[Hon A Member]

[Placeholder for Crest]

Environment Bill [2024]

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An Act to—
(a) **provide for the protection, conservation, and management of the environment in a sustainable manner; and**
(b) **repeal the Environment Act 2003.**

The Parliament of the Cook Islands enacts as follows—

Part 1

Preliminary matters

1. Title
This Act is the Environment Act [2024].

2. Commencement
This Act comes into force on the day after the day on which it is assented to by the King's Representative.

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

Air space means the air space above any island of the Cook Islands' and its territorial sea;

Animal means any species, alive or dead, of the animal kingdom other than human beings, and includes—

(a) any part of an animal's life cycle, such as eggs or parts of eggs;

(b) any part of animals, such as skin, feathers, horn, shell or other part of an animal; and

(c) animal products.

Aronga Mana is a traditional body of traditional leaders, comprising the House of Ariki and the House of Koutu Nui, that plays a major supporting role on each Island including by assisting the Island Governments and the National Government in co-ordinating and implementing Island related activities in areas of custom usage and tradition which includes the environmental management of each of those islands;

Biodiversity means the variability among living organisms from all sources including without limitation, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part, and this includes diversity within species, between species and of ecosystems;

Biological resources means genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity, for example through pharmaceutical, agricultural, cosmetic or other applications;

Bioprospecting means the systematic search for chemical compounds, biochemical or genetic information from biological resources for the purpose of developing commercially valuable products use or value for

humanity, for example through pharmaceutical, agricultural, cosmetic or other applications;

Bioprospecting permit means a permit issued in writing pursuant to Part 14 of this Act;

Checkpoints means the parts of the Cook Islands Government designated to support the monitoring, compliance and transparency of the bioprospecting scheme (legislative, policy and administrative arrangements).

Climate change means a change of climate, attributed directly or indirectly to human activity, that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods;

Climate change impact means impacts on the environment caused by climate change and includes, without limitation, any of the following:

(a) increased frequency and intensity of rainfall and tropical storms;

(b) increased risk of coastal erosion and flooding as a result of rising and extreme sea levels and changing wind patterns;

(c) loss of water resources from hotter, drier weather;

(d) contamination of groundwater due to saltwater intrusion;

(e) reduced productivity of food crops and associated impacts on food security due to climate variability, soil degradation, or increased salinity;

(f) loss of biodiversity caused by habitat changes, climate variability, extreme events, rising sea levels, ocean acidification and ocean warming;

Climate variability means fluctuations in climate that take place over a short term (whether months, seasons or years) and indicate a departure from the long term averages or trends;

Competent National Authority means the part or parts of the Cook Islands Government designated to administer the bioprospecting scheme legislative, policy and administrative arrangements for the Cook Islands including receiving applications and issuing permits, monitoring and compliance elements, and reporting;

Continental shelf means the continental shelf of the Cook Islands as defined by section 12 of the Maritime Zones Act 2018;

Cook Islands where used to describe a physical area, includes all the islands, airspaces and Cook Islands waters of the Cook Islands;

Cook Islands Environment Forum or **Forum** means the Cook Islands Environment Forum convened under section 31;

Cook Islands waters includes the following—

(a) inland waters;

(b) internal waters;

(c) the territorial sea;

(d) the exclusive economic zone;

(e) the continental shelf;

Coral means any species or subspecies of coral including hard and soft coral, and any rock or sample that consists of or include coral;

Council means the National Environment Council;

Court means the High Court of the Cook Islands;

Director means the Director of the Service;

Discharge includes, but is not limited to, throw, deposit, spill, leak, pump, pour, emit, empty or dump;

Dwelling house means a building that is used or intended to be used principally as a residence;

Environment (and **environmental**) —

(a) means the ecosystems and the quality of those ecosystems as well as the physical, biological, cultural, spiritual, social and historic processes and resources in those ecosystems; and

(b) includes—

(i) land, water, air, animals, plants, biodiversity and other features of the human habitat; and

(ii) those natural, physical, cultural, demographic, and social qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes;

Environment Officer means an Island Environment Officer or a National Environment Officer;

Environment Protection Fund means the fund that may be established under section **Error! Reference source not found.**;

Environmental protection notice means a notice that may be served by an environment officer under Part 17 of this Act;

Environmental approval means an approval issued in writing by the Director relating to a Tier 1 activity pursuant to Part 11 of this Act.

Environmental consent means a consent issued in writing by a permitting authority relating to a Tier 2 activity pursuant to Part 11 of this Act;

Environmental impact assessment means a process of—

(a) identifying and systematically studying the baseline of existing environmental conditions of a project area; and

(b) conducting a scoping exercise, including an environmental risk assessment of the proposed activity and preparation of a scoping report; and

(c) identifying, predicting, and evaluating the potential environmental, social and cultural effects and risks of the proposed activity; and

(d) identifying and evaluating measures to mitigate the effects and risks; and

(e) stakeholder consultation; and

(f) preparing an environmental impact statement;

which must be undertaken in order to apply for an environmental permit for a proposed Tier 3 activity pursuant to sections 73 and 74 of this Act;

Environmental impact statement means a report prepared pursuant to section 74 of this Act, based on the results of an environmental impact

assessment, that describes a proposed activity, its potential impacts, effects and risks, and sets out measures to avoid or mitigate such impacts, effects and risks;

Environmental information means information held by a public organisation on—

(a) the state of the environment, or otherwise relating to species, habitats and biodiversity;

(b) factors, such as substances, energy, noise, radiation, waste, emissions, discharges and other releases into the environment, affecting or likely to affect elements of the environment;

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, including management plans, and activities affecting or likely to affect elements of the environment as well as measures or activities designed to protect those elements;

Environmental management and monitoring plan means the plan required pursuant to sections 73 and 74 of this Act, which takes account of a prior environmental impact assessment and environmental impact statement, and documents methods and procedures to be implemented in order to monitor, manage, and mitigate impacts, effects and risks of a project on the environment.

Environmental permit means a permit issued in writing by a permitting authority relating to a Tier 3 activity pursuant to Part 11 of this Act.

Exclusive economic zone means the exclusive economic zone of the Cook Islands as defined by section 11 of the Maritime Zones Act 2018;

Financial year means a period of 12 months ending on the 30th day of June;

Foreshore means—

(a) in relation to Rarotonga—

(i) all that area between the mean high water mark and a line connecting those points landward and measured at right angles to a distance 50 metres from the mean high water mark or to the edge of the vegetation, whichever is the greater distance; and

(ii) every estuary, stream or river together with the bed of any stream or river and includes that area extending landward and measured at right angles from the mean high water mark in that estuary to a distance 5 metres landward from the edge of the vegetation; and

(b) in relation to any island other than Rarotonga—

(i) 30 metres from the mean high water mark or to the edge of the vegetation, whichever is the greater distance, or any other area specified to be foreshore by the Island Environment Authority for the island concerned and approved for this purpose by the King's Representative by Order in Executive Council; and

(ii) in the absence of any such order for an island, any area prescribed by regulations to be foreshore for the island, after consultation with the Island Environment Authority for the island concerned;

Gazette means the Cook Islands Gazette published by the Parliament of the Cook Islands;

Government means the Government of the Cook Islands;

Hazardous substances means any substance that is likely to be a health or environmental hazard if released into the environment and includes substances —

(a) meeting the definition of —

(i) "hazardous wastes" for the purposes of:

(1) the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, or

(2) the Waigani Convention to Ban the Importation into Forum Islands Countries of Hazardous and Radioactive Wastes within the South Pacific Region,

(ii) "severely restricted chemicals" or "severely hazardous pesticide formulations" for the purposes of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade;

(b) listed as a persistent organic pollutants in Annexes A and B to the Stockholm Convention on Persistent Organic Pollutants; and

(c) any other substance reasonably included on the register maintained by the Service under section 41 of this Act;

Indigenous biological resources includes any biological resources that derive from species indigenous to the Cook Islands, or any other organism altered with any genetic or chemical compound found in such a species, or any other form of resources as may be prescribed;

Inland waters includes the waters, bed and banks of and airspace above any stream, river, waterway, pond or lake occurring on land (and for the purposes of this definition "bank" includes all that area of land extending away from the water to a distance of 5 metres beyond the bank);

Instant penalty notice means the notice established under section 117;

Internal waters, means the internal waters of the Cook Islands as defined by section 7 of the Maritime Zones Act 2018, and includes the seabed and subsoil and the airspace above;

Invasive species means any species that—

(a) is not known to exist on an island in the Cook Islands; and

(b) in terms of the biological diversity of that island—

(i) is harmful;

(ii) is potentially harmful;

(iii) would be potentially harmful if introduced; or

(c) is designated for the purposes of section 36(1) of this Act;

Island means any of the islands of the Cook Islands including that island's inland and internal waters and territorial sea;

Island Environment Authority means an Island Environment Authority established pursuant to Part 3 of this Act;

Island Environment Officer means an Island Environment Officer appointed under section 105 of this Act, and includes a person deemed to be an Island Environment Officer under sections 105(8) and 132 of this Act, and under the Seabed Minerals Act 2019, as amended by this Act;

Island Government means an Island Government constituted under the Island Government Act 2012-2013;

Island Government bylaw means a bylaw made by an Island Government under Part 7 of the Island Government Act 2012-2013;

Island Protected Area means an area designated as a protected area pursuant to section 52(1) of this Act by an Island Environment Authority, in relation to a site that falls within the island (including the territorial sea) under their jurisdiction.

Marine Protected Area means an area designated as a protected area pursuant to section 52(2) of this Act by the Council, in relation to a site that falls beyond the outer limits of the territorial sea of any individual island.

Mean high water mark means the line of medium high tide between the spring and neap tides;

Minister means the Minister for the Environment or such other Minister of the Crown charged by the Prime Minister with responsibility for the administration of this Act;

National Environment Council or **Council** means the council established from time to time under section 28;

National Environment Officer means a National Environment Officer appointed under section 105(2); and includes any person deemed to be a National Environment Officer under sections 105(8) and 132 of this Act, and under the Seabed Minerals Act 2019, as amended by this Act;

National Environment Service or **Tu'anga Taporoporo**—

(a) means the body corporate described in section 11 of this Act; and

(b) includes any of its divisions or offices;

National Park is a type of island protected area, and means a large natural or near natural land area set aside to protect large-scale ecological processes, along with the complement of species and ecosystems characteristic of the area. Where consistent with this primary objective, a national park may provide a foundation for environmentally and culturally compatible spiritual, scientific, educational, recreational and visitor use opportunities.

Native customary land means land, which being vested in the Crown, is held by a person of the Polynesian race indigenous to the Cook Islands, or their descendants;

Native freehold land means land, or any undivided share in land, which is owned by a person of the Polynesian race indigenous to the Cook Islands by way of a beneficial estate in fee simple, whether legal or equitable;

Nature Reserve is a type of island protected area, and means a natural or near natural land area set aside to protect and conserve biodiversity and where applicable, heritage, cultural and spiritual values. Where consistent with this primary objective, a nature reserve may provide for ecologically sustainable use of the natural resources of the reserve.

Occupier, in relation to any premises, means—

(a) means any lessee, licensee or other occupant of the premises;

(b) includes the owner of the premises or an agent of the owner; and

(c) includes any person in charge of the premises;

Permitting authority means the permitting authority or authorities designated in accordance with section 10;

Person includes any natural person, legal entity, corporate person, Government department, or public authority;

Plant means any member of the plant or fungus kingdom and includes, seeds, culture, germplasm and any part of, or item made from, a plant or fungi;

Pollution and **polluting** means the introduction, either directly or indirectly, of substances or energy into the environment, which results in—

(a) deleterious effects that are harmful to living resources or marine life;

(b) hazards to human health;

(c) hindrance to marine activities including fishing and other legitimate uses of the sea;

(d) impairment of quality for use of water, air or soil;

(e) reduction of amenities;

(f) the creation of a nuisance;

(g) the depletion of the ozone layer; or

(h) contribution to climate change or to increasing the Cook Islands' vulnerability to climate change impacts;

Precautionary principle means that, where there are threats of serious or irreversible damage, a lack of full scientific certainty should not be used as a reason for postponing cost effective measures to prevent environmental degradation in accordance with the Cook Islands' capabilities in the implementation of the Environment Act;

Premises includes the following—

(a) any vessel, aircraft, vehicle, or other means of transportation;

(b) any building or other structure;

(c) any land;

(d) any body of water;

Protected areas mean island protected areas and marine protected areas.

