application relates;
- (b) require the applicant to conduct or cause to be conducted, such environmental impact assessment studies, social impact assessment studies, soil and water quality profiles and any other relevant studies as the Authority considers necessary; and
- (c) invite, within such period as the Authority may specify, the written comments or recommendations from—
 - (i) the National Environment and Planning Agency;
 - (ii) the Veterinary Services Division of the Ministry responsible for agriculture;
 - (iii) the Water Resources Authority;
 - (iv) the relevant local authority;
 - (v) any other entity that the Authority considers necessary.

(2) The fishery inspector shall submit to the Authority a report, in the prescribed form, in respect of an investigation or inspection carried out in accordance with subsection (1).

Consideration of applications and grant of licences.

65.—(1) In considering the applications made under section 63, the Authority shall have regard to all or any of the following matters—

- (a) in relation to the application for a commercial aquaculture licence, whether the applicant—
 - (i) satisfies the financial obligations and requirements that are necessary to operate a commercial aquaculture facility;

- (ii) has undergone training in aquaculture; and
 - (iii) will be able to operate the aquaculture facility in accordance with the terms and conditions of the licence;
- (b) in relation to the application for an aquaculture facility licence—
- (i) whether there is in place in relation to the proposed location of the aquaculture facility, any applicable fishery management plan or aquaculture management plan;
 - (ii) whether the applicant holds the right to have the land or areas within the fisheries waters prepared for the aquaculture facility;
 - (iii) the condition of the proposed aquaculture facility, including the aquaculture gear;
 - (iv) the number of persons to be employed at the aquaculture facility;
 - (v) whether there exists a management plan relating to the aquaculture facility;
 - (vi) whether the applicant satisfies the requirements of any other relevant enactment in relation to the aquaculture facility;
 - (vii) whether it may be in the public interest to grant the licence.

(2) Subject to the provisions of this section and any other provisions of this Act, the Authority may, upon receipt of payment of the prescribed fee, and on such terms and conditions as it may determine or as may be prescribed, grant to the applicant, in the prescribed form—

- (a) a commercial aquaculture licence in relation to the applicant; and
- (b) an aquaculture facility licence in relation to the aquaculture facility.

(3) An aquaculture facility licence issued under this section shall provide for the following—

- (a) the area or areas within which the holder of a commercial aquaculture licence is authorized to undertake commercial aquaculture;
- (b) the type of commercial aquaculture authorized to be undertaken within any aquaculture management area, zone or buffer zone to which the commercial aquaculture licence relates;
- (c) the health conditions of the fish;
- (d) the species of fish that may be cultivated or kept, including any hybrid or polyploid form of species;
- (e) conditions relating to the erection of any structures on the area to which the aquaculture facility licence relates;
- (f) measures for the control of pollution and infrastructure impacts on the environment resulting from commercial aquaculture;
- (g) conditions relating to the review of a commercial farm development plan;
- (h) conditions relating to the escape of fish, effluent or any other thing from the area to which the commercial aquaculture licence relates;
- (i) commercial provisions relating to the marketing of fish and fish products;
- (j) any other condition that the Authority may consider necessary.

Validity of commercial aquaculture licence and commercial aquaculture facility licence.

66. Unless suspended, canceled or revoked in accordance with section 38, a commercial aquaculture licence and an aquaculture facility licence shall be valid for a period not exceeding twelve months or such other period as may be determined by the Authority.

Cessation of aquaculture facility.

67.—(1) Where the holder of a commercial aquaculture licence intends to cease the operations at the aquaculture facility to which the licence relates, he shall serve notice on the Authority, at least ninety

days before ceasing the operations or such shorter period as may be determined by the Authority, and the Authority may require the holder to take such steps, within such time as the Authority may specify, to remove the aquaculture facility and restore the site where the aquaculture facility was located to a condition that is acceptable to the Authority.

(2) Where the holder of a commercial aquaculture licence fails to remove the aquaculture facility within the time specified by the Authority under subsection (1), the Authority may remove the aquaculture facility and restore the site to a condition that is acceptable to the Authority and the holder of the commercial aquaculture licence shall be liable to pay the costs associated with the removal and restoration of the aquaculture facility.

PART XI.—*Authorization*

68.—(1) Pursuant to section 25, a person shall obtain authorization from the Authority where the person desires to engage in, cause or use any vessel to engage in any educational or scientific research or survey operations relating to fisheries, aquaculture or a related activity in—

Engaging in scientific research prohibited without authorization.

- (a) the fisheries waters, or in any area adjacent to, or surrounding the fisheries waters;
- (b) any area of Jamaica which may have a direct impact on aquaculture, a fishery or species of fish and the associated ecosystem; or
- (c) any area declared by the Minister by order, to be a special fishery research area.

(2) A person who engages in, carries or uses any vessel to engage in educational or scientific research or survey operations without obtaining an authorization commits an offence.

69.—(1) Pursuant to section 68, an application for authorization shall be made to the Authority in the prescribed form and shall be supported by a detailed plan of the educational or scientific research or survey operations to be undertaken.

Application for authorization and conditions of authorization.

(2) The Authority may, subject to the provisions of this Act and any Regulations made under this Act, and upon the payment of a prescribed fee, grant an authorization to an applicant in the prescribed form and manner.

(3) An authorization granted under subsection (2) shall—

- (a) be in writing;
- (b) without prejudice to section 31, be subject to the following conditions—
 - (i) fishery inspectors or observers shall be allowed at any place used to conduct the educational or scientific research or survey operations to inspect or conduct an investigation into the operations;
 - (ii) copies of any raw data generated by any activity relating to the educational or scientific research or survey operations shall be submitted to the Authority at the end of the operations or during the course of the operations, as the Authority may require;
 - (iii) the results and conclusions of the educational or scientific research or survey operations shall be submitted to the Authority as soon as practicable following the completion of the operations and in any case no later than the time specified by the Authority for the submission of the results and conclusions;
 - (iv) copies of any publications arising out of the said operations shall be submitted to the Authority; and
- (c) contain such other conditions as the Authority considers necessary.

(4) Where a person who has been granted an authorization under subsection (2) breaches any of the conditions thereunder, the Authority may, in accordance with section 38, suspend or cancel the

authorization and, no further authorization shall be issued to the person concerned until such time as corrective action has been taken to the satisfaction of the Authority.

(5) No fish taken in the course of any educational or scientific research shall be sold without the prior written consent of the Authority and in accordance with such conditions as the Authority may impose.

(6) A person who contravenes subsection (5), commits an offence.

(7) Unless otherwise suspended, cancelled or revoked, an authorization granted under subsection (2), shall be valid for such period, as may be determined by the Authority.

PART XII.—*Establishment of Appeals Tribunal and Enforcement Measures*

70.—(1) There is hereby established, for the purposes of this Act, an Appeals Tribunal.

Establishment of Appeals Tribunal. Third Schedule.

(2) The Third Schedule shall apply with respect to the establishment, composition, jurisdiction, powers and procedure of the Appeals Tribunal.

(3) A person who is aggrieved by the decision of the Authority to—

(a) refuse to grant a licence, authorization or permit; or

(b) suspend, cancel or revoke, a licence, authorization or permit,

under this Act or Regulations made under this Act, may appeal to the Appeals Tribunal by way of a Notice of Appeal within twenty-one days of the date of the decision of the Authority.

(4) The Notice of Appeal shall set out clearly the grounds of the appeal and shall be accompanied by copies of any correspondence, document or statement relevant to the appeal.

(5) A copy of the Notice of Appeal, together with copies of any correspondence, document or statement shall be served on the Authority.

PART XIII.—*Enforcement Provisions*

Designation
of fishery
inspector.

71.—(1) The Minister may, from time to time, by notice in the *Gazette*, designate fishery inspectors who, by training and experience are, in the opinion of the Minister, qualified to be so appointed, for the purpose of enforcing the provisions of this Act.

(2) A person designated as a fishery inspector under subsection (1) shall undergo such training as may be prescribed.

(3) A fishery inspector in exercising any power conferred by this Act shall, upon request, identify himself, and produce evidence that he is a fishery inspector.

(4) The production by a fishery inspector of any identification document issued to him, shall, unless the contrary is proved, be sufficient authority for the fishery inspector to do anything which he is authorized by this Act to do.

Powers of
fishery
inspectors.