Protected species means any species of animal or plant designated as a protected species under section 34;

Public organisation means any ministry, department, state owned enterprise, commission, committee, board, corporation, agency, authority, office, service, or other organisation of the Government of the Cook Islands;

Recognised environmental organisation means an organisation named on the list maintained by the Service in accordance with section 88;

Rā'ui means the traditional custom of imposing a restriction on certain activities in a certain area for a certain time and purpose as determined by a traditional leader or leaders of a village area, which may include rā'ui

mutukore also known as rā'ui motukore, which is the traditional custom of imposing permanent restrictions on the use of the resources of any land, reef or lagoon;

Regulations means regulations made under this Act;

Seabed minerals activity has the meaning given in section 6 of the Seabed Minerals Act 2019;

Service means the National Environment Service or Tu'anga Taporoporo;

Significant environmental impact means an impact that is important, notable, or of consequence for natural, biophysical, social, cultural or economic aspects of the environment and is likely to have an adverse impact, and when determining if a project is likely to have an adverse impact, the following factors should be considered:

(a) the sensitivity, value, and quality of the environment which is to be impacted (including adjoining areas that are outside the development site); and

(b) the probability, intensity, duration, frequency, reversibility, magnitude, and extent of environmental effects, including geographic location;

and where information is lacking on these considerations, the precautionary principle should be applied;

Species means a group of organisms capable of inter-breeding freely with each other but (usually) not with a member of other species and includes any recognised sub-species or other taxon below a sub-species, any recognisable variant of sub-species or taxon and any tissues and cultures of such species or sub-species;

Stakeholders means persons or entities identified, which may be by self-identification, as specifically interested in, holding knowledge relevant to, or potentially affected by the issue in question;

Strategic environmental assessment or **SEA** means an evaluation conducted pursuant to Part 10 of this Act as to the likely effects on the environment of the adoption or implementation of certain plans, policies and programmes, which takes into account possible alternative options, in order to ensure that relevant environmental information is systematically taken into account in governmental decision making;

Suwarrow National Park means the area declared to be a national park of the Cook Islands under the Cook Islands Government Declaration of Cabinet, dated 23 June 1978;

Technical expert means a competent and independent person identified as an expert in a relevant technical subject matter for the purposes of section 20 of this Act;

Territorial sea means the territorial sea of the Cook Islands as defined by section 8 of the Maritime Zones Act 2018, and includes the airspace above it;

Vessel means any type of watercraft or other artificial contrivance used or capable of being used as a means of transportation on water;

Wetlands —

(a) means areas of marsh, swamp or water, whether—

(i) natural or artificial;

(ii) permanent, seasonally flooded or temporary; or

(iii) with water that is static or flowing, or fresh, brackish or salty; and

(b) includes water storage reservoirs, taro swamps and fish ponds;

(2) For the purpose of sections 62, 63 (strategic environmental assessment) and 68 (environmental impact assessment), additional criteria for determining likely significant environmental impact:

(a) include —

(i) the location, nature, size, operating conditions and resources to be allocated to activities envisaged under the policy or the project, as the case may be;

(ii) geographical area or size of population likely to be affected;

(iii) the likelihood of impact upon –

(A) any area that has been designated a protected area, or any site protected under any other enactment of the Cook Islands,

(B) areas outside of the Cook Islands;

(C) common resources,

(D) any protected species designated under this Act,

(E) water supply, catchment or quality, or

(F) ecosystem services,

including consideration of indirect or cumulative effects;

(iv) whether the implementation of the policy or project, as the case may be, has potential to contravene the objectives of a management plan in effect in accordance with Part 8, or have material impact upon a protected area;

(v) whether the likely environmental effects may be exacerbated by, or may themselves exacerbate climate change impacts, and;

(b) may be further specified by the Minister, or detailed in regulations.

(3) In this Act, reference to any other Act of Parliament of the Cook Islands, incorporates a reference to any future Act replacing or amending the Act referenced.

(4) This Act shall be interpreted, and all persons exercising or performing functions, duties, or powers conferred or imposed by or under this Act, in a manner consistent with the objectives contained in section 5, the principles contained in section 6, and the Cook Islands' international and regional obligations relating to environmental conservation, protection and management.

4. Act binds the Crown

This Act binds the Crown.

5. Objectives

(1) The objectives of this Act are to protect, conserve and manage the natural environment of the Cook Islands, including by—

(a) protecting, conserving, restoring or enhancing the environment, including its biodiversity and habitats, ecosystems and ecological services that support biodiversity;

(b) preventing, minimising or mitigating the environmental impacts of pollution, waste, hazardous substances and human activities, whether on land or at sea, and including transboundary harm;

(c) safeguarding the quality of the air, soil and water resources of the Cook Islands, and where relevant their resilience against external impacts;

(d) minimising the risks to the environment from the introduction of potentially harmful materials or organisms;

(e) protecting native species, and preventing the extinction (and promoting the recovery) of threatened species;

(f) promoting environmental sustainability, which includes mitigating and adapting to climate change impacts, and developing nature-based solutions to disaster risk management and other evolving issues;

(g) integrating customary activities, traditional knowledge and practices;

(h) meeting commitments made under international and regional conventions and protocols;

(i) promoting strong, effective and transparent environmental governance; and

(j) capturing the benefits of bioprospecting for the Cook Islands.

(2) This Act and actions or decisions taken under it should also support the principle and purposes of the marae moana under the Marae Moana Act 2017.

6. Principles

(1) To the extent possible, this Act should be interpreted in conformity with, and all persons performing functions and duties, or exercising powers under it must have regard to any principles adopted in the National Environment Policy, as may be adopted from time to time; and

(2) the following principles:

(a) Respect for traditional knowledge and practices;

(b) Early prevention of pollution and environmental harm;

(c) The polluter pays principle;

(d) Consideration of cumulative impacts;

(e) Prevention of transboundary environmental harm;

(f) Science-based decision-making;

(g) The precautionary principle;

(h) Sustainability and intergenerational equity;

(i) Adaptability to meet emerging and evolving challenges;

(j) Good governance, accountability and transparency;

(k) Collective stewardship across all persons and agencies of the Cook Islands;

(l) Empowerment of the people of the Cook Islands through education;

(m) An ecosystem-based management approach.

7. Application of Act

(1) On its coming into force, this Act applies throughout the Cook Islands, including all islands, Cook Islands waters, and air space.

(2) For the avoidance of doubt, the Act includes Suwarrow, Manuae and Takutea in its application.

(3) If any regulations or order made under this Act are inconsistent with an Island Government bylaw, or a provision in a shared resource management agreement or management plan, the regulations or order will prevail.

8. Authority of the Minister

(1) The Minister is responsible for giving effect to the objectives of this Act.

(2) The Minister is to—

(a) determine national environmental policy and give general policy guidance and direction on environmental matters;

(b) perform, or where appropriate delegate, responsibilities given to the Minister under this Act;

(c) lay before Parliament a copy of the Services annual report provided under section 12;

(d) table the state of the environment report prepared under Part 5 of this Act as an agenda item before Parliament; and

(e) recommend regulations, in accordance with section 126.

(3) In carrying out the functions described in subsection (2), the Minister must take into account insofar as they are relevant—

(a) recommendations of the Forum, made under section 31;

(b) the views of the Service, Island Environment Authorities, and the National Environment Council;

(c) the results of any stakeholder consultation under this Act.

9. Competent authorities

(1) Subject to any specific duty, power or function allocated to another public organisation under this Act, and to the responsibilities allocated by this Act to each permitting authority, the Service is the body competent for implementing the provisions of this Act.

(2) Nothing in this Act is intended to obstruct or overlap with –

(a) the Ministry for Marine Resource's statutory responsibility for the conservation and management of living marine resources in Cook Islands waters;

(b) the Ministry for Transport's statutory responsibility to prevent pollution of Cook Islands waters;

(c) the Ministry of Agriculture's jurisdiction relating to forestry, crops, livestock and farmed animals under the Agriculture Act 2021;

(d) functions given to the Ministry of Health and Infrastructure Cook Islands under the Solid and Hazardous Waste Act 2023;

or any other public organisation's statutory responsibilities, and the Service will coordinate with other relevant public organisations in this regard.

10. Permitting authority

(1) Subject to subsection (2), where in this Act reference is made to a "permitting authority"—

(a) the relevant Island Environment Authority is the permitting authority in relation to any act or activity on the respective island or in waters up to the boundary of the territorial sea surrounding the island concerned, including the air space, except for approval of a strategic environment assessment report pursuant to Part 10 of this Act, and the issue of bioprospecting permits under Part 14 of this Act; and

(b) in relation to any act or activity in any other area, and those functions listed in section 29, the Council is the permitting authority.

(2) Where an act or activity that takes place in an area which falls within the competence of more than one Island Environment Authority, or both the Council and one or more Island Environment Authorities, the permitting authority is the Council, who in regard to that act or activity must consult with any Island Environment Authority or Authorities concerned.

Part 2

National Environment Service or Tu'anga Taporoporo

11. Continuation of National Environment Service

(1) There continues to be a statutory body called the National Environment Service or Tu'anga Taporoporo.

(2) The Service—

(a) is a statutory agency of the Government of the Cook Islands;

(b) is a body corporate with perpetual succession and a common seal;

(c) is capable of holding real and personal property and of suing and being sued; and

(d) is capable of doing and suffering all such other acts and things as corporations may lawfully do and suffer.

(3) The head office of the Service will be based in Rarotonga with representation of the Service to be established on or for each other island to which this Act applies.

12. Service to report annually

(1) The Service must within three months of the end of each financial year—

(a) make a report to the Minister on—

(i) the work of the Service during the financial year; and

(ii) any other matter that the Service considers necessary or desirable, or is prescribed as an annual reporting requirement by regulations; and

(b) send the chairperson of each Island Environment Authority a copy of the report.

(2) The Service must, as soon as practicable after making a report under subsection (1), make a copy of the report available to the public in accordance with section 87.

(3) The Minister must lay a copy of the report before Parliament, during Parliament's next sitting.

13. Director of Service

(1) A Director will be appointed as head of the Service in accordance with the provisions of the Public Service Act 2009 governing the appointment and employment of heads of departments.

(2) The Director is responsible to the Minister for the efficient and proper administration and management of the Service.

(3) The Director will ensure that each Island Environment Authority is given opportunity to participate in preparing the work programme and annual report of the Service, for the purposes of section 26(1)(b).

14. Seal of the Service

(1) The seal of the Service must be kept in the safe custody of the Director and may not be used except by the authority of the Director.

(2) Every document to which the seal of the Service is applied must be witnessed by the Director.

(3) Any contract entered into by the Service must be in writing and executed under the seal of the Service.

15. Power of appointment

(1) The Director is an employer for the purposes of the Public Service Act 2009 and, subject to the provisions of this Act and the Public Service Act 2009, may appoint (on such terms and conditions as the Director may determine in writing) such other officers and employees of the Service for the purposes of administering and enforcing the provisions of this Act.

(2) The Director may engage external experts outside of the Service to perform services as may from time to time be necessary to assist the Service in the effective performance of its functions and powers under this Act.

(3) The Director may engage (by secondment or other temporary arrangement) officers and employees of other Cook Islands public

organisations where necessary for the effective performance of the functions and powers of the Service under this Act.

16. Delegation of powers

(1) The Director may by notice in writing, delegate to any officer of the Service, all or any of the Director's powers and functions under this Act, except this power of delegation.

(2) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.

(3) A delegation under this section is revocable at will, and does not prevent the exercise or performance by the Director of the power or function.

17. Functions of Service

(1) The functions of the Service include to—

(a) carry out all such activities, services and other tasks as are required to ensure the implementation of this Act and the fulfilment of the objectives set out in section 5 of this Act;

(b) monitor and manage activities that may cause environmental impact to any part of the Cook Islands, including Cook Islands waters;

(c) set environmental targets for the Cook Islands, and monitor and report against those targets;

(d) enforce this Act and any regulations;

(e) receive and respond to relevant enquiries and complaints from members of the public;

(f) provide secretarial and administrative services and technical advice to the Council, the Forum, and each Island Environment Authority;

(g) investigate, research and monitor the state of the environment and periodically prepare a state of the environment report for the Cook Islands;

(h) develop and implement measures, guidelines, standards, or plans designed to maintain or improve or restore the state of the environment of the Cook Islands;

(i) recommend regulations to be made and advise the Government in relation to the making of regulations under this Act;

(j) regulate activities in relation to bioprospecting benefit sharing;

(k) coordinate with other public organisations on matters of joint interest affecting the environment, including in matters relating to agriculture, climate change, fisheries and marine resources, maritime transport, seabed mineral activities, tourism, waste management, water resources, biosecurity and disaster risk management;

(l) make recommendations and provide advice to the Government in relation to any regional or international agreements, conventions, treaties, protocols or agendas relating to the environment, to which the Cook Islands has or intends to become party;

(m) plan, develop, negotiate, coordinate, represent government, and implement any projects provided under any regional or international agreements, conventions, treaties protocols or agendas relating to the environment, to which the Cook Islands is party;

(n) provide training in the skills associated with performing any of the Service's functions;

(o) do anything incidental or conducive to the performance of any of the foregoing functions.

(2) In performing its functions, the Service must take into account—

(a) Government policies from time to time conveyed to it in writing by the Minister;

(b) any relevant submissions received from stakeholder consultation; and

(c) any recommendations of the Forum, made under section 31.

18. General powers of Service

(1) The Service has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions including power to—

(a) enter into contracts;

(b) erect buildings and structures and carry out works in the public interest;

(c) accept gifts, devises and bequests, and act as trustee of money or other property vested in the Service upon trust;

(d) conduct promotional or regulatory activities in order to further the objectives of the Act;

(e) for the purpose of enforcing the provisions of this Act or any regulations, serve penalties or take other enforcement action, prosecute or sue any person, body corporate or group of persons, whether incorporated or not.

(2) The Service may at its discretion and when needed, establish mechanisms such as committees, task-forces or technical bodies, to inform the implementation of this Act, including aspects that require national coordination across different public organisations and stakeholders.

(3) The Service may perform any of its functions in collaboration with a public organisation, or a recognised environmental organisation.

(4) Any Environment Officer may, with the approval of the Director, exercise the power specified in subsection (1)(e).