72.—(1) For the purposes of enforcing the provisions of this Act, a fishery inspector may—

- (a) without a warrant, stop, board, enter, search, remain in, or stay on board, as the case may require—
 - (i) any vessel or conveyance in the fisheries waters or on land, which he has reason to believe has been used, is being used or is intended to be used to engage in fishing or a related activity;
 - (ii) any local fishing vessel or Jamaican ship outside the fisheries waters; and
 - (iii) any foreign fishing vessel to which this Act and any access agreement applies;
- (b) without a warrant, enter and search an aquaculture facility—
 - (i) in or on which he has reason to believe that, any item or thing used in the commission of an offence under this Act may be found;

- (ii) in order to ascertain whether this Act or the conditions of a licence, granted under this Act are being complied with;
- (c) inspect and take samples, copies of documents and other information from any vessel, conveyance, aquaculture facility or other place;
- (d) require any person who is associated with or appears to be associated with a vessel, conveyance, aquaculture facility to provide such information as may be reasonably required for the enforcement of this Act;
- (e) examine any equipment or document that is found in, on or at, as the case may be, any vessel, conveyance or aquaculture facility, being any equipment or document that he has reason to believe has been used, is being used or is intended to be used, for or in relation to fishing, aquaculture or other activity;
- (f) without a warrant, seize, remove and secure any fish, fish products, aquaculture products, vessel, conveyance, equipment, aquaculture gear, explosives or noxious substance that he has reason to believe is intended to be used, is being used, or has been used in, or in relation to, the commission of an offence under this Act;
- (g) where he has reason to believe that a vessel or conveyance is intended to be used, is being used or has been used in the commission of an offence, or where a vessel or conveyance is seized under this Act —
 - (i) bring the vessel or conveyance or require the owner or operator of the vessel or conveyance, to bring the vessel or conveyance to any place in Jamaica; and
 - (ii) remain in control of the vessel or conveyance pending the commencement of criminal proceedings in relation to the offence, or require the owner or operator of the vessel or conveyance

to remain in control of the vessel or conveyance at that place until the Authority permits the owner or operator to depart from that place;

- (h) where the vessel or conveyance has been brought to a place in Jamaica in accordance with paragraph (h), remove any part of the vessel or conveyance or otherwise secure the vessel or conveyance, for the purpose of immobilising the vessel;
- (i) require the master of a vessel to produce the licence, authorization or permit that has been granted under this Act, in relation to the vessel;
- (j) at all reasonable times, enter and inspect premises which are being used, or which he has reason to believe are being used, for a related activity;
- (k) exercise any powers given to him under any other law.

(2) A fishery inspector who is bringing a vessel or conveyance to a place in Jamaica in accordance with subsection (1)(h), or in other circumstances where the need for assistance in enforcing the Act is immediate, may require any person to assist him and that person shall be deemed to be a fishery inspector for the purposes of the Act, and at the time during which, he is required to act.

Power of fishery inspector in relation to fishing vessel on the high seas.

73.—(1) A fishery inspector may, where he has reasonable grounds to believe that an offence under this Act or a serious violation of an international fisheries conservation and management measure under an international agreement or arrangement to which Jamaica is a party has been committed on the high seas, seize—

- (a) any Jamaican ship that has been granted a high seas fishing vessel licence under this Act; and
- (b) where authorized by an international agreement or arrangement to which Jamaica is a party, any foreign fishing vessel, which he has reasonable grounds to believe has been used in the commission of an offence.

(2) The owner or operator of the Jamaican ship or a foreign fishing vessel that is seized under subsection (1), shall bring the Jamaican ship or foreign fishing vessel, as the case may be, to the nearest or most convenient port as designated by the fishery inspector, and the Jamaican ship or foreign fishing vessel may be retained pending the outcome of any legal proceedings under this Act.

(3) The owner or operator of the Jamaican ship or foreign fishing vessel shall be responsible for the safety of the fishing vessel and its crew and any other person on board, in bringing the Jamaican ship or a foreign fishing vessel to the designated port.

(4) Where the owner or operator of the Jamaican ship or foreign fishing vessel, fails or refuses to take the seized fishing vessel to the designated port or place, as the case may be, then, a fishery inspector may do so and may also require any person to assist him and that person shall be deemed to be a fishery inspector for the purposes of the Act and at the time during which he is required to assist the fishery inspector.

(5) A fishery inspector may remove any part of any vessel which is in the custody of the Authority for the purpose of immobilising that vessel.

(6) Any part or parts removed under subsection (5) shall be kept safely and returned to the vessel immediately on the lawful release of the fishing vessel from custody.

(7) A written receipt shall be given by the fishery inspector for any article or thing seized under subsection (1) and the grounds for the seizure shall be stated in the receipt.

74. Where a fishery inspector has reasonable grounds to believe that a vessel has been used in the commission of an offence under this Act, the fishery inspector shall have the power to pursue the vessel from the fisheries waters to the high seas.

Pursuit
beyond
fisheries
waters.

75.—(1) The owner, operator or any member of the crew of a vessel shall—

Duty to
comply with
fishery
inspector.

- (a) immediately comply with every instruction given by a fishery inspector and facilitate the safe boarding, entry and inspection

of the vessel and any equipment, fish, aquaculture products and documents; and

- (b) take all measures to ensure the safety of the fishery inspector in the exercise of any of the powers conferred on him by this Act.

(2) A person who—

- (a) fails to take all reasonable measures to ensure the safety of a fishery inspector in the exercise of any of the functions conferred on the fishery inspector by this Act;
- (b) wilfully obstructs or assaults a fishery inspector in the exercise of any of the powers conferred on him by this Act; or
- (c) fails to comply with a lawful enquiry or requirement made by a fishery inspector under this Act,

commits an offence.

Offence of destruction of evidence and avoidance of seizure.

76. A person who, being on board a vessel which is being pursued or about to be boarded or receives notification that the vessel will be boarded by a fishery inspector, throws overboard, discards or destroys any documents, fish, fish products, aquaculture products, equipment, explosives, or noxious substance, with the intention to avoid their seizure or the detection of any offence under this Act, commits an offence.

Offence of impersonating a fishery inspector.

77. A person who impersonates or falsely represents himself to be a fishery inspector under this Act commits an offence.

Inspection.

78.—(1) A fishery inspector may inspect any fishing vessel, fish processing establishment, aquaculture facility or other facility related to fisheries or aquaculture and any equipment or other thing that may be used for fishing, aquaculture or any related activity.

(2) In carrying out an inspection under subsection (1), the fishery inspector may, where applicable, have regard to—

- (a) the presence of pathogenic agents and the likelihood of pathogenic agents developing;
- (b) the adequacy of measures being taken to prevent the escape of aquatic plants, animals or other organisms which are being cultured; and

- (c) whether the activities being carried on are authorized by and are in accordance with a commercial aquaculture licence and a commercial aquaculture facility licence and the provisions of this Act and any regulations made under this Act.

(3) The owner or operator of an aquaculture facility shall provide any information, documents and samples and carry out any tests and examinations which the fishery inspector may reasonably require.

(4) Where a fishery inspector considers it necessary, he may direct the owner or operator of a an aquaculture facility to take measures—

- (a) to prevent the escape of any aquatic plant, animal or other organism;
- (b) to mitigate the development or prevent the spread of pathogenic agents; and
- (c) to ensure that aquaculture is conducted in accordance with the terms and conditions of the commercial aquaculture licence, and commercial aquaculture facility licence granted in relation to the aquaculture facility, and the provisions made under this Act.

PART XIV.—*Observers*

79.—(1) The Authority shall plan and manage an observer programme for the purposes of collecting and reporting reliable and accurate information for scientific, management and compliance purposes. Designation of observers.

(2) Pursuant to subsection (1), the Authority may, in writing, designate a person to be an observer, for the purposes of the observer programme, on a fishing vessel, at an aquaculture facility or any other facility related to fisheries or aquaculture that has been granted a licence, authorization or permit under this Act.

(3) An observer shall on request, identify himself and produce evidence that he is an observer, and the production by an observer, of

any identification document issued to him, shall, until the contrary is proved, be sufficient authority for the observer to do anything which he is authorized to do under this Act.

(4) An observer may exercise scientific and monitoring functions and such other functions as the Authority may determine.

Duties of owner or operator of fishing vessel, *etc.* whilst an observer is on board.

80.—(1) The owner or operator of a fishing vessel, conveyance or an aquaculture facility, shall—

- (a) permit and assist an observer to board and remain on board the fishing vessel, board, enter or inspect, as the case may require, a conveyance or an aquaculture facility and remain therein for the purposes of carrying out his functions in accordance with this Act;
- (b) grant to the observer full access to a fishing vessel, conveyance or an aquaculture facility and the use of any equipment therein which the observer considers necessary to carry out his functions, including, where applicable, access to—
 - (i) any aquaculture gear;
 - (ii) documents and logbooks for the purposes of recording, inspecting and making copies thereof; and
 - (iii) any other thing which the observer considers necessary;
- (c) permit an observer to—
 - (i) take or remove from the fishing vessel, conveyance or aquaculture facility, samples and information relevant to fishing, aquaculture and any related activity;
 - (ii) take photographs or make audio or video recordings of any operations in relation to a fishing vessel, conveyance or aquaculture facility;
 - (iii) carry out all of his duties safely;

- (iv) in the case of a fishing vessel or conveyance, embark and disembark at such time and place as may be determined by the Authority or, where the fishing vessel is a foreign fishing vessel, in accordance with the applicable access agreement;
- (v) in the case of an aquaculture facility, enter and exit at such time as may be reasonably determined by the Authority.

(2) Pursuant to the provisions of this section, the owner or operator of a fishing vessel, or where applicable, conveyance or an aquaculture facility shall provide to an observer such food, accommodation and medical facilities equivalent to that accorded to a member of the crew on board the fishing vessel or conveyance or a person employed at the commercial aquaculture facility.

(3) The owner of the fishing vessel, conveyance or aquaculture facility shall, where applicable, pay, in relation to the observer, insurance coverage and such other reasonable costs and expenses as may be determined by the Authority.

PART XV.—*Procedure upon Seizure, Release,
Forfeiture, etc., of Vessel*

81.—(1) For the purposes of this Part, a vessel's equipment, furniture, appurtenances, stores, cargo, conveyance, fish, fish products and aquaculture products are deemed to form part of the vessel. Custody of
seized items.

(2) A fishery inspector may, in addition to his power of seizure under section 72(1)(f), seize any item or thing which he has reasonable grounds to believe—

- (a) has been or is being used in the commission of an offence under this Act; or
- (b) has been unlawfully removed from custody under this Act.

(3) Any vessel, item or thing seized under this Act shall be delivered to the custody of the Authority and be dealt with in accordance with the provisions of this Part:

However, where an item or thing seized is not related to an offence under this Act, the fishery inspector shall forthwith deliver the item or thing to the nearest police station.