(5) In the exercise of its powers the Service must at all times, except where the circumstances require the immediate exercise of any power to protect the environment or to take enforcement action, have regard to the principle that it may better serve the community by consultation, negotiation and education.

19. Emergency provisions

(1) Whenever the Service is of the view that there is an imminent danger of loss of life or property due to environmental degradation, or imminent risk of any unpermitted significant environmental impact, it must immediately take necessary and reasonable action to remove the cause of environmental degradation or harm, or direct any other relevant agency to do so, and recover the cost of so doing from the person who is responsible for causing that danger or harm as a debt due to the Service.

(2) In taking action pursuant to subsection (1), the Service may exercise such powers as are reasonable and proportionate in the circumstances, including accessing land or business premises without prior consent from or notification to the occupier or owner where the urgency of the situation reasonably justifies this.

(3) The Service may prepare and issue guidelines or procedures for emergency or disaster prevention, management or response relevant to the environment.

20. Technical Experts Register

(1) The Service may retain a register of technical experts, upon whom the Service may call for advisory and other technical services, where the relevant expertise or knowledge is not available within the Service.

(2) The register will comprise experts selected according to objective criteria, through open and fair recruitment processes, in line with any national procurement guidelines or rules as may be in force from time to time.

(3) The names of the technical experts included on the register must be made publicly accessible on the Service's website.

21. Funds of the Service

The funds of the Service consist of—

(a) all moneys received by the Service out of money appropriated by Parliament for the purpose;

(b) all moneys from time to time received by way of grants, donations, and subsidies;

(c) all accumulations of moneys belonging to the Service.

22. Accounts

(1) The Service must keep full and correct accounts of money received and expended in accordance with the provisions of the Ministry of Finance and Economic Management Act 1995-96.

(2) The accounts, financial statements and records of the Service will be audited in accordance with the Public Expenditure Review Committee and Audit Act 1995-96.

23. Financial and fiscal responsibility

The Director is responsible for ensuring that all activities of the Service are undertaken in a manner which is consistent with the provisions of the Ministry of Finance and Economic Management Act 1995- 1996.

24. Exemption from taxation

The Service is exempt from the payment of any tax, duty or levy due in the performance of its functions or the exercise of its powers.

Part 3

Island Environment Authorities

25. Island Environment Authorities

(1) An Island Environment Authority must be established for each island, and must carry out its functions in accordance with this Part and relevant regulations.

(2) An Island Environment Authority may also have responsibility for a neighbouring island that is uninhabited, in addition to its own island.

26. Functions of an Island Environment Authority

(1) It is the function of each Island Environment Authority in respect of its island or islands to—

(a) act as the permitting authority in relation to environmental consents, permits, and other authorisations that it must consider in accordance with this Act or regulations;

(b) identify priority areas of environmental concern and convey to the Service such policies and programmes as are approved by the Island Environment Authority for implementation;

(c) recommend to the Service additions or amendments to the list of animals and plants to be protected, taking into account the endemic, native, threatened, endangered or migratory nature of relevant species, in accordance with section 34(1)(b);

(d) develop and approve management plans in accordance with Part 8, including those designating island protected areas, in accordance with Part 9.

(e) at the Director's request, participate in preparing the work programme of the Service for each financial year, or the Service's annual report in connection with—

(i) the work of the Service on and in relation to the island; and

(ii) any other matter concerning the island;

(f) formulate and publish guidelines on specific issues of environmental protection and management in relation to the island;

(g) recommend to the Minister regulations to be made;

(h) carry out any other function conferred on it by this Act or the regulations.

(2) In the performance of its functions under subsection (1) an Island Environment Authority must—

(a) take into account the following—

(i) Government policies in relation to the environment;

(ii) any recommendations of the Forum;

(iii) advice from the Service;

(iv) any relevant submissions received from stakeholder consultation;

(v) relevant traditional resource management practices and standards on the island; and

(b) seek expert advice at all times where such expert advice is reasonably available.

(3) An Island Environment Authority may invite officials, technical experts, and other persons to advise the Island Environment Authority in relation to any subject matter under consideration.

(4) An Island Environment Authority may appoint sub-committees consisting of officials, technical experts, and other persons to facilitate the Island Environment Authority's work on specific areas of concern and to advise the Island Environment Authority in the performance of its functions.

27. Remuneration of Island Environment Authority members

(1) Subject to subsection (2), every appointed member of an Island Environment Authority will be paid such remuneration, expenses and allowances as are permitted by the Minister.

(2) A person who is a member of Parliament or an employee of a public organisation will not be entitled to receive remuneration as a member of an Island Environment Authority.

Part 4

National Environment Council and Cook Islands Environment Forum

28. National Environment Council

(1) The Director may, at any time as required for the objectives of this Act, having first consulted with the Minister, convene a body to be called the National Environment Council.

(2) The Council must be composed and carry out its functions in accordance with this Part and relevant regulations.

(3) As soon as practicable after the Council has completed its consideration and determination of the matter for which the Council was convened, the Director may, after convening a final Council meeting to approve the minutes of the last meeting relating to that matter, disband the Council.

29. Functions of the Council

(1) The Council is the permitting authority for matters of national significance and for activities that take place beyond the geographical jurisdiction of an individual Island Environment Authority, as indicated in subsection (2).

(2) It is the function of the Council to—

(a) act as the permitting authority in relation to any applications for environmental consents, permits and other authorisations that it must consider under this Act or regulations, including:

(i) recommendations upon a strategic environment assessment report pursuant to section 66;

(ii) issue of a bioprospecting permit pursuant to section 94;

(iii) where outside the competence of an individual Island Environment Authority –

(A) approval of a management plan pursuant to section 48;

(B) issue of environmental consent or permit for a Tier 2 or Tier 3 activity, pursuant to Part 11.

(b) recommend to the Service additions or amendments to the list of animals and plants to be protected, taking into account the endemic, native, threatened, endangered or migratory nature of relevant species, in accordance with section 34(1)(b);

(c) designate a marine protected area in any area of the Cook Islands' exclusive economic zone or continental shelf, in accordance with section 52;

(d) carry out such other functions, consistent with this Act, that the Minister may from time to time determine.

(3) In carrying out its functions, the Council must—

(a) take into account the following—

(i) Government policies in relation to the environment;

(ii) advice from the Service;

(iii) any relevant representations received from its Consultative Board, or submissions received from stakeholder consultation;

(iv) relevant traditional resource management practices and standards; and

(b) seek expert advice at all times where such expert advice is reasonably available.

30. Remuneration of Council members

(1) Subject to subsection (2), a member of the Council is to be paid such remuneration, expenses and allowances as are permitted by the Minister.

(2) A person who is a member of Parliament or an employee of a public organisation, is not entitled to receive remuneration as a member of the Council.

31. Cook Islands Environment Forum

(1) The Minister may at any time require the Service to convene a Cook Islands Environment Forum.

(2) The Forum must—

(a) consider the effectiveness and shortcomings of this Act;

(b) receive reports from the Island Environment Authorities and the Service, on the operation of this Act;

(c) make recommendations to the Minister concerning new regulations or reforms to the laws relating to the protection of the environment, priority environment and sustainable development concerns of the Cook Islands, and changes in environmental policies and programmes;

(d) receive reports from any other interested parties including public organisations and recognised environmental organisations;

(e) consider whether to recommend species of plants and animals for designation as protected species under section 34;

(f) consider whether to recommend any protected areas for designation, the development of shared resource management agreements, or the preparation of management plans; and

(g) perform such other functions as directed by the Minister.

(3) The meetings of the Forum must be conducted in such manner as the Minister may determine from time to time, and the Minister may chair the Forum or appoint a chairperson.

(4) The Service must make minutes of any meeting of the committee available to the public in accordance with section **Error! Reference s ource not found.**.

Part 5

State of the Environment Monitoring and Reporting

32. Monitoring by the Service

(1) The Service shall undertake such environmental monitoring activities, in such areas of the Cook Islands, as it deems expedient or necessary to implement this Act, or as is prescribed by regulations.

(2) In conducting environmental monitoring activities, the Service will collaborate with other agencies where relevant, for example in relation to at-sea monitoring which may require Service presence on vessels or placement of remote monitoring technology.

33. Periodic report on the state of the Environment

(1) The Service is responsible to produce periodically a report on the state of the environment of the Cook Islands which provides an overview of the health of the environment of the Cook Islands.

(2) The state of the environment report must be:

(a) based on monitoring data that has been collected according to monitoring programmes and procedures, including those set by the Service;

(b) based on data that has been independently reviewed for accuracy and robustness;

(c) developed in consultation with other public organisations and stakeholders who may be sources of relevant data or information;

(d) published, together with the underlying data, in an accessible format;

(e) and tabled by the Minister as an agenda item before Parliament.

(3) The state of the environment report must include and report upon:

(a) environmental indicators and targets in line with the Cook Islands national and international commitments;

(b) descriptions of biodiversity in the Cook Islands, including rare, threatened, endangered or endemic species and habitats, and significant biodiversity areas;

(c) analysis of invasive species in the Cook Islands, and plans for combatting their adverse impacts on the environment;

(d) baseline data and scientific gaps and uncertainties relating to the environment of the Cook Islands, including data derived from seabed mineral activities;

(e) descriptions of areas subject to environmental protection or management plans;

(f) climate change impacts;

(g) the efficiency and effectiveness of the implementation of this Act, including any policies, regulations, procedures developed, and the exercise of any functions, powers and duties, in accordance with this Act;

(h) recommended priority areas for future monitoring and data collection;

(i) recommended priority areas for implementation of the objectives of this Act.

(4) The Service will explore opportunities to collaborate and integrate state of the environment reporting requirements under this section, with Outlook Report requirements under the Marae Moana Act 2017.

(5) The Service will aim to produce a report under this section every 5 years, which period may vary at the Director's discretion, taking account of availability of requisite resources and funding.

(6) Where monitoring programmes and procedures set by the Service, or recommendations included in the state of the environment report, require action or cooperation of another public organisation, the Service must notify that public organisation and both agencies will agree on steps to ensure the relevant monitoring and data collection take place.

(7) Officers of public organisations must cooperate with the Service in its implementation of this Part of the Act.

Part 6

Protected and Invasive Species

34. Protected species

(1) The Service may, from time to time, by notice in the Gazette designate certain animals and plants as being protected species for the purposes of this Act, specifying whether the designation relates to all of the Cook Islands or is restricted in the locations to which the designation relates, and taking account where relevant —

(a) commitments to protect certain animals and plants that may arise under a regional or international convention, treaty, protocol, agenda or other mechanisms applicable to the Cook Islands;

(b) any decision of the Island Environment Authority or Council, or recommendation of the Forum; and

(c) the results of stakeholder consultation.

(2) Before designating any species as protected pursuant to subsection (1), the Service may organise a stakeholder consultation, including to consult persons with expertise or an interest in the living organisms, habitats or other components of biodiversity that are of principal importance in the Cook Islands.

35. Prohibitions relating to protected species

(1) Subject to subsections (3) and (4), any person who intentionally or recklessly—

(a) hunts;

(b) remove

(c) kills;

(d) injures or harasses;

(e) catches or possesses;

(f) during the period of breeding, incubation, hibernation, estivation or migration, disturbs that habitat or species; or

(g) sells or exports, or possesses, or transports, for the purposes of sale or export,

any animal that is a protected species, commits an offence.

(2) Subject to subsections (3) and (4), any person who intentionally or recklessly—

(a) attempts or does pick, collect, cut, uproot or take, by any method;

(b) possesses;

(c) damages or destroys the habitat of; or

(d) sells, offers or exposes for sale, exports or possesses, or transports, for the purposes of sale or export;

any plant that is a protected species, commits an offence.

(3) Subsections (1) and (2) do not apply to any person acting with authority of and in accordance with an environmental approval, consent or permit obtained pursuant to this Act, or other permission or authorisation related to the animal or plant issued by a public authority under any other enactment.

(4) For the avoidance of doubt, each plant or animal affected pursuant to subsections (1) or (2) constitutes a separate offence.

(5) Any person committing an offence under this section will upon conviction be liable—

(a) in the case of a body corporate, to a fine not exceeding $500,000;

(b) in any other case, to a fine not exceeding $250,000 or imprisonment for a term not exceeding 2 years, or both.

(6) A person will not be guilty of an offence:

(a) if the person proves that harm done was an incidental result of a lawful operation and could not reasonably have been avoided.

(b) under subsection (1), if the person proves that committing the harm done was intended to alleviate unnecessary suffering of the animal.

(7) The Service shall regularly identify, monitor the presence of, and take actions where possible for the conservation, protection or other management measures for any protected species, coordinating with other public organisations and with Island Governments as appropriate, in order to support the implementation of this Act.

36. Prohibition of introduction of invasive species

(1) The Service may, from time to time, by notice in the Gazette designate certain species as being invasive species for the purposes of this Act.

(2) Subject to subsection (3), any person who intentionally or recklessly imports, in the case of animals: releases or allows to escape into the wild, or in the case of plants: plants or causes to grow in the wild, any invasive species; commits an offence and will upon conviction be liable—

(a) in the case of a body corporate, to a fine not exceeding $500,000;

(b) in any other case, to a fine not exceeding $250,000 or imprisonment for a term not exceeding 2 years, or both.

(3) Subsection (2) does not apply to any person acting with authority of and in accordance with an environmental approval, consent or permit obtained pursuant to this Act or other permission or authorisation related to the animal or plant issued by a public authority under any other enactment.

(4) The Service shall regularly identify, monitor the presence of, and take actions where possible for the control or elimination of, invasive species, coordinating with other public organisations and with Island Governments as appropriate, in order to support the implementation of this Act.

37. Register of protected species and invasive species

(1) The Service shall maintain its own register of all species designated as protected species or invasive species for the purposes of this Act.

(2) The register of protected species or invasive species maintained by the Service in accordance with this provision shall be made available to the public to view.

38. Permission relating to protected species and invasive species

(1) Subject to subsections (2) and (3), in accordance with Part 11, the Director may issue an environmental approval, or a permitting authority may issue an environmental consent or permit, authorising any person to do anything which would otherwise constitute an offence under any provision of this Part.

(2) An approval, consent or permit may only be issued under this section if the act relating to protected species or the invasive species that is to be authorised will be done—

(a) for scientific, research or educational purposes;

(b) for recreational or commercial purposes, subject to subsection (4);

(c) for the purpose of preserving public health or public safety, including preventing the spread of disease;

(d) for the purpose of conserving biodiversity; or

(e) for the purpose of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber, aquaculture, fisheries or other forms of property, whether movable or immovable.

(3) The Director or permitting authority, taking such scientific advice as is considered necessary, may not issue an approval, consent or permit (as the case may be) for any purpose mentioned in subsection (2) unless satisfied that:

(a) there is no other satisfactory solution for the purpose;

(b) anything authorised by the approval, consent or permit will not be detrimental to the survival of the population of the species concerned, or any protected species;

(c) issue of the approval, consent or permit is in the public interest.

(4) An approval, consent or permit may only be issued under this section for recreational or commercial purposes if—

(a) there is an overriding public interest in permitting the activity, taking into account the impact of the activity on biodiversity in Cook Islands;

(b) all alternative practical means of carrying out the activity have been considered;

(c) the applicant has adopted a plan to ensure that the activity is carried out with the minimal practicable impact on biodiversity and with the greatest practicable protections for any affected protected species; and

(d) the Director or permitting authority (as the case may be) is satisfied that the applicant has the technical and other capacity to fulfil the plan referred to in paragraph (c).

(5) An approval, consent or permit which authorises any person to kill protected species must specify the area within which and the methods by which such species may be killed.

39. Prohibition on cruelty to animals

(1) A person commits an offence if—

(a) their act, or failure to act, causes an animal to suffer,

(b) they knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so,

(c) the suffering could have been reasonably avoided or reduced.

(2) It is a defence under this section if the act or failure to act was -

(a) required by any enactment or other instrument issued under an enactment,
(b) for a legitimate purpose, such as benefiting the animal or protecting a person, property or another animal, or
(c) for the destruction of an animal in an appropriate and humane manner.

(3) A person committing an offence under this section is liable on conviction to a fine not exceeding $20,000 or to imprisonment of up to a year.

Part 7

Pollution and Hazardous Substances

40. Application of this Part

This Part does not apply to:

(1) matters covered by the Prevention of Marine Pollution Act 1998, including waste, pollution or hazardous substances on or discharged from a vessel or platform in the territorial sea or exclusive economic zone;

(2) the contamination of fishery waters, insofar as is covered by the Marine Resources Act 2005;

(3) discharges related to seabed mineral activities, insofar as those have been permitted under this Act, or the Seabed Minerals Act 2019.

41. Register of hazardous substances

The Service may compile a register of hazardous substances for the purpose of section 3 of this Act, which must be open to inspection by the public during ordinary business hours.

42. Environmental consent or permit required for activities with potential to pollute

(1) Every person who, without a prior environmental approval from the Director, or environmental consent or permit from the permitting authority, obtained in accordance with Part 11 of this Act—

(a) imports, handles, stores, processes, produces, generates, controls or discharges into the environment any hazardous substance;

(b) pollutes Cook Islands waters;

(c) deposits material of any kind in any place where it is likely to be washed into Cook Islands waters or environment and likely therefore to —

(i) cause pollution, or

(ii) cause harm to another person or to another person's property;

commits an offence, and is liable on conviction in the case of a body corporate, to a fine not exceeding $500,000, and in any other case, to a fine not exceeding $250,000 or imprisonment for a term not exceeding 2 years, or both.

(2) Where a person convicted under subsection (1) fails to respond to a request to desist or remediate, issued by the permitting authority pursuant to section 45(1)(a), the Court may impose a penalty fine of no more than $500 per day, which may accrue for each day that the person continues to fail to desist or remediate.

(3) Nothing in subsection (1) applies to—

(a) a disposal of hazardous waste authorised under the Solid and Hazardous Waste Act; or

(b) discharge into Cook Islands waters necessary, and reasonable in extent, for the purpose of securing the safety of a vessel or saving life at sea, provided all reasonable precautions have been taken after the occurrence of the discharge for the purpose of preventing or minimising pollution.

43. Designated pollutants

Regulations made under section 126 may designate as a pollutant any substance, thing, or man-made phenomenon which, in a specified quantity or concentration or condition, is likely to cause pollution; and may prescribe processes or offences related to the use of such a pollutant.

44. Pollution levy

(1) Regulations may be made to impose proportionate levies on any business or person—

(a) using or allowing others to use fresh water and degrade its quality;

(b) entering ports in the Cook Islands; or

(c) for the consented release of any designated pollutant into the environment.

(2) Any levies collected pursuant to such regulations are to be deposited in the Environment Protection Fund.

45. Permitting authority may require or take remedial action

(1) Where a permitting authority is of the opinion that any person has acted in contravention of a provision in this Part—

(a) the permitting authority may require that person to—

(i) desist from so acting and

(ii) take such remedial action at that person's own cost as the permitting authority may reasonably determine; and

(b) where that person refuses to take remedial action required by the permitting authority, the Service, at the request of the permitting authority, and in consultation with any other public organisations with relevant mandates, must take such remedial action as may be necessary in the circumstances, and recover the cost of so doing from that person as a debt due to the Service.

(2) Subsection (1) applies despite any penalty or other order which may be imposed in respect of any offence committed under this Part.

46. Accidental discharge

(1) The Service may require any person who owns or controls premises on which a designated pollutant or hazardous substance is stored, used or transported, to prepare a pollution emergency plan to deal with any accidental discharge of that pollutant or hazardous substance, which must—

(a) set out counter-measures to be adopted in the event of an accidental discharge;

(b) set out steps after an accidental discharge to be taken to clear up any substance, remedy any damage, or otherwise restore the area as near as possible to a satisfactory environmentally sound state; and

(c) be submitted to the Service for approval, with or without amendments.

(2) When any accidental discharge of a designated pollutant or hazardous substance occurs—

(a) the person who owns, controls, or uses the premises on which the incident takes place must—

(i) immediately notify the Service of the incident;

(ii) implement the approved pollution emergency plan, if any; and

(iii) follow such instructions as may be received from the Service or otherwise take such other measures as are necessary or expedient to minimise any resulting threat to human health or the environment.

(b) the Service must investigate the incident, and may itself or by coordinating or commissioning others with competence, undertake such emergency response measures as are considered necessary or expedient, and may recover the costs of so doing from the person who owns or controls the premises as a debt due to the Service.

(3) A person who fails to comply with the requirements of subsection (1) or subparagraph (2)(a) commits an offence, and is liable on conviction in the case of a body corporate, to a fine not exceeding $100,000, and in any other case, to a fine not exceeding $50,000 or imprisonment for a term not exceeding 6 months, or both.

Part 8

Management Plans

47. Management plans

The Service will at the request of a permitting authority, or the recommendation of the Forum, prepare a draft management plan, or amend an existing management plan in accordance with this Part 8, for one or more of the objectives listed in section 5, or where required for the purposes of protected areas or rā'ui, in accordance with Part 9.

48. Preparation and approval of management plans

(1) A draft management plan or amendment to an existing management plan (in this section "the draft") must —

(a) be prepared by the Service in consultation with:

(i) stakeholders, and with particular attention to any landowners, occupiers, or users of the area covered by the management plan, who are known by the Service to be affected by the draft; and

(ii) any public bodies who may be affected by the management plan, or have a specific interest or responsibility in its implementation; and

(b) include a management committee including representatives of those landowners, occupiers, or users where relevant.

(2) When the Service has prepared the draft, the Director must by public notice—

(a) state that the draft has been prepared and specify the areas affected by the draft;

(b) specify the place or places where the draft is displayed and may be inspected by interested persons;

(c) invite interested persons including the Aronga Mana of the district that may be affected to make representations in connection with the draft by a specified date, not being less than 1 month after the publication of the notice; and

(d) specify an address to which representations may be forwarded.

(3) The Service must give due consideration to any representations made by the date specified in the notice, and may alter, amend or vary the draft accordingly.

(4) After the steps pursuant to subsections (2) and (3) have been completed, the Director must submit the draft together with such representations as have been made under subsection (2) to the requesting permitting authority.

(5) The requesting permitting authority may—

(a) approve or decline to approve the draft as submitted; or

(b) refer it to the Service, together with its suggestions for further consideration and for any amendment to the draft.

(6) A management plan will come into effect once it has been approved in accordance with sub-section (5).

49. Advisory committee for a management plan

The Director may establish an advisory committee for a proposed or approved management plan to provide advisory inputs to the management committee, on such terms of reference as the Director may determine.

50. Implementation of a management plan

The Service shall be responsible, working with the management committee, and any other relevant persons and organisations named in the management plan, for its implementation, which will include raising awareness of the plan, and

monitoring, evaluating, enforcing compliance, and reporting on its implementation and progress towards its objectives.

51. Failure to comply with management plan

Any person who, without reasonable excuse or lawful justification, fails to comply with or acts in contravention of any provision of a management plan in force for the time being commits an offence, and will upon conviction be liable to a fine in the case of a corporate entity of $500,000, and in any other case, to a fine not exceeding $250,000 or imprisonment for a term not exceeding 2 years, or both.

Part 9

Island Protected Areas, Marine Protected Areas, and Ra'ui

52. Designation of island protected areas or marine protected areas

(1) An Island Environment Authority may designate an area within its jurisdiction as an island protected area, in accordance with the procedure set out in section 54, where the Island Environment Authority considers:

(a) the area meets the definition specified in Section 3 of a national park or a nature reserve; and

(b) the designation meets the primary purpose to achieve the long-term conservation of nature with associated ecosystem services and cultural values; and

(c) the designation is necessary or expedient, taking into account one or more of the reasons set out in section 53.

(2) The Council may designate an area of Cook Islands waters that is outside the jurisdiction of any individual Island Environment Authority as a marine protected area, in accordance with the procedure set out in section 55, where the Council considers the designation:

(a) meets the primary purpose to achieve the long-term conservation of nature with associated ecosystem services and cultural values; and

(b) is necessary or expedient, taking into account one or more of the reasons set out in section 53.

53. Reasons for designation of a protected area

Other reasons for which a protected area may be designated, subsidiary to the primary purpose contained in subparagraph 52(1)(b), include to:

(a) protect and preserve the environment, with special consideration of endemic, native, rare, threatened or endangered or migratory species, or their habitats, rare or fragile ecosystems;

(b) allow for the recovery or restoration of wildlife in areas where such life has been depleted;

(c) provide for ecologically sustainable management of the natural resources of the area, where appropriate in the site and consistent with the objectives of that protected area;

(d) promote scientific study and research in respect of such area;

(e) act as a tool for climate change or natural disasters preparedness, resilience or response;

(f) conserve biodiversity, including through effectively and equitably managed, ecologically representative and well-connected systems or networks of protected areas, in accordance with the Cook Islands' obligations under the Convention on Biological Diversity;

(g) cover a site that is also designated as protected or similar under another enactment of the Cook Islands, in consultation with the responsible agency or ministry for that other enactment.

54. Procedure for designation of an island protected area

(1) Where an island protected area designation under section 52(1) is proposed, the permitting authority must –

(a) draft a management plan to give effect to the proposed protected area designation, and ensure the procedure contained in section 48 is followed.

(b) obtain the prior consent of the Aronga Mana of the relevant district,

(c) seek and take account of any advice from the Service, and

(d) ensure that a shared resource management agreement pursuant to subsection (3) has been concluded between the Service and any owners or other persons with legal interest in any of the land concerned.

(2) A draft management plan for the purpose of this section must include—

(a) a description of the area to be protected and its boundaries;

(b) name and category of the island protected area (whether a national park or nature reserve);

(c) clear objectives for the area and the rationale for protection;

(d) a statement of the area's values and significance for nature and biodiversity conservation, and any associated ecosystem services and cultural values;

(e) the proposed management intent for, and any proposed use of, the area;

(f) arrangements for management and governance;

(g) the terms and conditions of the island protected area, including any specific activities or impacts that are to be permitted or prohibited.

(3) A shared resource management agreement concluded under this section must—

(a) include members of the Aronga Mana, in respect of any native customary land, and take into account the provisions of the Land (Facilitation of Dealings) Act 1970 where applicable;

(b) describe any obligations upon the parties; and

(c) provide a procedure for amendment to or substitution of the management plan once approved and in effect.

55. Procedure for designation of a marine protected area

(1) Where a marine protected area designation under section 52(2) is proposed, the Service must draft a management plan to give effect to the proposed marine protected area designation, and ensure the procedure contained in section 48 is followed.