(4) Where legal proceedings are instituted in respect of any vessel, item or thing that has been seized, the Authority may retain it pending the outcome of the proceedings.

Security for
release of
fishing
vessel,
conveyance
or
aquaculture
gear.

82.—(1) A person may within sixty days of the seizure of a vessel, item or thing, under this Act, apply to the court for an order for the release of the vessel, item or thing.

(2) Upon receipt of an application under subsection (1), the court may, and in the case of a Jamaican ship or a foreign fishing vessel shall, unless the vessel is required as an exhibit in court proceedings or reasonably required for any further investigation of an offence, order—

- (a) the payment into court of a bond or other security in the total aggregate value of—
 - (i) the fair market value of the vessel, item or thing to be released;
 - (ii) the total maximum fines provided for the offences charged or likely to be charged; and
- (b) the release of the vessel, item or thing upon receipt of the bond or other security.

(3) The court may, in such special circumstances, as it considers fit, taking into account the gravity of the offence alleged, release any vessel, item or thing for an amount less than that prescribed under subsection (2).

(4) Any vessel, item or thing seized under this Act, or any security that has been paid under subsection (2), shall be held until any legal proceedings under this Act has been disposed of or discontinued and all fines imposed have been paid.

Sale of
perishable
items.

83.—(1) Where fish or any other goods of a perishable nature is seized under this Act, the fish or any other goods of a perishable nature may at the direction of the Authority, be sold and the proceeds of sale

shall be deposited in trust with the Authority until any proceedings under this Act have been disposed of or discontinued.

(2) Where, after making reasonable efforts, the Authority is unable to sell the fish or other goods of a perishable nature referred to in subsection (1), or where the fish or other perishable item is unfit for sale, the Authority may, with the approval of the Board, dispose of them in such other manner as the Authority thinks fit.

84.—(1) Where a person is convicted of an offence under this Act, Forfeiture. the court may, in addition to any other penalty, order the forfeiture of any of the following—

- (a) any vessel, item or thing used or involved in the commission of the offence;
- (b) where any fish or other item of a perishable nature has been sold under section 83, the proceeds of sale of the fish or other item of a perishable nature.

(2) Where any bond or other security has been paid under section 82 and the vessel, item or thing has been released—

- (a) an order for forfeiture under this Act shall operate as an order for the forfeiture of the sum paid in respect of the value of the vessel, item or thing; and
- (b) the payment of any fine ordered upon conviction shall be made from the security; and
- (c) an order for costs shall be applied against the security.

(3) Where any vessel, item or thing is released on the lodging of a bond or other security under section 82, the court may order the person convicted of the offence and the owner or operator of the vessel, or the owner of the item or thing to pay the difference between the bond or the amount lodged in respect of the forfeited property and the full value of the forfeited property.

Disposal of
seized and
forfeited
vessel, item
or thing.

85.—(1) Any vessel, item or thing seized under this Act but not forfeited in any criminal proceedings, shall be—

- (a) held by the Authority until all fines imposed under this Act, and orders for costs have been paid and, failing payment within the time allowed, be sold and the balance of the proceeds returned to the person who is entitled to it after deduction of all fines, orders for costs and costs of sale; and
- (b) refunded to the person who posted or paid the bond or security in respect of the vessel, item or thing, where there are no fines or orders for costs made available for collection by the owner or a person nominated by the owner, or in the absence of the owner.

(2) Pursuant to subsection (1), where any fish or other goods of a perishable nature is forfeited in any criminal proceedings under this Act, the Authority may, at the direction of the Board, order the sale of the fish or other goods of a perishable nature and the proceeds of the sale shall be placed at the disposition of the Fund by the Authority.

(3) Any vessel, item or thing that is ordered to be forfeited shall be forfeited to the Crown and may, at the expiry of the time limit for an appeal, or if no appeal is lodged, be disposed of in such manner as the Authority with the approval of the Board, after consultation with the Minister responsible for finance, thinks fit.

Liability of
Authority.

86. The Authority shall not be liable to any person for any loss, damage to, or deterioration in the condition of, any vessel, item or thing while in the custody of the Authority under this Act.

PART XVI.— *Offences*

Offences and
penalties.
Fourth
Schedule.

87. A person who commits an offence specified in the Second Column of the Fourth Schedule shall be liable, on conviction, to a penalty not exceeding the amount specified in relation thereto, in the corresponding column of that Schedule.

Fixed
penalties.
Fifth
Schedule.

88.—(1) Subject to subsection (6), this section shall apply to any offence specified in the Fifth Schedule.

(2) The Authority may serve on a person who has committed an offence specified in the Fifth Schedule a notice in writing in the prescribed form, offering the opportunity to discharge any liability on conviction of that offence by payment of a fixed penalty as specified in the Fifth Schedule.

(3) A person shall not be liable to be convicted of an offence if the fixed penalty is paid in accordance with this section before the expiration of thirty days following the date of the notice, or such longer period (if any) as may be specified therein, or before the date on which proceedings are begun, whichever is later.

(4) Where a person is given a notice under this section in respect of an offence, proceedings shall not commence against the person for that offence until the end of the thirty days following the date of the notice or such longer period (if any) as may have been specified therein.

(5) In this section “proceedings” means any criminal proceedings in respect of the act or omission constituting the offence specified in the notice under subsection (2) and “convicted” shall be construed in like manner.

(6) Payment of a fixed penalty under this section shall be made to the Collector of Taxes and in any proceedings a certificate that payment of the fixed penalty was or was not made to the Collector of Taxes, by a date specified in the certificate shall, if the certificate purports to be signed by or on behalf of the Collector of Taxes, be sufficient evidence of the facts stated therein.

(7) A notice under subsection (2) shall—

- (a) specify the offence alleged, and give such particulars of the offence as are reasonably necessary in relation to the allegation;
- (b) state the period during which, by virtue of subsection (3), proceedings will not commence for the offence;
- (c) state the amount of the fixed penalty and the address of the Collector of Taxes, at which it may be paid.

(8) In any proceedings for an offence to which subsection (1) applies, no reference shall be made after the conviction of the accused to the—

- (a) giving or affixing of any notice under this section; or
- (b) payment or non-payment of a fixed penalty thereunder, in the course of the proceedings or in some document which is before the Court in connection with the proceedings if reference has been made by or on behalf of the accused to the giving or affixing of such a notice or, as the case may be, to such payment or non-payment.

(9) The Minister may, by order, make provision as to any matter incidental to the operation of this section, and in particular, any such order may prescribe—

- (a) the form of notice under subsection (2);
- (b) the nature of the information to be furnished to the Collector of Taxes along with any payment;
- (c) the arrangements for the Collector of Taxes to furnish to the Authority, information with regard to any payment under a notice under this section.

Offences involving prohibited fishing methods and items in custody.

89.—(1) A person commits an offence if that person in the fisheries waters—

- (a) permits to be used, uses, attempts or participates in the use of any explosive, poison or noxious substance or electrical current fishing device;
- (b) carries, or has in his possession or control, any explosive, poison, noxious substance or electrical current fishing device; or
- (c) uses a prohibited fishing method prescribed by this Act.

(2) A person commits an offence where the person—

- (a) lands, sells, receives or is found in possession of fish or fish products, knowing or having reasonable cause to believe

them to have been taken in contravention of the provisions of this Act;

- (b) fails without reasonable cause to comply promptly with any order or request given or made by a fishery inspector or an observer under this Act;
- (c) wilfully obstructs or delays a fishery inspector or an observer in the performance of his functions under this Act;
- (d) threatens, intimidates or assaults a fishery inspector or an observer in the course of his duties under this Act;
- (e) offers to pay, or pays any bribe, or offers, or furnishes any inducement to a fishery inspector or an observer to improperly discharge or refrain from properly discharging any of his duties under this Act;
- (f) in any manner holds himself out to be, or impersonates a fishery inspector or an observer.

(3) Any person who, without lawful authority, removes or damages any vessel, conveyance, aquaculture gear or item that is seized or forfeited under this Act and is in the custody of the Authority commits an offence.

90.—(1) A person commits an offence if, within any area of the fisheries waters, or in any area adjacent to, or surrounding the fisheries waters, the person—

Offence of using prohibited equipment.

- (a) uses for fishing or carries in his control; or
- (b) has on board any vessel, conveyance or aquaculture facility or any related facility,

any prohibited equipment, as specified in subsection (2).

(2) In this section, prohibited equipment means—

- (a) any net or trap, the mesh size of which does not conform to the prescribed minimum mesh size for that type of net or trap within a particular area or location;

- (b) any fishing equipment which does not conform to any standards prescribed for that type of fishing gear;
- (c) any equipment which is prohibited by this Act or any Regulations made under this Act; or
- (d) any equipment which is prohibited by the management plan for any fishery management area, fishery management zone, aquaculture management area, aquaculture management zone or fishery or species of fish.

General offences involving fishing vessel, fishing devices, fishery inspectors and observers.