(2) A draft management plan for the purpose of this section must include:

(a) a description of the marine area to be protected, with coordinates and/or a map delineating its boundaries;

(b) clear objectives for the area and the rationale for protection;

(c) a statement of the area's values and significance for nature and biodiversity conservation, and any associated ecosystem services and cultural values;

(d) the terms and conditions of that marine protected area including any specific activities or impacts that are to be permitted or prohibited, which may include zones within the area within which certain activities may be prohibited or managed including —

(i) fishing, aquaculture or related activities;

(ii) research, and taking, sampling, or destroying flora or fauna;

(iii) mining, dredging, or extracting coral, sand, gravel or other material;

(iv) discharging waste, sediment, sand, rock or any other polluting matter;

(v) constructing or erecting any buildings, platforms or other structures;

(vi) access for tourism or recreational activities; or

(vii) in any other way disturbing, altering or destroying the environment.

(e) the proposed management intent for, and any proposed use of, the area;

(f) arrangements for management and governance.

(3) A management plan for a marine protected area prepared under this Act, may implement, and must take into account, the terms of any existing marine spatial plan that pertains to any of the same area, developed under the Marae Moana Act 2017.

(4) No marine protected area may be designated under this Part where such designation would conflict with or undermine implementation of the Marae Moana Act 2017.

(5) Where an activity is planned within a marine protected area by any public organisation pursuant to any other Act or law, the entity under whose management that activity is planned must obtain the prior written consent of the Minister.

56. Bringing into effect of protected areas

(1) A protected area becomes formally designated and brought into effect when the management plan for that area is formally approved by the permitting authority, pursuant to Section 48.

(2) Where an approved management plan designates a protected area, the Director will cause notice to be published in the Gazette.

(3) Where an approved management plan designates a marine protected area, the King's Representative will by Order in Executive Council declare that area of Cook Islands waters to be a marine protected area.

(4) The Service must take such steps as are reasonable to notify relevant persons of the management plan for any protected area and to continue to maintain public awareness of the terms of that plan while it remains in effect.

57. Inspection of protected areas

Without limiting the powers conferred by sections 107 and 108, an Environment Officer may undertake reasonable inspection activities, including entering premises where relevant, to determine whether the terms of a protected area management plan are being complied with, and to monitor the attainment of the objectives of that management plan.

58. Protected area register

(1) Following the notice of an island protected area in the Gazette, the Director must make an application to the Registrar of the Court for the registration of that designation and the relevant shared resource management agreement in the Register of Titles.

(2) The Service shall maintain its own accurate register of all protected areas designated under under this Act, as well as rā'ui and sites protected under any other enactment of the Cook Islands of which the Service is aware.

(3) The register maintained by the Service in accordance with subsection (2) shall be made available to the public to view.

59. Cancellation of protected area designation

(1) An Island Environment Authority may terminate a designation of an island protected area after consultation with the NES, owners and occupiers (if any) of the land and the Aronga Mana of the district in which the land is situated, by

(a) a notice in the Gazette cancelling the prior notification, and

(b) giving notice to the owner or occupier of the land affected (if any).

(2) Upon conclusion of the steps outlined in subsection (1), the previous island protected area notification will cease to have any force or effect, and any shared resource management agreement or management plan relating specifically to the island protected area to which the notification relates will be deemed to have been terminated.

(3) A copy of every notice of cancellation under subsections (1) and (2) must be filed with the Registrar of the Court who must cause the notice of cancellation to be noted against the earlier registration.

(4) Where the Council wishes to terminate a designation of a marine protected area, after consultation with the NES and such consultation with stakeholders as is deemed relevant and necessary, it will issue a notice in the Gazette cancelling the prior notification, and the King's

Representative will by Order in Executive Council reverse the previous declaration of that area as a marine protected area.

(5) Any marine protected area established under the Marae Moana Act 2017 can only be disestablished, repealed, or cancelled using the provisions of that Act.

60. Rā'ui

Where requested by relevant Aronga Mana, and working in consultation with them and the relevant local communities, a permitting authority may consider adopting a management plan, or otherwise designating a ra'ui under this Act, in order to formalise a rā'ui.

Part 10

Strategic Environmental Assessment

61. Interpretation of this Part

In this Part, unless otherwise stated—

Policy refers to any policy, plan or programme, including any modification to any policy, plan or programme, which is—

(a) subject to preparation or adoption by a public organisation; or

(b) prepared by a public organisation for adoption, through a legislative procedure;

Responsible authority, in relation to a Policy means the public organisation by which or on whose behalf it is prepared.

62. Strategic environmental assessment of a Policy

(1) Subject to subsections (2) and (3), a responsible authority must carry out, or secure the carrying out by a technical expert of, a SEA during the preparation or modification of any Policy—

(a) which concerns resources, land or ocean use, development, or industry in any location in the Cook Islands; and

(b) whose implementation is likely to lead to significant environmental impact.

(2) Before determining whether a Policy is likely to have significant environmental impact under subsection (1), the responsible authority must—

(a) take into account the definition and criteria for significant environmental impact listed in subsections 3(1) and (2) of this Act, and any relevant regulations;

(b) obtain and take account of the opinion of the Service; and

(c) consult such other persons as the responsible authority or the Council thinks fit.

(3) Nothing in subsection (1) requires the carrying out of a SEA —

(a) for a Policy the sole purpose of which is to serve national defence or civil emergency;

(b) for a financial or budget Policy;

(c) that, in the opinion of the Director, is not feasible or necessary, for example because the matter has been adequately addressed by a previous SEA; or

(d) for a minor modification to a Policy.

(4) Nothing in this Part 10 affects the proper application of Part 11 of this Act, and the requirement for an environmental approval, permit or consent for activities that may be carried out in the future under a Policy adopted pursuant to this Part.

63. Determination that a strategic environmental assessment is not required

Where the responsible authority determines that a SEA is not required because the implementation of the Policy is unlikely to have significant environmental impact, or one of the criteria listed in subsection 62(3) apply, the responsible authority must–

(c) provide the Director with a copy of that determination, and

(d) publish its decision and reasoning in accordance with section 86.

64. Strategic environmental assessment report

(1) Where an SEA is required under this Part, the responsible authority must prepare, or secure the preparation of, a SEA report in accordance with subsections (2) and (3), and any relevant regulations, or guidelines issued by the Service.

(2) The SEA report must identify, describe and evaluate the likely effects on the environment of—

(a) implementing the Policy;

(b) application of methods to mitigate those effects; and

(c) reasonable alternatives to the Policy, taking into account the objectives and the geographical scope of the Policy.

(3) The SEA report must have a scope and level of detail and include such information as may prescribed or otherwise as may be reasonably be required, taking account of—

(a) the scale, nature and extent of likely environmental effects of the Policy, taking into account cumulative effects and climate change;

(b) current knowledge and methods of assessment;

(c) the contents and level of detail in the Policy;

(d) the stage of the Policy in the decision-making process;

(e) alignment of the Policy with other relevant national legislation, plans and policies in force, including those relating to the environment, sustainable development, waste management, sanitation, water resource management;

(f) the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment; and

(g) The SEA report must propose a strategic environmental monitoring plan designed to enable evaluation and adaptation as the Policy is implemented.

65. Consultation on strategic environmental assessment

(1) In this section "relevant documents" means —

(a) the draft Policy, or information about it, if drafting has not yet commenced;

(b) the SEA report;

(c) any other documents the responsible authority considers should be brought to the attention of the public for the purposes of a SEA.

(2) As soon as reasonably practicable after the preparation of an SEA report pursuant to section 64, the responsible authority must—

(a) send a copy of the relevant documents to and request comments from —

(i) the Service;

(ii) any Island Environment Authorities affected, and

(iii) any other public organisation who have expressed an interest in, or in the responsible authority's opinion, have an interest in, the Policy;

(b) publish copies of the relevant documents on a publicly accessible website and otherwise take such steps as it considers appropriate to bring the relevant documents to the attention of stakeholders including persons who, in the responsible authority's opinion, are likely to be affected by, or have an interest in the decisions involved in the assessment and adoption of the Policy including relevant non-governmental organisations;

(c) establish a process lasting at least 30 days to receive comments from the persons mentioned in paragraphs (a) and (b), which may involve holding a meeting or meetings.

(3) The responsible authority must provide to the Council a report on the consultation held pursuant to this section, including a summary of—

(a) how the environmental considerations have been integrated into the Policy;

(b) how the comments received through the consultation procedures have been taken into account; and

(c) the reasons for proposing to adopt this Policy, in the light of the reasonable alternatives considered.

66. Recommendations by Council after strategic environmental assessment

(1) The Council must review a report submitted pursuant to section 64, and may make recommendations to the responsible authority in line with the objectives of this Act, which may relate to the content of the Policy, the strategic environmental monitoring plan, and actions taken under it over time, or other recommendations in relation to its implementation.

(2) The responsible authority must publish its report, the Council's recommendations, and any response to those recommendations, in accordance with section 86.

67. Adoption of policy following a strategic environmental assessment

(1) The responsible authority must ensure that the final version of a Policy for which a strategic environmental assessment has been undertaken pursuant to this Part, takes account of—

(a) the conclusions of the SEA report;

(b) measures to prevent, reduce or mitigate the adverse effects identified in the SEA report;

(c) comments received through the consultation procedures organised under section 65; and

(d) the recommendations of the Council made under section 66.

(2) The responsible authority must implement the strategic environmental monitoring plan, in its implementation of the Policy.

Part 11

Environmental Approvals, Consents and Permits

68. Tier 1 to 3 activities

(1) For the purposes of this Part, and subject to regulations –

(a) A Tier 1 activity is an activity that has only minimal environmental impact and is able to be undertaken with prior written environmental approval of the Director. The Service may issue guidelines for identifying Tier 1 activities and grounds for Director approval under this paragraph.

(b) A Tier 2 activity is an activity that has some but not significant environmental impact and may be undertaken only—

(i) with the prior written environmental consent of the permitting authority; and

(ii) subject to any conditions imposed by the permitting authority.

(c) A Tier 3 activity is an activity which will cause or is likely to cause significant environmental impact, and may only be undertaken in accordance with sections 73 to 77 of this Act.

(2) At any time, a person planning an activity may seek the advice of the Service as to the Tier to which that activity belongs, and the Service may also refer such request for advice to the permitting authority for a screening opinion to determine whether the activity is a Tier 1, Tier 2 or Tier 3 activity.

(3) Where there is information lacking to determine the Tier to which an activity belongs, the precautionary principle shall be applied.

(4) An application for an environmental approval, consent or permit made under this Part must comply with any prescribed requirements or fees, and guidelines issued by the Service, and must be made in writing to the Service who will check the application for completeness before progressing it.

(5) An environmental approval, consent or permit enures to the named holder, and is non-transferrable, save where prior written consent to a

transfer has been given by the Director in the case of an approval, or the permitting authority in the case of a consent or permit.

69. Requirement for environmental approval, consent or permit

(1) No person may undertake any Tier 1 activity in the Cook Islands except in accordance with a prior written approval in accordance with section 68 of this Act.

(2) No person may undertake any Tier 2 activity in the Cook Islands except in accordance with a prior environmental consent issued under this Part.

(3) No person may undertake any Tier 3 activity in the Cook Islands except in accordance with a prior environmental permit issued under this Part.

(4) An applicant for an environmental approval, consent or permit must show evidence of legal ownership, occupation rights, or other relevant permission relating to the access and use of the proposed project site.

(5) In considering any request under this Part for environmental approval, consent or permit made by a natural person in respect of development of that person's private land or premises, the permitting authority may take into account the social and economic circumstances of that person, and the needs of local communities.

70. Application for environmental consent for a Tier 2 activity

(1) The permitting authority must review an application for environmental consent in accordance with any prescribed criteria, and with a view to the objectives of this Act.

(2) In conducting its review of an application for environmental consent, the permitting authority must also have regard to possible –

(a) impact from the activity that may affect a site designated a protected area under this Act or other enactment of the Cook Islands;

(b) transboundary environmental harm;

(c) cumulative impacts that may arise from more than one individual project occurring simultaneously, or that may build up over time.

(3) The permitting authority may request advice from the Service, relevant public organisations, or technical experts for the purpose of its review of any application under this section.

71. Environmental consent decision

(1) On the basis of the information reviewed, the permitting authority may—

(a) grant an environmental consent to a Tier 2 activity subject to—

(i) any guidelines prescribed by regulations;

(ii) any specific duration for the consent, decided by the permitting authority; and

(iii) any conditions that the permitting authority considers necessary or reasonable to safeguard the environment; or

(b) upon review, identify the activity as a Tier 3 activity, and require Tier 3 application procedures to be followed; or

(c) refuse to grant an environmental consent.

(2) The Service must provide the applicant with a written statement of the decision of the permitting authority, supported by reasons, and also make a copy of that statement publicly available on the Service's website.

(3) An applicant or another affected person may appeal against a decision of the permitting authority taken under this section, pursuant to section 82.

72. Environmental permits subject to Infrastructure Act

The provisions of this Part relating to applications for, and the grant of, environmental permits are subject to section 33(4) of the Infrastructure Act 2019.

73. Application for environmental permit for a Tier 3 activity

(1) A person who proposes to undertake a Tier 3 activity must apply to the permitting authority for an environmental permit in respect of the activity in accordance with this Part and otherwise in the form, manner, and pursuant to any procedures as may be prescribed by regulations.

(2) An application for an environmental permit must –

(a) include an environmental impact statement and an environmental management and monitoring plan, conforming to any requirements prescribed by regulations, and the requirements of section 74; and

(b) be accompanied by –

(i) any other information that the permitting authority may reasonably require, or that may be prescribed by regulations; and

(ii) an application fee prescribed by regulations.

(3) In reviewing the application, the permitting authority must take account of any prescribed matters, any consultation feedback, and any advice of the Service.

74. Environmental impact assessment

(1) Before undertaking an environmental impact assessment, an applicant must, taking account of any applicable regulations, standards or guidelines—

(a) identify and systematically study the baseline of existing environmental conditions of the area which the proposed activity may affect;

(b) conduct a scoping exercise, including an environmental risk assessment; and

(c) prepare a draft scoping report; and

(d) undertake stakeholder consultation on the draft scoping report in accordance with section 89; and

(e) submit the scoping report and results of stakeholder consultation to the Service for its review and comments.

(2) An environmental impact assessment must –

(a) be based on the scoping report and any comments on the report provided by the Services in accordance with subsection (1)(e);

(b) be conducted in accordance with any applicable regulations, standards and guidelines, best available scientific information, best environmental practices, and best available technology and techniques; and

(c) be documented in an environmental impact statement.

(3) An environmental impact statement, for the purposes of this Act, must include a non-technical summary, and must also set out comprehensive details of—

(a) the proposed project;

(b) the proposed project site and the existing environmental conditions;

(c) the impact of the project on the environment and, in particular,—

(i) how the existing environmental conditions may be affected by the proposed project , in the form of an evidence-based prediction; and

(ii) pollution that may occur;

(iii) a justification for the use or commitment of resources that can be depleted, or non-renewable resources (if any), to the project; and

(iv) the likelihood of any impacts affecting –

(A) any area that has been designated a protected area under this Act, or any other enactment of the Cook Islands,

(B) any area outside the Cook Islands,

(C) common resources,

(D) water supply, catchment or quality, or

(E) ecosystem services;

(v) the extent to which climate change considerations may affect those predicted impacts; and

(d) confidence levels in the information provided, highlighting any data gaps and uncertainties; and

(e) the proposed action to mitigate adverse environmental effects and the proposed environmental management and monitoring plan, setting out the steps and indicators that will be taken to monitor and manage environmental impacts arising out of the project; and

(f) the applicant’s environmental management system, which will be used for implementation of the project; and

(g) possible alternatives to the proposed project, how they were evaluated, and an explanation for why the proposed project was preferred; and

(h) how stakeholders were identified and reached; and

(i) stakeholder consultations conducted, details of the comments received and how these have informed the application;

(4) An environmental impact statement submitted for the purpose of this section, must be peer reviewed before submission by technical experts selected from the Technical Experts Register, with the results of that peer review provided in full as an annexure, which must also give details of the relevant experts engaged, and explain how the report was amended as a result of the peer review.

75. Consultation for the purpose of a Tier 3 permit

(1) Before the permitting authority takes a decision pursuant to section 76, the Service must, on behalf of the permitting authority,

(a) undertake stakeholder consultation on the application for the environmental permit in accordance with section 89 of this Act.

(b) request comment from any public organisations or Island Government affected by or having expertise relevant to the proposed project or its environmental impact.

(2) For the purpose of paragraph (1)(a) -

(a) copies of the environment impact statement and environmental management and monitoring plan must be made available for public review and comment for a time appropriate to the volume and complexity of the information, and for a minimum of 30 days from the date of publication; and

(b) the Service may—

(i) organise a meeting or meetings; or

(ii) require that the applicant for the environmental permit organise a meeting or meetings, at the applicant's expense, in locations, via media, and at times that will enable interested parties to attend.

(3) The Service must document and publish all comments received.

76. Environmental permit decision

(1) After the permitting authority has reviewed and assessed the application for an environmental permit, and relevant information, it must, subject to guidelines prescribed by regulations—

(a) issue a permit for the proposed project specifying the conditions subject to which the permit is issued, in accordance with section 77; or

(b) request the applicant to submit more information or modifications regarding the proposed project, which may include a direction for further stakeholder consultation where the modifications are significant; or

(c) decline to issue a permit for the proposed project and state the reasons for that refusal.

(2) The permitting authority must decline to issue a permit, where –

(a) the activity would contravene the objectives of any management plan, or have material impact upon any protected area designated under this Act or any other enactment of the Cook Islands;

(b) it reasonably considers that it does not have adequate information to make a determination on the application; or

(c) environmental impacts predicted in the application, including transboundary or cumulative impacts, despite mitigation and management measures, are deemed unacceptable by the permitting authority in line with relevant guidelines, standards and regulations.

(3) The Service must provide the applicant with a written statement of the decision of the permitting authority, supported by reasons, and also make a copy of that statement publicly available on the Service's website

(4) An applicant or another affected person may appeal against a decision of the permitting authority taken in under this section, pursuant to section 82.

77. Environmental permit conditions

(1) Every environmental permit issued under this Part must be subject to a condition of adherence to an environmental management and monitoring plan agreed with the permitting authority, which will include closure obligations.

(2) Other conditions the permitting authority may impose on an environmental permit granted under this Part may include—

(a) the duration of the permit;

(b) environmental performance outcomes, specifying a measurable environmental outcome that must be achieved or met or not exceeded; and

(c) prescriptive conditions requiring the holder to comply with specified actions or procedures, including –

(i) provision of an environmental bond calculated in accordance with any applicable regulations or guidelines, designed to secure performance of the environmental management and monitoring plan, or to cover the costs of clean-up or restoration for any unpermitted damage to the environment;

(ii) ongoing monitoring and reporting to the Service on the performance and environmental effects of the activity that is the subject of the permit;

(iii) maintaining data and records related to the activity, and making these available for audit or verification by the Service.

(3) The permitting authority may review and revise the conditions of an environmental permit where a periodic review is specified in the permit, or where the permitting authority otherwise reasonably considers it necessary to do so to achieve the objectives of this Act.

78. Termination and renewal of an environmental consent or permit

(1) An environmental consent or permit issued ends when—

(a) it is revoked by the permitting authority in accordance with this Act;

(b) an end date or milestone specified as a condition of the environmental consent or permit is reached; or

(c) the specific activity to which the environmental consent or permit relates ends, including any closure activities.

(2) A person who held an environmental consent or permit, must continue to comply with the requirements of the Act, and any conditions of that environmental consent or permit, that still apply after it ends.

(3) A holder of an environmental consent or permit may apply to renew or extend the duration of that consent or permit by applying in writing to the permitting authority at least 30 days before the consent or permit's end, stating the reasons for the request, and in line with any other prescribed procedures and requirements.

(4) The permitting authority may renew or extend the duration of a consent or permit where it considers it reasonable to do so, and provided there has been no change in circumstances relevant to the basis for issue of the consent or permit, other than a change or changes that the permitting authority considers minor.

79. Variation, revocation or suspension of environmental approval consent or permit

The Director and a permitting authority may, taking into account relevant regulations, vary, revoke or suspend an environmental approval, consent or permit it previously issued where:

(a) the circumstances have changed in a way that affects the basis on which the original approval, consent or permit was issued;

(b) the holder is in serious or persistent breach of conditions contained in the consent or permit or this Act;

(c) the holder requests or consents to the variation, suspension or revocation; or

(d) there are other compelling reasons in the public interest to do so.

80. Duty of environmental consent or permit holder to inform Service of change in activity

(1) A holder of an environmental consent or permit must inform the Service of any proposed changes in the nature, intensity, or scale of the activity to which the environmental consent or permit relates, or of any request to change the conditions contained in the environmental consent or permit.

(2) If the Service considers that the proposed change is minor, it may authorise that change in writing without referring the change to the permitting authority for a decision, but must inform the permitting authority within a reasonable period of time after approving such change.

(3) If the Service considers that the proposed change is more than minor, the Service must require the holder of the environmental consent or permit to make a new application to the permitting authority for an environmental consent or permit, as applicable, under this Part, based on the updated information.

(4) The Service's assessment under subsections (2) or (3) must take into account any criteria prescribed by regulations for that purpose.

81. Offence relating to an environmental approval, consent or permit

(1) Every person commits an offence who, without reasonable excuse or lawful justification –

(a) fails or refuses to comply with section 69, or

(b) fails to comply with a condition of an environmental approval, consent or permit issued under this Part, or

(c) causes significant environmental impact of a nature or extent that is not permitted under an environmental approval, consent or permit.

(2) A person committing an offence under subsection (1) is liable on conviction,—

(a) in the case of a Tier 1 activity, a body corporate to a fine not exceeding $10,000 and in any other case, to a fine not exceeding $5,000;

(b) in the case of a Tier 2 activity, a body corporate to a fine not exceeding $100,000 and in any other case, to a fine not exceeding $50,000;

(c) in the case of a Tier 3 activity, a body corporate to a fine not exceeding $2,000,000 and in any other case, to a fine not exceeding $250,000 or up to 2 years' imprisonment, or both.

(3) Subsection (1) does not apply to an urgent activity conducted under the management or authority of a Ministry or public authority for the purpose of national defence or protecting the public against a civil emergency.

(4) Where the Service believes an offence is being committed in accordance with this section, it shall consider application of an environmental protection notice pursuant to Part 17 including to suspend the activity that is the cause of concern, pending further investigation.

82. Reconsideration of, and appeal against, permitting authority's decisions

(1) Within 30 days of receiving notice of a decision under section 71 or 76, or a revocation or suspension under section 79, the applicant may, by letter to the responsible Minister, request that the responsible Minister review the permitting authority's decision.

(2) Within 30 days of publication of a decision under section 71 or 76, a person who considers themselves to be directly affected by that decision, may, by letter to the responsible Minister, request that the responsible Minister review the permitting authority's decision.

(3) Where a request under subsection (1) or (2) is received, the responsible Minister must review the permitting authority's decision and all information relevant to it and must within 3 months of receipt of the letter of request notify the complainant, and the applicant where the applicant is not the complainant, and the permitting authority in writing of the responsible Minister's decision to—

(a) uphold the permitting authority's decision to refuse, suspend or revoke an environmental consent or permit for the proposed project; or

(b) direct the Service to request that the applicant submit specified further information or modifications to the Service regarding the proposed project for reconsideration by the permitting authority.

(4) If the responsible Minister is required to make a decision under subsection (2) in any case where the responsible Minister is the applicant for the environmental consent or permit, or is otherwise directly or indirectly interested in the environmental consent or permit application otherwise than as the reviewing authority, the responsible Minister must,–

(a) with the concurrence of the permitting authority concerned, convene an independent panel to review the permitting authority's decision and submit a recommendation to the responsible Minister; and

(b) follow the panel's recommendation in making the decision under subsection (2); and

(c) make those recommendations public.

(5) The Minister may follow the process set out in subsection (3), in any case.

(6) Where the responsible Minister has conducted a review under subsection (2), or an independent panel has conducted a review under subsection (3), no further review of the decision may be conducted (except on the order of the court).

Part 12

Foreshore, Sloping Land, Wetlands

83. Determination of foreshore, sloping land and wetlands

The Service may determine whether a site falls within the definition of foreshore, sloping land, or wetlands, by reference to relevant guidelines and scientific criteria.

84. Permission for development of foreshore, sloping land, wetlands

(1) Subject to subsection (4), every person commits an offence who, without a prior environmental approval, consent or permit authority obtained pursuant to Part 11 of this Act—

(a) removes any silt, sand, cobble, gravel, boulder, coral, vegetation or tree from the foreshore;

(b) places any fill or material of any type, or erects or alters any building or structure within the foreshore, sloping lands or wetlands;

(c) undertakes any excavation, dredging, clearing, paving, grading, ploughing, dumping, burning, reclamation, or removal of vegetation or trees on any foreshore, sloping land or wetlands;

(d) carries out any activity which may result in the alteration of the natural configuration of the foreshore, sloping lands or wetlands;

(e) undertakes excavation on sloping land of any kind, or erects or alters any building or structure, on any land having a natural gradient in excess of 1:10.

and will be liable on conviction to a fine not exceeding $100,000.

(2) Nothing in subsection (1) applies to an activity that in the opinion of the Service, in light of its nature, extent and location will have a negligible impact on the environment.

85. Moratorium on development in vulnerable areas

The Minister may by notice in the Gazette declare a moratorium on development activities of any kind in relation to wetland, sloping lands or foreshore areas, where it is considered necessary or expedient to do so in order to—

(a) protect, conserve or restore animal or plant habitat, or biodiversity; or

(b) meet the obligations of the Cook Islands under a regional or international convention, treaty, protocol or agenda.

Part 13

Access to Environmental Information and Public Participation

86. Publication of reports, minutes, etc.

(1) This section applies to—

(a) an Island Environmental Authority, in respect of minutes of meetings;

(b) the Council, in respect of minutes of meetings;

(c) the advisory committee for the Environment Protection Fund established under section 104, in respect of minutes of meetings produced pursuant to section 104(3);

(d) the Director, in respect of any consultation report produced pursuant to section 89; or

(e) any other body or person, in respect of any document it is required to publish pursuant to this Act.

(2) A body or person to which this section applies must—

(a) maintain copies of the document in a reasonable form;

(b) make copies of the document open to inspection by the public during ordinary business hours; and

(c) make copies of the document available to a member of the public on request, which will be satisfied by making copies available in electronic form on a website.