91. A person commits an offence where the person—

- (a) without lawful authority, removes or attempts to remove any thing that has been seized under this Act;
- (b) falsifies, conceals or destroys any document which could be used in the course of an inquiry or legal proceedings relating to any matter under this Act;
- (c) tampers with or wilfully destroys, renders inoperative or otherwise interferes with the vessel monitoring device, vessel or where applicable, the gear tracking device of a fishing vessel or conveyance;
- (d) tampers with or wilfully destroys, damages or renders inoperative any fish aggregating device or enhancement structure;
- (e) is required to supply information to any person under this Act and fails to supply such information, or supplies false or misleading information;
- (f) engages in fishing in breach of measures provided for in a fishery management plan or aquaculture management plan;
- (g) contravenes any prescribed international fisheries conservation and management measure;
- (h) fails to comply with the rules and procedures authorizing any fishery inspector or observer on board any fishing vessel or conveyance or the disembarking of the fishery inspector or observer when obliged to do so under this Act;

- (i) without the requisite licence, authorization or permit, possesses, offers for sale, engages in fishing or in any way takes a species of fish or in any way, kills, injures or distress such species of fish; or
- (j) is in possession of, or offers for sale, any fish which is prohibited or illegally caught.

92. A person commits an offence if, without reasonable excuse, the person—

Offence of stealing from traps, *etc.*

- (a) removes, hauls, takes away, empties, casts adrift or otherwise interferes with equipment without the consent of the owner or operator of the equipment;
- (b) places any object in the water, or promotes or undertakes any activities in such a manner as to obstruct any fishing or related activity being carried out by another person;
- (c) destroys, damages, displaces or alters the position of any equipment, buoy, float or other marker attached to it without the consent of the owner;
- (d) removes fish from any equipment, without the consent of the owner of the equipment;
- (e) removes fish from any kraal or any such holding device without the consent of the owner.

93.—(1) No person shall use or cause to be used a drift net for fishing in the fisheries waters.

Offence of using a drift net for fishing.

(2) Any person who contravenes subsection (1) commits an offence.

(3) Any vessel or conveyance used—

- (a) to transport or tranship any fish obtained by virtue of the commission of an offence under this section; or
- (b) to assist in any other manner in the commission of the offence under subsection (2),

may be liable to seizure and forfeiture in accordance with the provisions of this Act.

(4) Any equipment used to process any fish obtained by virtue of the commission of an offence under this section shall be liable to seizure and forfeiture in accordance with the provisions of this Act.

Offences relating to fishing in fish sanctuary or fish habitat.

94.—(1) A person commits an offence where, in a fish sanctuary he—

- (a) without lawful authority fishes or attempts to fish;
- (b) places or causes to be placed, any poisonous or noxious substance;
- (c) uses or causes to be used, any dynamite or other explosive substances;
- (d) removes, disturbs, or alters any living organism including, but not limited to, seagrass, corals and mangrove;
- (e) removes any non-living material including but not limited to sand, rocks, coral or other materials;
- (f) causes or knowingly permits to flow, whether directly or indirectly, any trade effluent or industrial waste, sewage or any noxious or polluting matter;
- (g) conducts, or causes to be conducted, any research without the permission of the Authority.

(2) A person commits an offence where, in a fish sanctuary, he—

- (a) harmfully alters, disrupts or destroys a fish habitat; or
- (b) deposits any deleterious substance in a fish habitat.

(3) A person commits an offence where the person fails to submit a report to the Authority in relation to the deposit of a deleterious substance in a fish habitat, as soon as that person knows, or ought to have known, of this fact.

Offences involving aquaculture.

95. A person commits an offence where the person, without the prior consent of the holder of a commercial aquaculture licence—

- (a) interferes with, or causes interference with, any aquaculture product within an aquaculture facility; or

- (b) harvests, or causes to be harvested, any aquaculture product farmed at an aquaculture facility.

96.—(1) A person commits an offence if the person—

Offence of causing damage to fish habitat.

- (a) discharges or throws overboard any vessel, any ballast, stones or other substances or objects that are detrimental or potentially detrimental to the fish habitat;
- (b) leaves or deposits, or causes to be left or deposited on the shore of any bank of any water, or on the beach between the high and low water marks, any fish remains or offal;
- (c) leaves decayed or dying fish in any net or other equipment on the shore of any bank or any water or on the beach between the high and low watermarks;
- (d) deposits, or permits, the deposit of a deleterious substance in a fish habitat.

(2) For the purpose of any criminal proceedings in respect of an offence under this section—

- (a) a deposit takes place whether or not any act or omission resulting in the deposit is intentional; and
- (b) a harmful alteration or disruption, or a destruction of fish habitat takes place whether or not any act or omission resulting in the alteration, disruption or destruction is intentional.

97.—(1) Subject to subsection (2), no person shall—

Offences relating to aquatic invasive alien species.

- (a) export, import or transport; or
- (b) release into the fisheries waters or permit to be released into the fisheries waters,

any aquatic invasive alien species.

(2) Notwithstanding the provisions of subsection (1), a person may, with the written permission of the Authority, export, import, transport or release into the fisheries waters, an aquatic invasive alien species for conservation measures, or any other purpose which the Authority considers necessary.

Offences of failure to keep records.

98. A person who fails to keep any books, documents or records required to be kept under this Act or any Regulations made hereunder, commits an offence.

Offences relating to information and documents, etc.

99. A person commits an offence if the person—

- (a) knowingly submits false information to be entered into the Register;
- (b) provides false information purporting to be from the Register;
- (c) falsifies or in any way modifies without authorization, any information in the Register; or
- (d) discards or destroys, any document, aquaculture product or equipment with the intent to avoid their seizure or the detection of an offence under this Act.

Offences of transferring and stocking live fish without a permit.

100.—(1) A person shall not, without any licence, authorization or permit—

- (a) transfer fish from an aquaculture facility to any part of the fisheries waters;
- (b) stock any part of the fisheries waters with fish; or
- (c) introduce into any part of the fisheries waters, any fish not indigenous to Jamaica.

(2) A person who contravenes subsection (1) commits an offence.

Other offences and penalties.

101. A person who commits an offence under this Act, for which no penalty is specifically provided, is liable, on summary conviction in a Parish Court, to a fine not exceeding three million dollars, or to imprisonment for a term not exceeding twelve months.

Revocation of licence, authorization, permit, fishing right or quota and disqualification by order of the court.

102.—(1) Where a person is convicted of an offence against this Act, the Court may, in addition to any other penalty, order the revocation of any licence, authorization, permit, fishing right or quota granted to that person under this Act or any Regulations made under this Act.

(2) Pursuant to subsection (1) where the offence involves the use of a fishing vessel, the court may, in addition to any other penalty, order the suspension, cancellation or revocation of the licence relating to the fishing vessel.

PART XVII.—*Confidentiality*

103.—(1) Every person having an official duty under this Act, or being employed or otherwise concerned in the administration of this Act (hereinafter called a “concerned person”) shall regard and deal with as secret and confidential, all information and all other matters relating to any matter before the Authority, except that no disclosure made by the Authority or other concerned person in the proceedings for an offence under this Act or under the *Perjury Act*, by virtue of section 17(2) of that Act, shall be deemed inconsistent with any duty imposed by this subsection.

Confidentiality
regarding
information.

(2) Every concerned person who is required under subsection (1) to deal with matters specified therein as secret and confidential who at any time communicates or attempts to communicate any such information, declaration, letter and other document or thing referred to in subsection (1) disclosed to him in the execution of any of the provisions of this Act to any person—

- (a) other than a person to whom he is authorized under this Act to communicate it; or
- (b) otherwise than for the purpose of this Act,

commits an offence and shall be liable on summary conviction in a Parish Court, to a fine not exceeding one million dollars, or to imprisonment for a term not exceeding one year.

PART XVIII.—*Jurisdiction and Evidence*

104.—(1) An act or omission in contravention of any of the provisions of this Act which is committed—

Jurisdiction
of Court.

- (a) by a person within the territory of the fisheries waters;
- (b) outside the fisheries waters, by a Jamaican national or a person resident in Jamaica; or
- (c) by a person on board a fishing vessel which has been granted a high seas fishing vessel licence under this Act, or
- (d) by a person on board a local fishing vessel,

shall be dealt with, and legal proceedings taken, as if the act or omission had taken place in Jamaica within the local limits of the jurisdiction of the Supreme Court.

(2) Where a fishery inspector or an observer is exercising any power conferred on him outside the fisheries waters in accordance with—

- (a) the provisions of this Act;
- (b) an applicable access agreement or arrangement; or
- (c) an applicable fisheries management agreement or arrangement,

an act or omission by a person, in contravention of any of the provisions of this Act shall be deemed to have been committed within the fisheries waters.

(3) An act or omission by a person on the high seas, which, if committed within the fisheries waters, would be an offence under this Act, is deemed to have been committed within the fisheries waters.

(4) Where the conditions of a licence requires, specifically or incidentally, the reporting of a fact while a vessel is on the high seas, proceedings may be taken in respect of a failure to report the fact as if it had occurred within the fisheries waters.

Onus of
proof.

105. In any proceedings under this Act, where a person is charged with having committed an offence involving an act for which a licence, authorization, permit, fishing right or quota is required under this Act, the onus is on the person to prove that at the relevant time, the requisite licence, authorization, permit, fishing right or quota was held by him.

Presump-
tions.

106.—(1) For the purpose of any proceedings under this Act, the act or omission of any member of the crew of a vessel or conveyance is deemed to be also that of the owner or operator of the vessel.

(2) Where, in any legal proceedings instituted under this Act, the place in which a fishing vessel or conveyance was located at a particular time is an issue, the place stated in a certified copy of the relevant entry in the log book or other official record of an enforcement vessel or aircraft as being the place in which the vessel was at that particular time is presumed, unless the contrary is proved, to be the place in which that fishing vessel was at that time.

(3) The production of a copy or a written extract of an entry in a log book or other official record of the enforcement vessel or aircraft certified by an authorized officer to be a true copy of accurate extract is *prima facie* evidence of the entry.

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

(5) Where any information is given in respect of a vessel under this Act, or an access agreement or arrangement, or in relation to any fishing activity of a fishing vessel, it is presumed, unless the contrary is proved, to be given by the owner or operator of the vessel concerned.

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

(7) For the purposes of this section, a position fixing instrument is deemed to be a device which indicates the location of a vessel or conveyance, including, but not limited to, a satellite navigation system or global positioning system.

(8) All fish found on board a vessel or on a conveyance used or involved in the commission of an offence under this Act is presumed, unless the contrary is proved, to have been caught unlawfully.

107.—(1) Any person engaged in fishing, aquaculture or a related activity shall provide to the Authority information in such form as the Authority may require, including where applicable, information relating to fishing time and effort, landings, aquaculture production, processing, sales, purchases and other related transactions and information.

Provision of information.

(2) Where there is any change in circumstances which has the effect of rendering any information required under subsection (1) to be false, incomplete or misleading, the appropriate person or body shall as far as is reasonably practicable, immediately notify the Authority.

(3) Any person who contravenes this section commits an offence.

108. Any person who does any act in pursuance of, or in intended pursuance of any function conferred on the person under this Act or omits to do any act required of him under this Act shall not be under any civil or criminal liability in respect thereof unless the act or omission was committed in bad faith or negligence.

Immunity of persons acting in pursuance of powers, etc.

PART XIX.—*Regulations and Miscellaneous Provisions*

Regulations.

109.—(1) The Minister may make regulations generally for giving effect to the purposes and provisions of this Act and in particular, (but without prejudice to the generality of the foregoing), may make regulations—

- (a) prescribing measures for the management, licensing, permitting, authorization and regulation of fisheries or any particular fishery, including close seasons and close areas and the organization, administration and regulation of participatory fisheries management or aquaculture management;
- (b) with respect to the licensing, permitting or authorizing in respect of any fishing vessel, or class or category of fishing vessel or aquaculture facility to be used for fishing, aquaculture or any related activities or any other purpose pursuant to this Act;
- (c) with respect to joint venture arrangements for the development of a fishery or a species of fish;
- (d) in relation to sports fishing, subsistence fishing and conditions relating thereto;
- (e) prescribing the operation of and conditions and procedures to be observed by, any fishing vessel while in the fisheries waters or beyond;
- (f) prescribing the operation of and conditions and procedures to be observed by the owner or operator of any member of a crew aboard any fishing vessel while on the high seas;
- (g) prescribing the functions of fishery inspectors and observers;
- (h) regulating or prohibiting the use of any equipment or method used for fishing, aquaculture or any related activity;
- (i) establishing standards and measures for the safety of fish farmers, fishers, fishing vessels and aquaculture facilities;
- (j) prescribing standards for the construction of aquaculture facilities and fishing vessels and conveyances;

- (k) prescribing particulars for allocating individual fishing rights and quotas for a specific fishery, specie of fish and aquaculture;
- (l) prescribing the particulars to be stated in any register to be kept under this Act;
- (m) prescribing measures to be taken for the protection of a fishery or species of fish, as appropriate;
- (n) prescribing the particulars to be marked on fishing vessels, conveyances, aquaculture facilities and equipment;
- (o) prescribing the methodology and procedure to be followed in determining the total allowable catch and quotas and other fisheries and aquaculture related limits;
- (p) prescribing the procedure to be followed in imposing a cess on a fishery, species of fish or an aquaculture activity;
- (q) prohibiting or restricting the export from and import into Jamaica, of any prescribed species or size of fish;
- (r) regulating the handling, possession and disposal of fish and aquaculture products and the import, export, distribution and marketing of fish and aquaculture products;
- (s) prescribing the manner in which any device, machine or equipment used for aquaculture, or any related activity, or for fishing, or any related activity, is to be stored, transported, deployed and disposed of;
- (t) prescribing the functions and procedures to be followed by the owner, operator or any member of the crew aboard a fishing vessel or in an aquaculture facility in respect of fishery inspectors and observers;
- (u) prescribing measures to prevent, deter and eliminate illegal, unreported and unregulated fishing;
- (v) prescribing measures for the management of fishing tournaments;

- (w) prescribing measures for the management and development of the fishing beaches, Morant and Pedro Cays and any other area within the fisheries waters;
- (x) prescribing the procedure for suspension and cancellation of licences, authorizations, permits, rights and quotas.

Power to increase monetary penalty.

Fourth and Fifth Schedule.

110. The Minister may by order, subject to affirmative resolution—

- (a) vary or amend the monetary penalties specified in this Act;
- (b) amend the Fourth and Fifth Schedule (other than the custodial penalties specified in the Fourth Schedule).

PART XX.—Miscellaneous Provisions

Repeal of the Fishing Industry Act and transitional.

111.—(1) The *Fishing Industry Act* (hereinafter referred to as the repealed Act) is hereby repealed.

(2) Notwithstanding the repealed Act—

- (a) Regulations made and in force immediately before the repeal of this Act, shall remain in full force and effect, with such changes as may be necessary as if made under this Act and may be amended or revoked accordingly; and
- (b) a reference in any enactment to specific provisions of the repealed Act shall be construed as a reference to the equivalent provision of this Act.

(3) Any legal proceedings or claims commenced under the repealed Act, before the appointed day but not concluded before that day, shall continue after the appointed day and shall be concluded as if this Act had not been enacted.

(4) Nothing in this section shall be construed to affect any civil or criminal liability incurred by any person under the repealed Act before the appointed day.

112.—(1) The *Conch (Export Levy) Act* is amended—

(a) in section 9(3), by—

(i) deleting the word “and” at the end of paragraph (c); and

(ii) inserting next thereafter the following new paragraph as paragraph (d)—

“ (d) the proceeds of sale of any fish, aquatic plants or animals or other perishable items forfeited under the Fisheries Act;”; and

(iii) re-lettering the paragraph which follows accordingly; and

(b) in paragraph 1(b) of the Schedule by deleting the words “the Director of Fisheries” and substituting therefor the following—

“the Chief Executive Officer of the National Fisheries Authority or his nominee.”.

(2) Section 2 of the *Maritime Areas Act* is amended in the definition of “marine officer” by deleting the words “any public officer designated by a Fishery Inspector under the *Fishing Industry Act*” and substituting therefor the following—

“ any person designated as a fishery inspector under the Fisheries Act”.

(3) Section 2 of the *Exclusive Economic Zone Act* is amended in the definition of “marine officer” by deleting the words “any public officer designated a Fishery Inspector under the *Fishing Industry Act*” and substituting therefor the following—

“any person designated as a fishery inspector under the Fisheries Act.”.

113. Every licence, authorization, permit, fishing right or quota granted under the repealed Act shall, notwithstanding such repeal, continue to have effect until the expiry thereof in accordance with the

Amendment
of the *Conch
(Export Levy)
Act, Maritime
Areas Act* and
the *Exclusive
Economic
Zone Act*.

Transitional.

terms thereof and thereafter the holder of such licence, authorization, permit, fishing right or quota, shall within six months after the date of expiry of the licence, authorization, permit, fishing right or quota, make an application under this Act to obtain the relevant licence, authorization, permit, fishing right or quota under this Act or any Regulations made under this Act.

Crew
manning
local fishing
vessel to be
citizens of
Jamaica three
years after
appointment.

114.—(1) Within three years after the appointed day, the majority of the crew manning local fishing vessels which are licensed to fish under this Act, shall be citizens of Jamaica.

(2) After the expiration of a period of six months after the appointed day, no person shall engage in or conduct any commercial aquaculture activity or operate as a commercial aquaculture facility without a valid licence granted under this Act.

Transitional
provisions
relating to
employment.

115.—(1) Subject to the provisions of this section, on the appointed day, a person holding a permanent appointment to an office existing in the Fisheries Division of the Ministry responsible for fisheries, shall be transferred on secondment to the services of the Authority for a period of six months or such longer period as the Minister may, in special circumstances determine.

(2) During the period of secondment to the Authority, an officer shall be employed on such terms and conditions as may be determined by the Board, being such terms and conditions that are not less favourable than those enjoyed by such person in his substantive position, on the appointed day.

(3) An officer that is transferred on secondment may be deployed in the public service on or before the expiration of the secondment period on terms and conditions that are not less favourable than those enjoyed by the officer in his substantive position.

(4) A person who, on the appointed day held an office or employment in the Fisheries Division of the Ministry responsible for fisheries under a contractual arrangement, shall, from that date be deemed to continue to be employed to the Authority on such terms and conditions as may be determined by the Board, being terms and conditions that are no less favourable than those enjoyed by such person in his substantive position, on the appointed day.

FIRST SCHEDULE (Sections 5(2) and 6)

PART A

The National Fisheries Authority

1.—(1) Subject to subparagraph 5, the Chief Executive Officer, shall appoint such officers as may be necessary for the efficient operation of the Authority.

Appointment of other officers of the Authority and benefits for employees.

(2) No salary in excess of the prescribed rate shall be assigned to any post within the Authority without the prior approval of the Minister.

(3) No appointment shall be made to any post within the Authority to which salary in excess of the prescribed rate is assigned without the prior approval of the Minister.

(4) For the purposes of subparagraphs (2) and (3), the “prescribed rate” means such rate as the Minister responsible for the public service may, by order, prescribe.

(5) The Governor-General may, subject to such conditions as he may impose, approve the appointment of any public officer in the service of the Government to any office within the Authority and any public officer so appointed shall, while so employed, in relation to any pension, gratuity or other allowance and in relation to any other rights as a public officer, be treated as continuing in the service of the Government.