87. Dissemination of environmental information

Subject to the Official Information Act 2008, a public organisation must engage in the active and systematic dissemination to the public of environmental information that it holds, including at least—

(a) texts of international conventions or agreements, and of national or local legislation, on the environment or relating to it;

(b) policies, plans and programmes relating to the environment;

(c) progress reports on the implementation of the items referred to in (a) and (b) when prepared or held in electronic form by public authorities;

(d) reports on the state of the environment;

(e) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;

(f) authorisations with a significant impact on the environment and environmental agreements or a reference to the place where such information can be requested or found;

(g) environmental impact studies, environmental reports and risk assessments or a reference to the place where the information can be requested or found; and

(h) facts and analyses of facts which the public authority considers relevant and important in framing major environmental policy proposals.

88. Recognised environmental organisations

(1) Any organisation or association in the Cook Islands that:

(a) purports to have expertise, or an advisory or representation role, in relation to environmental matters, and

(b) wishes to be considered for membership of an Island Environment Authority or the Council, or to obtain other benefits offered to recognised environmental organisations in this Act,

may, at its discretion, notify the Service of its interest for this purpose.

(2) Regulations may prescribe the procedure and forms for notification under this section.

(3) The Service must maintain a list of organisations notified to the Service under this section, and must make it available to inspection by the public by reasonable means, including electronically.

89. Stakeholder consultations

(1) Where in this Act reference is made to a stakeholder consultation, the person or body responsible for the consultation must—

(a) provide appropriate stakeholder access to up-to-date and comprehensive information in accessible terminology and format, including electronic and machine-readable format where possible;

(b) give all stakeholders, including all recognised environmental organisations, the opportunity to participate in the consultation;

(c) provide reasonable opportunity for those consulted to raise enquiries and to make known their views;

(d) record in written form all responses to the consultation, however received;

(e) take those responses into account in taking decisions related to the matter subject to consultation;

(f) produce a report of the consultation, including—

(i) a summary of the responses received to the consultation; and

(ii) a statement explaining how the responses have or have not been taken into account;

(g) continue or repeat these processes, as appropriate, if the subject matter of a prior consultation substantially alters; and

(h) provide a copy of the report referred to in paragraph (f) to the Director, for publication in accordance with section 86 of this Act.

(2) The Service will provide assistance to a permitting authority, in conducting a public consultation.

90. Public enquiries

The Service must make itself reasonably accessible to receive enquiries or complaints from members of the public, and will endeavour to:

(a) respond to such enquiries or complaints in a full and timely manner, and

(b) where appropriate and with the consent of the person making the enquiry or complaint, publish the enquiry or complaint and the reply.

Part 14

Bioprospecting, Access and Benefit Sharing

91. Cook Islands' sovereign rights over indigenous biological resources

(1) This Act recognises the Cook Islands' sovereign rights over indigenous biological resources, and the Crown's right to regulate third party access to them.

(2) Nothing in this Part is intended in any way to –

(a) undermine or amend the implementation of the Traditional Knowledge Act 2013;

(b) restrict the customary use or exchange of indigenous biological resources by and between local communities of the Cook Islands;

(c) undermine or amend the spirit of partnership and mutual respect set out in the United Nations Declaration on the Rights of Indigenous Peoples;

(d) limit the collecting, obtaining or exporting of indigenous biological resources to which the International Treaty on Plant Genetic Resources for Food and Agriculture adopted at the

Conference of the Food and Agriculture Organization of the United Nations on 3 November 2001 applies; or

(e) restrict the uses of any indigenous biological materials as may be prescribed.

92. Bioprospecting permit required

(1) A person may only collect, obtain or export indigenous biological resources for bioprospecting, within the terms of a bioprospecting permit issued by the Council and in force under this Part.

(2) A person who acts in contravention of subsection (1) commits an offence and will be liable on conviction to a fine not exceeding $250,000.

(3) The Council is the permitting authority for a bioprospecting permit pursuant to this Part.

(4) Regulations may prescribe thresholds and procedures for bioprospecting permits.

93. Application for a bioprospecting permit

(5) An applicant for a bioprospecting permit must disclose to the Council all relevant information concerning the proposed bioprospecting, in accordance with any applicable regulations, and including:

(a) legal entity and affiliation of the applicant, and their contact person, including an address and contact details;

(b) type, form and quantity of indigenous biological resources to which access is sought;

(c) the starting date and duration of the proposed activity;

(d) the geographical area in which the proposed collecting, obtaining or exporting will take place, including any re-collecting, re-obtaining or re-exporting;

(e) the name of the person or persons providing or giving access for collecting, obtaining or exporting, including an address and contact details;

(f) an evaluation of how the proposed activity may impact on conservation and sustainable use of biodiversity;

(g) the intended use of the indigenous biological resources to which access is sought and the arrangements for the retention, record-keeping, sample storage and access to the indigenous biological resources;

(h) details about where and how any research and development will take place, including land and sea locations and voyage routes, research facilities and development facilities;

(i) identification of local bodies for possible collaboration in research and development, including the legal entity and affiliation of each possible collaborator;

(j) the collaborator (including local bodies) and third party involvement, including the legal entity and affiliation of each possible collaborator and third party;

(k) possible capacity-building initiatives,

(l) purpose of the bioprospecting, research and expected results, including the objectives and methods and any environmental impacts;

(m) types of benefits that could come from the bioprospecting, including benefits from progeny, derivatives and products arising from the utilisation of those resources;

(n) indication of benefit-sharing arrangements, taking into account any relevant regulations, protocols or guidelines,

(o) budget for the proposed bioprospecting,

(p) indication of confidentiality of information to be provided and generated from the bioprospecting;

(q) a list of any other applications or permits related to the proposed activity or otherwise associated with the application;

(r) identification of any traditional uses or knowledge associated with the indigenous biological resources that are proposed to be collected, provided or exported for bioprospecting;

(s) if the indigenous biological resources are to be exported:

(i) the quantity of indigenous biological resources that are to be exported;

(ii) particulars of the legal entity and affiliation of the person or persons receiving the exported indigenous biological resources;

(iii) evidence that the person or persons receiving the exported indigenous biological resources have also agreed to a material transfer agreement consistent with the bioprospecting permit, the benefit sharing agreement and the material transfer agreement;

(iv) the arrangements for the retention, record-keeping, sample storage and access to the exported indigenous biological resources; and

(v) the arrangements for the repatriation of indigenous biological resources samples and their derivates and associated data and information;

(t) proposed repository for the duplicates of any indigenous biological resources accessed;

(u) details about:

(i) the prior written consent of the Island Government to the proposed bioprospecting;

(ii) the prior written consent of the indigenous communities to the proposed bioprospecting;

(iii) the material transfer agreement approved by the Minister;

(iv) any benefit sharing agreements approved by the Minister;

(v) any data and information management plans;

(v) a signed declaration about compliance with the laws and regulations, proper consents and the truthfulness of the information in the application;

(w) any other information relevant to enable the Council to determine the relative costs and benefits of granting the bioprospecting permit;

(x) any other matters as may be prescribed.

94. Issue of bioprospecting permit

(1) The Council must review the information provided under section 93 with the objective of protecting the interests that any of the following stakeholders may have in the proposed bioprospecting project—

(a) any person, including any public or community body, providing or giving access to the indigenous biological resources to which the application relates; and

(b) any indigenous community whose traditional use or knowledge of the indigenous biological resources to which the application relates have initiated or will contribute to or form part of the proposed bioprospecting or use by the applicant of the resources.

(2) If the Council, who may undertake stakeholder consultation pursuant to section 89 for the purpose, identifies the existence of a stakeholder with an interest as set out in subsection (1)(a), the Council may only issue a bioprospecting permit if—

(a) the applicant has disclosed all material information relating to the bioprospecting to the stakeholder and on the basis of that disclosure has obtained the free, prior and informed consent of the stakeholder for the provision of or access to such resources; and

(b) the applicant and the stakeholder have pursuant to this Part entered into a mutually agreed —

(i) material transfer agreement that regulates the provision of or access to such resources; and

(ii) benefit-sharing agreement that provides for sharing by the stakeholder in any future benefits that may be derived from the bioprospecting; and

(c) the Minister has approved the benefit-sharing agreement under section 95(2) and the material transfer agreement under section 96(2).

(3) If a stakeholder has an interest as set out in subsection (1)(b), the Council may only issue a bioprospecting permit if—

(a) The applicant has disclosed all material information relating to the bioprospecting to the stakeholder and on the basis of that disclosure has obtained the free, prior and informed consent of the stakeholder to use any of the stakeholder's knowledge of or discoveries about the indigenous biological resources for the proposed bioprospecting;

(b) the applicant and the stakeholder have entered into a benefit-sharing agreement that provides for sharing by the stakeholder in any future benefits that may be derived from the bioprospecting and

(c) the Minister has approved the benefit-sharing agreement under section 95(2).

(4) A bioprospecting permit may specify—

(a) the type, form and quantity of indigenous biological resources that may be accessed,

(b) limitations on the possible use of the indigenous biological resources,

(c) recognition of the sovereign rights of the Cook Islands,

(d) local capacity-building requirements,

(e) restrictions on transfer of the indigenous biological resources to collaborators and third parties,

(f) measures designed to ensure due respect and protection of knowledge and practices of indigenous communities,

(g) treatment of data, information and confidential information,

(h) details of the person(s) from whom free-prior and informed consent has been obtained,

(i) requirement to comply with benefit-sharing and material transfer agreements, and confirmation that they have been mutually agreed,

(j) a duty to minimise environmental impacts of activities carried out in the Cook Islands,

(k) date of issue, and duration of the permit,

(l) a schedule for regular review and reporting requirements;

(m) where to find a translation into Cook Island Māori;

(n) a unique identifier as a marker of the permit as an Internationally Recognised Certificate of Compliance;

(o) details about the Competent National Authority and checkpoints for any reporting and other monitoring and compliance activities;

(p) requirements to contact the Competent National Authority about any breaches in permitted bioprospecting activities and any breaches of the material transfer agreement or the benefit-sharing agreement; and

(q) the termination date of the permit; and

(r) any other conditions.

95. Benefit-sharing agreements

(1) A benefit-sharing agreement for the purpose of this Part must—

(a) be in a prescribed format, or format approved by the Service where none is prescribed;

(b) be translated into Cook Island Māori;

(c) specify—

(i) the type and form of indigenous biological resources to which the bioprospecting relates;

(ii) the geographical location or source from which the indigenous biological resources are to be collected or obtained;

(iii) the quantity of indigenous biological resources that is to be collected or obtained;

(iv) any traditional uses or knowledge of an indigenous community related to the bioprospecting and present and future potential uses of the indigenous biological resources; and

(d) name the parties to the benefit-sharing agreement;

(e) detail:

(i) any intellectual property rights, and

(ii) any restrictions or limitations on traditional uses or knowledge of an indigenous community,

attaching to the items listed in (c), and how these will be held between the parties;

(f) set out the manner in which and the extent to which the indigenous biological resources are to be utilised or exploited for the bioprospecting;

(g) set out the manner in which and the extent to which the stakeholder will share in any monetary or non-monetary benefits that may arise from the bioprospecting;

(h) specify any agreed access fee, upfront payments, milestone payments, royalties, licence fees in the event of commercialisation, and other forms of monetary amounts;

(i) describe any joint ventures, research funding, payment to the Environmental Protection Fund, project participation, capacity-building, training, education, research dissemination, technology transfer, or other local investment or development initiatives, and other forms of monetary and non-monetary arrangements;

(j) provide for a regular review of the agreement by the parties as the bioprospecting progresses; and

(k) comply with any other matters that may be prescribed.

(2) A benefit-sharing agreement or any amendment to an agreement—

(a) must be submitted to the Minister for approval; and

(b) does not take effect unless approved by the Minister.

96. Material transfer agreements

(1) A material transfer agreement must—

(a) be in a prescribed format, or format approved by the Service where none is prescribed;

(b) be translated into Cook Island Māori;

(c) specify—

(i) particulars of the person providing or giving access to the indigenous biological resources, and of the applicant for the

bioprospecting permit for collecting or obtaining the resources;

(ii) the type and form of indigenous biological resources to be collected or obtained and the arrangements for the retention, record-keeping, sample storage and access to the indigenous biological resources;

(iii) the geographical location or source from which the indigenous biological resources are to be collected or obtained;

(iv) the quantity of indigenous biological resources that is to be collected or obtained;

(v) if the indigenous biological resources are to be exported:

(A) the quantity of indigenous biological resources that is to be exported;

(B) particulars of the legal entity and affiliation of the person or persons receiving the exported indigenous biological resources;

(C) evidence that the person or persons receiving the exported indigenous biological resources has or have also agreed to a material transfer agreement consistent with the bioprospecting permit, the benefit sharing agreement and the material transfer agreement;

(D) the arrangements for the retention, record-keeping, sample storage and access to the exported indigenous biological resources; and

(E) the arrangements for the repatriation of indigenous biological resources samples and their derivates and associated data and information;

(F) the purpose for which such indigenous biological resources are to be exported, and any limitations thereto;

(vi) the present and future potential uses of the indigenous biological resources;

(vii) agreed data retention, record-keeping, and sample storage and access arrangements;

(viii) how intellectual property rights shall apply to creations, products or processes associated with and derived from the indigenous biological resources;

(ix) how the Cook Islands may be recognised as the country of origin of the indigenous biological resources, in any future use;

(x) conditions under which the recipient may provide any such indigenous biological resources, or their progeny or derivatives, to a third party;

(xi) agreement that the indigenous biological resources shall only be used for the purposes and in accordance with the terms and conditions set out in the agreement;

(xii) statement that any change in use or purposes would require an amendment to the agreement, and new free, prior and informed consent from the relevant stakeholders;

(xiii) circumstances in which the agreement can or must be renegotiated;

(xiv) clauses regarding the assignment or transfer rights;

(xv) dispute resolution arrangements; and

(xvi) any such other matter as may be prescribed.