(6) The Authority may, with the approval of the Minister—

- (a) enter into arrangements respecting schemes whether by way of insurance policies or otherwise; and
- (b) make regulations, for medical benefits, pensions, gratuities and other retiring benefits or disability or death benefits relating to employees of the Authority and such arrangements or regulations may include provisions for the grant of benefits to the dependants and the legal personal representatives of such officers.

2.—(1) The Authority may delegate any of its functions under this Act, other than the power of delegation, to any officer or agent of the Authority.

Delegation of functions.

(2) Every delegation under paragraph 1 is revocable by the Authority and a delegation of a function shall not preclude the performance of that function by the Authority.

Funds and resources of the Authority. 3. The funds and the resources of the Authority shall consist of such funds as may be appropriated to the Authority by Parliament.

Accounts and audit. 4.—(1) The Authority shall keep proper accounts and other records in relation to its functions and shall prepare annually a statement of accounts in a form satisfactory to the Minister and conforming to established accounting principles and the *Public Bodies Management and Accountability Act* and such accounts shall be audited annually by an auditor appointed by the Chief Executive Officer, with the approval of the Minister and a statement of the accounts so audited shall form part of the annual plan submitted pursuant to paragraph 6.

(2) In this paragraph, “Minister” means the Minister responsible for finance.

Expenses and remuneration. 5. The expenses of the Authority, including the remuneration of the Chief Executive Officer and members of staff of the Authority, shall be paid out of the funds of the Authority.

Annual plan. 6.—(1) Before the beginning of each financial year, the Chief Executive Officer shall submit an annual plan to the Minister setting out how the Chief Executive Officer intends that the functions of the Authority are to be exercised during that year.

(2) The annual plan for a financial year shall include—

- (a) a statement of the strategic priorities for the Authority;
- (b) pursuant to subparagraph (1), a statement of the operational priorities for the Authority and in relation to each of the strategic and operational priorities, an explanation of how the Chief Executive Officer intends that the priority will be given effect to;
- (c) ways in which the Authority is to be administered, including with respect to governance and finance.

Chief Executive Officer to consult in preparing annual plan. 7. In preparing an annual plan, the Chief Executive Officer shall consult with any person who the Chief Executive Officer considers it appropriate to consult.

Estimates and operating plan. 8. The Authority shall, in each financial year, before a date specified by the Minister, submit to the Minister for his approval—

- (a) estimates of income and expenditure for the ensuing financial year; and
- (b) the annual plan under paragraph 6.

9. The Authority shall furnish the Minister with such returns, Returns.
accounts and other information as he may require with respect to
the activities of the Authority, and shall afford him facilities for
verifying such information in such manner and at such times as he
may reasonably require.

10.—(1) Annual and other reports shall be prepared by the Authority in accordance with the provisions of *the Public Bodies Annual and other reports.*
Management and Accountability Act.

(2) A copy of the annual report and audited financial statements of the Authority, approved by the Board, shall be submitted, no later than four months after the end of each financial year, to the Minister.

(3) The Minister shall cause a copy of the report together with the annual statement of accounts and the Auditor-General's report thereon to be laid in the House of Representatives and the Senate.

PART B

(Section 6 (1))

The National Fisheries Board

1.—(1) The Authority shall be managed by a Board of Directors which shall comprise nine members namely— Constitution of the Board of the Authority.

- (a) four *ex-officio* members as specified in subparagraph (2); and
- (b) five members (hereinafter referred to as “appointed members”) two of whom shall be appointed by the Minister, on the advice of the National Fisheries Advisory Council, one to be appointed by the Minister from a scientific research body and two to be appointed by the Minister from a body that specializes in the environment or other related field, by instrument in writing.

(2) The *ex-officio* members shall be—

- (a) the Chief Technical Director in the Ministry responsible for fisheries;
- (b) the Chief Executive Officer of the Authority;
- (c) the Permanent Secretary or his nominee in the Ministry responsible for national security;

(d) an attorney-at-law from the Attorney General's Chambers.

(3) The members to be appointed by the Minister on the advice of the Council in paragraph (1) (b) shall be such persons with knowledge and expertise in fisheries, aquaculture or a related field.

(4) The Chairman of the Board shall be appointed by the Minister from among the appointed members of the Board.

Gazetting of appointments.

2. The names of all members of the Board as first constituted and every change in the membership thereof shall be published in the *Gazette*.

Tenure and revocation of appointment and resignation.

3.—(1) The appointment of every member shall be evidenced by instrument in writing and, subject to the provisions of this Schedule.

(2) The period of office of appointed members shall not exceed three years.

(3) Every appointed member of the Board shall be eligible for reappointment.

(4) A member of the Board, other than the Chairman, may at any time, resign his office by instrument in writing addressed to the Minister and transmitted through the Chairman, and from the date of receipt by the Chairman of such instrument, the person shall not be a member of the Board.

(5) The Chairman may, at any time, resign his office by instrument in writing addressed to the Minister, and such resignation shall take effect from the date of receipt by the Minister of that instrument.

(6) The Minister may, at any time, revoke the appointment of an appointed member of the Board, for the inability of the appointed member to discharge the functions of his office, whether arising from infirmity of body or mind, misbehaviour or any other cause.

Leave.

4. The Minister may, on the application of any member, grant leave of absence to such member.

Procedure and meetings.

5.—(1) The Board shall meet as often as may be necessary or expedient for transaction of its business and such meetings shall be held at such places and on such days as the Board may determine.

(2) The Chairman shall preside at all meetings of the Board.

(3) If the Chairman is absent from a meeting of the Board, the members shall select a member present at the meeting to preside.

(4) Minutes of the meeting of the Board shall be kept in proper form.

(5) Subject to the provisions of this Schedule, the Board may regulate its own proceedings.

(6) The quorum of the Board shall be five.

6. The decisions of the Board shall be by a majority of votes of the members present, and, in addition to an original vote, the Chairman shall have a casting vote in any case in which the voting is equal. Voting.

7. Any member who is directly or indirectly interested in any matter which is being dealt with by the Board— Disclosure of interest.

- (a) shall disclose the nature of his interest in a meeting of the Board;
- (b) shall not be present at any meeting of the Board when the matter in which he has an interest is being deliberated unless, by unanimous decision of the remaining members of the Board, he is requested to be so present; and
- (c) shall not take part in any deliberation or decision of the Board with respect to that matter.

8.—(1) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Board in respect of any act done *bona fide* in pursuance or execution or intended execution of the Board's functions under this or any other enactment. Protection of members.

(2) Where any member of the Board is exempt from liability by reason only of the provisions of this paragraph, the Authority shall be liable to the extent that it would be if the said member were a servant or agent of the Authority.

9. The Office of Chairman or appointed members of the Board shall not be a public Office for the purpose of Chapter V of the *Constitution of Jamaica*. Office of chairman or member not a public Office.

10. There shall be paid to the Chairman and other members such remuneration (whether by way of honorarium or fees) and such allowances as the Minister responsible for the public service may determine. Remuneration of members.

SECOND SCHEDULE (Section 25 (2))

Exemptions from Requirement to Hold a Licence

1. A person who engages in fishing in a pond that is situated entirely on a single private property.
2. A person who fishes with a line only, from the sea shore.

THIRD SCHEDULE (Section 70(2))

Appeal Tribunal

- Constitution of Appeal Tribunal. 1.—(1) The Appeal Tribunal shall consist of members appointed by the Minister as follows—
- (a) two attorneys-at-law who have practised for at least ten years; and
 - (b) four other members who shall have wide knowledge of and experience in the fishing and other matters relating to fisheries.
- (2) If there are fewer than three members, but at least two members in office, the Appeal Tribunal shall be deemed to be properly constituted for a period not exceeding ninety days after the deficiency in the number of members first occurs.
- Disqualifi- cation from appointment to Tribunal. 2. A person shall not be qualified for appointment as a member of the Appeal Tribunal who—
- (a) is a member of the Senate or the House of Representatives;
 - (b) is a director, officer, employee or auditor of an enterprise involved in fisheries;
 - (c) has a direct or indirect proprietary interest in more than five *per cent* of an enterprise that is involved in fisheries.
- Chairman. 3.—(1) The Minister shall appoint one of the members of the Tribunal to be chairman of the Appeal Tribunal.
- (2) In the case of the absence or inability of the chairman to act at any sitting, members of the Tribunal present at such meeting shall elect one of their number to act as chairman at that sitting.
- Hearing panel. 4.—(1) A matter referred to the Appeal Tribunal shall be heard and determined by a panel consisting of three members of the Tribunal, one of whom shall be an attorney-at-law, as assigned by the chairman of the Appeal Tribunal.

(2) In assigning members of the Appeal Tribunal to a panel, the chairman shall take into consideration the requirements, if any, for experience and expertise to enable the panel to decide the issues raised in any matter before the Appeal Tribunal.

(3) The Appeal Tribunal may co-opt to a panel such person who, in its opinion, has the requisite expertise in any matter before the panel for the purpose of advising the panel on that matter.

5.—(1) A member of the Appeal Tribunal who has an interest, whether directly or indirectly, in any matter brought before the Tribunal— Disclosure of interest.

- (a) shall, by notice, disclose the nature of the interest at a sitting of the Appeal Tribunal; and
- (b) shall not take part in any deliberation or decision of the Tribunal with respect to that matter.

(2) A notice given by a member at a sitting of the Tribunal to the effect that he is interested in any appeal before the Tribunal shall, for the purposes of sub-paragraph (1), be a sufficient disclosure of his interest in relation to an appeal.

(3) A member need not attend in person at a sitting of the Appeal Tribunal in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to ensure that the disclosure is made by notice which is taken into consideration and read at such sitting.

(4) Where the Minister, or any person authorized by the Minister, is satisfied that a member of the Appeal Tribunal is unable to carry out his duties properly and effectively because of any conflict of interest or potential conflict of interest in a matter before the Tribunal, the Minister may replace that member or direct that member to abstain from taking part in any proceedings relating to any matter affected by his conflict of interest or potential conflict of interest.

6. The members of the Appeal Tribunal shall, subject to the provisions of this Schedule, hold office for a period, not exceeding three years, as the Minister may determine and shall be eligible for re-appointment. Tenure of office.

7. The Minister may appoint any person to act in the place of the chairman or any other member of the Tribunal in the case of the absence or inability to act of the chairman or other member. Acting appointments.

- Resignation. 8.—(1) Any member of the Appeal Tribunal other than the chairman may, at any time, resign his office by instrument in writing addressed to the Minister and transmitted through the chairman, and from the date of the receipt by the Minister of such instrument that member shall cease to be a member of the Tribunal.
- (2) The chairman may, at any time, resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of receipt by the Minister of that instrument.
- Vacancies. 9.—(1) The office of member of the Appeal Tribunal shall become vacant if—
- (a) the member resigns his office; or
 - (b) the appointment of the member is revoked in accordance with paragraph 9; or
 - (c) the member dies.
- (2) If any vacancy occurs in the membership of the Appeal Tribunal, the vacancy shall be filled by the appointment of another member who shall, subject to the provisions of this Schedule, hold office for the remainder of the period for which the previous member was appointed, however, the appointment shall be made in the same manner and from the same category of persons as the appointment of the previous member.
- Publication of membership. 10. The names of all members of the Appeal Tribunal as first constituted and every change in the membership of the Tribunal shall be published in the *Gazette*.
- Remuneration of members. 11. There shall be paid to the chairman and other members of the Appeal Tribunal, in respect of each appeal, such remuneration, whether by way of honorarium, salary or fees, and such allowances as may be determined by the Minister responsible for the public service.
- Expenses. 12. Expenses, accommodations and other facilities of the Appeal Tribunal shall be included in the budget of the Authority and shall be reimbursable or offset to the extent that certain expenses are itemized in the Appeal Tribunal's award of costs on particular matters.
- Voting. 13. The decisions of the Appeal Tribunal shall be by a majority of votes of the members.
- Other. 14.—(1) The Appeal Tribunal shall determine matters before it by making an order.

(2) The Appeal Tribunal may make an order subject to the conditions that are set out in the order.

15.—(1) The Appeal Tribunal shall have the power to summon and enforce the attendance of the person aggrieved and witnesses and to compel them to give evidence on oath or otherwise.

Power over witnesses and evidence.

(2) The Appeal Tribunal may order that any books, paper, statement or other document relation to the appeal that is in the possession of the Authority be produced at the hearing of the appeal.

(3) The Appeal Tribunal may require or permit persons to give evidence before it by affidavit.

16. Subject to the provisions of the Act, the Appeal Tribunal shall regulate its own proceedings.

Tribunal may regulate own proceedings.

17. The office of chairman or member of the Appeal Tribunal shall not be a public office for the purposes of Chapter V of the *Constitution of Jamaica*.

Office of chairman or member of Tribunal not public office.

FOURTH SCHEDULE (Section 87)
Offences and Penalties

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court		Supreme Court	
		Monetary	Impri- sonment	Monetary	Impri- sonment
19(2)	Damages, removes or authorizes the removal of fish guard, screen, covering, etc.	\$3 million	2 years	A fine	3 years
20(1)	Failure to notify the Authority without delay of any alteration, disruption or destruction of fish habitat	\$3 million	2 years	A fine	3 years
20(2)	Failure to notify the Authority of the deposit of any deleterious substance	\$3 million	2 years	A fine	3 years

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court		Supreme Court	
		Monetary	Impri- sonment	Monetary	Impri- sonment
21(3)	Failure to comply with a fish habitat protection order	\$2 million	1 year	A fine	2 years
25(1)(a)	Engages in fishing in Jamaica or in fisheries waters without an appropriate licence, authorization or permit issued by the Authority	\$3 million	2 years	A fine	3 years
25(1)(b)	Engages in fishing contrary to the terms and conditions of an appropriate licence, authorization or permit	\$3 million	2 years	A fine	3 years

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court		Supreme Court	
		Monetary	Impri- sonment	Monetary	Impri- sonment
25(1)(c)	Engages in fishing contrary to the requirements of this Act or any Regulations made hereunder	\$2 million	1 year	A fine	2 years
25(3)	Engaging in fishing or any related activity in the fisheries waters without the appropriate licence, authorization or permit	\$3 million	2 years	A fine	2 years
25(4)	Engaging in fishing on the high seas contrary	\$3 million	2 years	A fine	3 years

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court		Supreme Court	
		Monetary	Imprisonment	Monetary	Imprisonment
	to a high seas fishing vessel licence				
26(3)	Using a vessel to engage in fishing in a manner which undermine or contravenes international or regional conservation or management treaty or agreement	\$3 million	2 years	A fine	3 years
33(1)	Fails to carry upon his person the prescribed licence, authorization or permit while he is fishing	\$30,000.00	3 months		

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court		Supreme Court	
		Monetary	Impri- sonment	Monetary	Impri- sonment
36(1)	Failure to report a fishing vessel that is lost, becomes permanently unserviceable and no longer seaworthy	\$100,000.00	3 months		
48(1)	Organize or cause to be organized a recreational fishing activity without approval	\$100,000.00	3 months		
53(4)	Using a foreign fishing vessel otherwise than in accordance with the conditions	\$3 million	12 months	A fine	3 years

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court		Supreme Court	
		Monetary	Impri- sonment	Monetary	Impri- sonment
	of the foreign fishing vessel licence				
55(1) and (2)	Failure to stow fishing gear in the prescribed manner	\$50,000	3 months		
56	Uses a Jamaican ship to fish on the high seas without a valid high seas fishing vessel licence	\$3 million	2 years	A fine	3 years
61(1)	Failure to comply with conditions of high seas fishing vessel licence	\$3 million	12 months	A fine	3 years

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court	Supreme Court	Parish Court	Supreme Court
		Monetary	Impri- sonment	Monetary	Impri- sonment
62(1)	Installing or operating an aquaculture facility or conducting commercial aquaculture without a commercial aquaculture facility licence	\$3 million	2 years	A fine	3 years
68(2)	Engaging in scientific research or survey operations relating to fishery without valid authorization	\$3 million	2 years	A fine	3 years
69(5)	Sale of fish obtained in the course of educational or scientific	\$2 million	12 months	A fine	2 years

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court	Supreme Court	Parish Court	Supreme Court
		Monetary	Impri- sonment	Monetary	Impri- sonment
75(2)(a)	research without prior written consent of the Authority Failure to take all reasonable measures to ensure the safety of a fishery inspector	\$100,000.00	3 months		
75(2)(b)	Wilfully obstructs fishery inspector	\$3 million	3 years		
75(2)(c)	Fails to comply with a lawful enquiry or requirement made by a fishery inspector	\$100,000.00	3 months		

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court		Supreme Court	
		Monetary	Impri- sonment	Monetary	Impri- sonment
76	Destruction of evidence	\$2 million	12 months		
77	Impersonates or falsely represents himself to be a fishery inspector	\$3 million	12 months	A fine	2 years
78(5)	Discards or destroys, any document or aquaculture product equipment, records or other documents	\$2 million	12 months		
89(1)(a)	Permits, uses, attempts or participates in the use of explosives; poison with other noxious substance, <i>etc.</i>	\$3 million	2 years	A fine	3 years

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court		Supreme Court	
		Monetary	Impri- sonment	Monetary	Impri- sonment
89(1)(b)	Carries or has in possession or control any explosive, poison or noxious substance, etc.	\$3 million	2 years	A fine	3 years
89(1)(c)	Uses a prohibited fishing method	\$3 million	2 years	A fine	3 years
89(2)(a)	Lands, sells, receives or is found in possession of fish or fish products in contravention of the provisions of this Act	\$3 million	2 years	A fine	3 years
89(2)(b)	Fails without reasonable cause to comply with order,	\$100,000.00	3 months		

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court	Impri- sonment	Supreme Court	Impri- sonment
		Monetary	Impri- sonment	Monetary	Impri- sonment
	request, <i>etc.</i> , from fishery inspector or observer				
89(2)(c)	Wilfully obstructs or delays a fishery inspector in the perfor- mance of his functions	\$3 million	2 years	A fine	2 years
89(2)(d)	Threatens, intimidates or assault a fishery inspector or an observer in the course of his duties under the Act	\$3 million	2 years	A fine	2 years
89(2)(e)	Offers to pay, pays any bribe <i>etc.</i> , to a fishery inspector or an observer	\$3 million	12 months	A fine	3 years

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court		Supreme Court	
		Monetary	Imprisonment	Monetary	Imprisonment
89(3)	Removal or damage of any vessel, conveyance, aquaculture gear or item in custody	\$3 million	2 years	A fine	3 years
90(1)(a) and (b)	Uses for fishing or carries in his control or has on board any vessel or any prohibited equipment	\$2 million	12 months	A fine	2 years
91(a)	Without lawful authority, removes or attempts to remove a fishing vessel that has been seized	\$3 million	2 years	A fine	3 years
91(b)	Falsifies, conceals or destroys evidence	\$3 million	2 years	A fine	2 years

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court		Supreme Court	
		Monetary	Impri- sonment	Monetary	Impri- sonment
91(c)	Tampers with or wilfully destroys, vessel monitoring device or vessel or gear tracking device	\$3 million	2 years	A fine	2 years
91(d)	Tampers with or willfully destroys, damages any fish aggregating device or enhancement structure	\$2 million	12 months	A Fine	2 years
91(e)	Fails to supply information or supplies false or misleading information	\$3 million	2 years	A fine	2 years
91(f)	Engages in fishing in breach of measures provided	\$2 million	12 months	A fine	2 years

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court		Supreme Court	
		Monetary	Impri- sonment	Monetary	Impri- sonment
91(g)	Contravenes any prescribed international fisheries conservation and management measure	\$3 million	12 months	A fine	3 years
91(h)	Fails to comply with the rules and procedures in relation to taking a fishery inspector or an observer onboard any fishing vessel, <i>etc.</i>	\$1 million	12 months	A fine	2 years
91(i)	Fishes for a species of fish, kills, injuries or distress such species of fish	\$3 million	2 years	A fine	2 years

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court		Supreme Court	
		Monetary	Impri- sonment	Monetary	Impri- sonment
91(j)	without a licence, authorization or permit Possesses or offers for sale any fish which is prohibited or illegally caught	\$3 million	2 years	A fine	3 years
92(a)	Removes, hauls, takes away, empties, casts adrift or otherwise interferes with equipment without consent of the owner	\$3 million	12 months	A fine	3 years
92(b)	Places any object or undertakes activities in a manner as to obstruct a fishing activity	\$1 million	12 months	A fine	3 years

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court	Supreme Court		
		Monetary	Impri- sonment	Monetary	Impri- sonment
92(c)	Destroys, damages, displaces or alters the position of any equipment, or any buoy, float or other marker attached to it without the consent of the owner	\$1 million	12 months	A fine	2 years
92(d)	Removes fish from any equipment, without consent of the owner	\$3 million	12 months	A fine	3 years
92(e)	Removes fish from any kraal or any such holding device without the consent of the owner	\$3 million	12 months	A fine	3 years

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court		Supreme Court	
		Monetary	Impri- sonment	Monetary	Impri- sonment
93(1)	Uses drift net for fishing in fisheries waters	\$3 million	2 years	A fine	3 years
94(1)	In a fish sanctuary—				
(a)	Without lawful authority fishes or attempts to fish;	\$3 million	2 years	A fine	3 years
(b)	places or causes to be placed any poisonous or noxious material;	\$3 million	2 years	A fine	3 years
(c)	uses or causes to be used, dynamite or other explosive substances;	\$3 million	2 years	A fine	3 years
(d)	removes, disturbs, or alters any living	\$3 million	2 years	A fine	3 years

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court	Imprisonment	Supreme Court	Imprisonment
		Monetary		Monetary	
(e)	organism including but not limited to seagrass, corals and mangrove; removes any non-living material including but not limited to sand, rocks or other substances;	\$3 million	2 years	A fine	2 years
(f)	causes or knowingly permits to flow or puts or knowingly permits to be put, whether directly or indirectly, any trade effluent or industrial waste or sewage or any noxious or polluting matter;	\$3 million	2 years	A fine	3 years

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court		Supreme Court	
		Monetary	Impri- sonment	Monetary	Impri- sonment
(g)	Conducts or causes to be conducted any research without the permission of the Authority	\$3 million	2 years	A fine	2 years
94(2)(a)	In a fish sanctuary, harmfully alters or disrupts; a fish habitat	\$3 million	2 years	A fine	2 years
94(2)(b)	Deposits any deleterious substance in a fish habitat	\$3 million	2 years	A fine	2 years
94(3)	Failure to submit report to the Authority in relation to the deposit of deleterious substance	\$2 million	2 years	A fine	2 years

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court		Supreme Court	
		Monetary	Impri- sonment	Monetary	Impri- sonment
95(a)	Interferes or causes interference with any aquaculture product	\$3 million	2 years	A fine	3 years
95(b)	Harvests or causes to be harvested any aquaculture product	\$3 million	2 years	A fine	3 years
96(1)(a)	Discharges or throws overboard any vessel, or other conveyance, ballast, stones or other substances that are detrimental to fish habitat	\$3 million	2 years	A fine	2 years

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court		Supreme Court	
		Monetary	Impri- sonment	Monetary	Impri- sonment
96(1)(b)	Leaves or deposits or causes to be left or deposited on the shore of any bank of any water or on the beach between the high and low water marks, any fish remains or offal	\$50,000.00	3 months		
96(1)(c)	Leaves decayed or dying fish in any net or other fishing equipment	\$50,000.00	3 months		
96(1)(d)	Deposits or permits the deposit of a deleterious substance in the fish habitat	\$3 million	2 years	A fine	3 years

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court	Impri- sonment	Supreme Court	Impri- sonment
		Monetary		Monetary	
97(1)(a)	Export, import or transport any aquatic invasive alien species	\$1 million	2 months		
97(1)(b)	Release or permit to be released into the fisheries waters any aquatic invasive alien species	\$1 million	2 months		
98	Fails to keep books, documents or records required to be kept under this Act or any Regulations made here-under	\$1 million	1 years	A fine	2 years

Section	Offence	Penalty			
		Individual		Individual/ Body Corporate	
		Parish Court		Supreme Court	
		Monetary	Impri- sonment	Monetary	Impri- sonment
99(a)	Knowingly submits false information to be entered in the Register	\$3 million	2 years	A fine	2 years
99(b)	Provides false information purporting to be from the Register	\$3 million	2 years	A fine	2 years
99(c)	Falsify or in any way modifies any information in the Register	\$3 million	2 years	A fine	2 years
100(1)(a)	Transfers fish from an aquaculture facility to any part of the fisheries waters	\$3 million	2 years	A fine	2 years

<u>Section</u>	<u>Offence</u>	<u>Penalty</u>			
		<u>Individual</u>		<u>Individual/ Body Corporate</u>	
		<u>Parish Court</u>	<u>Supreme Court</u>	<u>Parish Court</u>	<u>Supreme Court</u>
		<u>Monetary</u>	<u>Impri- sonment</u>	<u>Monetary</u>	<u>Impri- sonment</u>
100(1)(b)	Stocks any part of the fisheries waters with fish	\$3 million	2 years	A fine	2 years
100(1)(c)	Introduces into any part of the fisheries waters, any fish not indigenous to Jamaica	\$3 million	2 years	A fine	2 years

FIFTH SCHEDULE (Section 88(1))
Offences and Fixed Penalties

Section	Offence	Penalty
33(1)	Fails to carry upon his person the prescribed fishing licence while he is fishing	\$10,000.00
36(1)	Failure to report a fishing vessel that is lost, becomes permanently unseaworthy and is no longer seaworthy	\$50,000.00
48(1)	Organize or cause to be organized a recreational activity without approval	\$100,000.00
55(1) and (2)	Failure to stow fishing gear in prescribed manner	\$50,000.00
75(2)(a)	Failure to take all reasonable measures to ensure the safety of a fishery inspector	\$100,000.00
75(2)(c)	Fails to comply with a lawful enquiry or requirement made by a fishery inspector	\$100,000.00
96 (1)(b)	Leaves or deposits or causes to be left or deposited on the shore of any bank of any water or on the beach between the high and low water marks, any fish remains or offal	\$50,000.00
96 (1)(c)	Leaves decayed or dying fish in any net or other fishing equipment	\$50,000.00

Passed in the House of Representatives this 10th day of July, 2018 with two (2) amendments.

PEARNEL P. CHARLES, CD, MP, JP
Speaker.

MEMORANDUM OF OBJECTS AND REASONS

The Fishing Industry Act and other existing legislation governing the fisheries sector do not cover all relevant aspects of the sector or give sufficient powers to the Minister responsible for fisheries.

The industry has expanded since the enactment of the existing Acts and now encompasses capture and culture fisheries. It also involves a production and processing sector. No provision is made in the current Acts regarding aquaculture, and there are inadequate and outdated provisions for capture fishery.

A decision has been taken to enact comprehensive provisions to address these inadequacies and to provide for modern fisheries management and development mechanisms and strategies.

This Bill therefore, seeks to repeal the *Fishing Industry Act* and make new provisions relating to *inter alia*—

- (a) the designation of fishery and aquaculture management areas;
- (b) aquaculture and aquaculture facilities;
- (c) the power to make regulations for safety while engaging in fisheries operation;
- (d) a licensing regime for all aspects of the fisheries sector, including the licensing of—
 - (i) fisheries;
 - (ii) fishing vessels, conveyances or aquaculture facilities;
 - (iii) recreational fishing vessel or conveyances;
- (e) the regulation of aquatic and related scientific research;
- (f) the imposition of quotas for specific fisheries;
- (g) the seizure and forfeiture of fish, fishing gear, equipment and fishing vessels or conveyances for operating against the Act;
- (h) the power of the Minister to impose a cess for specific fisheries.

In addition, the Bill also amends the *Conch (Export Levy) Act*.

KARL SAMUDA
Minister of Industry, Commerce,
Agriculture and Fisheries

A BILL

ENTITLED

AN ACT to Repeal the *Fishing Industry Act*; to provide for the efficient and effective management and sustainable development of fisheries, aquaculture and other related activities in accordance with internationally recognized norms, standards and best practices and to provide for matters connected therewith and incidental thereto.

As passed in the Honourable House of Representatives.