(2) A material transfer agreement or any amendment to such an agreement—

(a) must be submitted to the Minister for approval; and

(b) does not take effect unless approved by the Minister.

97. Benefit-sharing: assistance from the Service

The Service, in collaboration with other authorities relevant to indigenous rights in the Cook Islands —

(a) may assist the applicant and stakeholder in defining the terms and conditions of a benefit-sharing or material transfer agreement;

(b) may facilitate negotiations between the applicant and stakeholder and ensure that those negotiations are conducted on an equal footing;

(c) on request by the Minister, must provide its opinion whether any benefit-sharing arrangement agreed upon between the applicant and stakeholder is fair and equitable;

(d) must take action to monitor and enforce the terms or permits or agreements entered into under this Part;

(e) may make recommendations to the Minister; and

(f) must perform any other functions that may be prescribed.

98. Termination of bioprospecting

A bioprospecting permit issued under this Part ends when –

(a) It is revoked by the Council;

(b) An end date as specified in the permit is reached;

(c) The bioprospecting act or activity is ended.

99. Extension and variation of bioprospecting permit

(1) A bioprospecting permit holder may apply for an extension or variation in writing to the Council:

(a) to extend a permit that is still in force under this Part – by applying in writing to the Council at least 30 days before the permit's end, stating the reasons for the request, or

(b) to vary a permit that is still in force under this Part – by applying in writing to the Council and stating the reasons for the request,

and complying with any other prescribed procedures and requirements.

(2) Pursuant to an application under subsection (1), the Council may extend or vary a bioprospecting permit after consultation with relevant stakeholders and indigenous communities, and if satisfied that:

(a) there is free, prior and informed consent;

(b) there is an agreed benefit sharing agreement and material transfer agreement; and

(c) any new environmental impacts are addressed in accordance with this Act.

(3) A permit extension or variation —

(a) must be submitted to the Minister for approval;

(b) does not take effect unless approved by the Minister; and

(c) may include conditions.

100. Environmental impact assessment for bioprospecting

Nothing in this Part:

(a) affects the proper application of Part 11 of this Act to bioprospecting activities; and

(b) limits a bioprospecting permit applicant from requiring an environmental impact assessment and a separate environmental permit where a bioprospecting project causes or is likely to cause a significant environmental impact.

101. Indigenous biological resources benefit-sharing fund

(1) The Minister, in cooperation with the Minister of Finance, may establish a trust fund into which all moneys arising from benefit-sharing agreements under this Part, and due to stakeholders, can be paid, and from which all payments to or for the benefit of stakeholders can be made.

(2) The Service will maintain and publish a record of all moneys arising from benefit-sharing agreements under this Part.

Part 15

Environment Protection Fund

102. Environment Protection Fund

(1) The Minister may establish for the objectives of this Act an Environment Protection Fund.

(2) The monies for the Environment Protection Fund may consist of—

(a) fees charged under this Act or regulations;

(b) damages, costs and compensation granted by a court to the Government in respect of an action under this Act or regulations;

(c) sums of money received from instant penalty payments under this Act;

(d) proceeds of the sale of forfeited items collected, imposed or received by or under this Act;

(e) funds raised through levies and taxes imposed by other enactments, or by appropriations, the proceeds of which are identified for deposit in the Environment Protection Fund;

(f) loans and grants; and

(g) such other sources of money as may be specified in regulations.

103. Use of the Environment Protection Fund

Monies held in the Environment Protection Fund must be expended in pursuance of the objectives of this Act, and at such times and in such manner, and otherwise administered—

(a) as prescribed by regulations; or

(b) in the absence of such regulations, as Cabinet may from time to time approve.

104. Policies in relation to the Environment Protection Fund

(1) The Minister must establish a committee to advise on the responsibilities related to the Environment Protection Fund, which must include in its membership the Director, who will act as Secretary.

(2) The committee established under subsection (1) must, for the purpose of the management and administration of the Environment Protection Fund where it has been established—

(a) formulate policies to generate money for the Environment Protection Fund; and

(b) determine allocations to be made from the Environment Protection Fund.

(3) The Director must make minutes of any meeting of the committee established under subsection (1) available to the public in accordance with section 86.

Part 16

Environment Officers

105. Island Environment Officers and National Environment Officers

(1) The Director must appoint at least one Island Environment Officer to each island.

(2) The Director may from time to time appoint National Environment Officers for the purposes of this Act.

(3) Environment Officers must be employed by the Service on terms and conditions specified in a contract of employment.

(4) The Director must, upon appointment, issue to an Environment Officer an identity card, which must be returned to the Director at the end of the appointment.

(5) Subject to subsection (6), an Island Environment Officer must perform the functions of the Service—

(a) on or in relation to the island to which the officer was appointed; and

(b) under the general direction of the Director and in consultation with the Island Environment Authority for that island.

(6) The Director may at any time, following consultation with the relevant Island Environment Authority and the Environment Officer concerned, including with regards to length of redeployment period, redeploy an Island Environment Officer to work on or in relation to any other part of the Cook Islands under the general direction of the Director.

(7) A National Environment Officer must perform the functions of the Service—

(a) on or in relation to any part of the Cook Islands to which this Act applies; and

(b) under the general direction of the Director.

(8) The following persons are deemed to be a National Environment Officer for the purposes of this Act—

(a) the Director;

(b) any serving police officer designated in writing by the Director;

(c) any serving police officer assisting or accompanying an Environment Officer in the exercise or performance of functions or powers conferred under this Act.

(9) An Environment Officer shall be deemed an inspector for the purposes of the Seabed Minerals Act 2019.

106. Jurisdiction of Environment Officers

(1) A National Environment Officer may exercise powers on or in relation to any area to which this Act applies.

(2) An Island Environment Officer may exercise powers on or in relation to the island to which he or she has been appointed or redeployed under section 105.

107. Powers of Environment Officers

(1) Where an Environment Officer suspects that an offence against this Act is being or has been committed, he or she may—

(a) subject to subsections (2) and (3), enter at any reasonable time, and inspect and search, any premises to investigate the suspected offence,

(b) take samples of any material relevant to the offence for testing or evidentiary purposes,

(c) order any person suspected of the offence to do all or any of the following—

(i) disclose full name and usual place of residence;

(ii) produce any environmental approval, permit, consent, or other evidence of a document authorising the act or omission that would otherwise constitute the offence;

(d) by environmental protection notice pursuant to Part 17 of this Act, order any person to cease any specified activity, which the Environment Officer has reasonable grounds to believe is an offence against this Act.

(2) An Environment Officer entering any premises under subsection (1) must, if requested by an occupier of the premises, produce that officer's identity card.

(3) No Environment Officer may enter a dwelling house for the purposes of this section except –

(a) with the consent of an occupier of the dwelling house; or

(b) in accordance with a warrant issued under section 109.

(4) Every person commits an offence against this Act who, without reasonable excuse or lawful justification, fails or refuses to comply with an order made under subsection (1)(c), and will upon conviction be liable to a fine not exceeding $5,000.

(5) An Environment Officer may undertake reasonable inspection activities, including conduct a site visit, where the Service or permitting authority consider this necessary or expedient, in order to verify information submitted in an application for an environmental approval, consent, or permit, or to monitor impacts or verify reports relating to an activity that has been approved, consented or permitted, under this Act, or that the Service believes may require an environmental approval, consent or permit, or to monitor compliance with an environmental protection notice issued under this Act, or any other requirement of this Act.

108. Additional powers of Environment Officers with police or warrant

(1) Where there are reasonable grounds to believe that an offence under this Act is being or has been committed, an Environment Officer may exercise a power specified in subsection (2) if the officer—

(a) is a serving police officer;

(b) is assisted or accompanied by a serving police office; or

(c) is acting in accordance with a warrant issued under section 109.

(2) Subsection (1) refers to the power to—

(a) seize any animal, plant, article or property (not including land) that could constitute evidence as to the commission of the offence;

(b) take or cause to be taken such steps as appear to the Environment Officer to be necessary either to ensure compliance with the requirements of an environmental protection notice served under Part 17, or to remedy the consequences of a failure to so comply, and the Service may recover all reasonable costs of taking such steps as a debt due to the Service from the person on whom the notice was served; and

(c) arrest a person who is believed to be committing, or have committed, the offence.

109. Warrants to inspect dwelling house, seize property, or arrest persons

(1) A Justice of the Peace or Judge may, on the written application of an Environment Officer made on oath, issue a warrant to the Environment Officer, unconditionally or subject to conditions a, valid for 14 days from the date of issue, authorising that officer to do all or any of the following—

(a) enter and inspect a specified dwelling house for the purposes of section 107;

(b) seize any item for the purposes of section 108(2)(a);

(c) arrest a named person for the purposes of section 108 (2)(c).

(2) No warrant may be issued under subsection (1) unless the Justice of the Peace or Judge concerned is satisfied that there are reasonable grounds for believing—

(a) in the case of a warrant issued under paragraph (a) of that subsection, that an offence against this Act is being or has been committed in or from the dwelling house concerned;

(b) in the case of a warrant issued under paragraph (b) of that subsection, that the item concerned could constitute evidence as to the commission of an offence against this Act;

(c) in the case of a warrant issued under paragraph (c) of that subsection, that the person concerned is committing or has committed an offence against this Act.

110. False statements, obstructing or impersonating an Environment Officer

Any person—

(a) making a statement that is false or misleading in any material particular in any application or in other information given to an Environment Officer, the Service, or permitting authority under this Act; or

(b) falsifying or altering any document that is granted, served or issued by an authority or Environment Officer under this Act or providing to an authority or Environment Officer a document that has been falsified or altered by the person or that the person knows to have been falsified or altered; or

(c) intentionally or recklessly delaying, hindering, obstructing, assaulting or threatening an Environment Officer acting in the exercise of functions or powers conferred under this Act, or allowing an animal under their control to do so, or inducing or inciting another person to do so; or

(d) who by words or conduct falsely represents that he or she is an Environment Officer or who otherwise impersonates an Environment Officer;

commits an offence, and upon conviction will be liable to a fine not exceeding $50,000, or to imprisonment for a term not exceeding 3 months, or both.

111. Forfeiture of property

(1) Upon the conviction of any person for an offence against this Act, the Court may in addition to imposing any penalty by way of fine or imprisonment, order the forfeiture to the Service of any property (not including land) used or otherwise involved in the commission of the offence.

(2) Any property or article forfeited under subsection (1), may be sold or otherwise disposed of as the Court thinks fit, and the proceeds of any

such sale must be paid into the Environment Protection Fund where established, or to the Service otherwise for its use.

Part 17

Environmental Protection Notices

112. Environmental protection notices

(1) An Environment Officer may serve an environmental protection notice on a person where to do so is reasonable and in accordance with any relevant standards or guidelines, in order —

(a) to secure compliance with this Act, or regulations; or

(b) otherwise to secure necessary action to protect the environment.

(2) Any person who, without reasonable excuse or lawful justification, fails to comply with an environmental protection notice in spite of a written warning or warnings from the Service, or who obstructs another person from so complying, commits an offence, and upon conviction will be liable to a fine not exceeding $50,000 or imprisonment for a term not exceeding 6 months, or both.

113. Content of environmental protection notices

(1) An environmental protection notice must—

(a) be in writing;

(b) describe the premises or person to which it relates;

(c) specify the purpose of the notice, including the environmental concern or harm that is the subject of the notice;

(d) specify, to the extent necessary—

(i) any operations which are to be carried out on the premises or by the person named, or other actions that must be taken for the purpose of preventing, controlling, mitigating or eradicating the environmental concern or harm;

(ii) the manner in which those operations are to be carried out;

(iii) the person or persons who are to carry out those operations; and

(iv) the timeframe within which those operations are to be carried out;

(e) specify any operations or actions which must not be carried out on the premises or by the person named;

(f) specify the date on which the notice is to come into effect and the period for which it is to have effect;

(g) not impose unreasonable burden on the recipient of the notice, in the circumstances; and

(h) be counter-signed by the Director.

(2) An environmental protection notice may provide for the making of payments by the owner or occupier of the premises to which the notice relates, to any person in respect of reasonable costs incurred by a person carrying out an operation under the notice.

114. Appeals against notices

(1) A person—

(a) on whom an environmental protection notice is served under this Act; or

(b) is subject to the imposition of requirements under any environmental protection notice served under this Act,

may within the period of twenty-eight days of the date of service appeal against the notice to the Court.

(2) On any appeal under subsection (1) the Court may modify or quash the notice, as appropriate, if it is satisfied that—

(a) the service of the notice, or any requirement contained in it, is not reasonable in all the circumstances;

(b) there is a material defect in the notice;

and in any other case must dismiss the appeal.

115. Coming into effect of notices

Unless a notice specifies a later date—

(a) an environmental protection notice that is specified as an emergency environmental protection notice comes into effect at the time it is served; and

(b) any other notice comes into effect either—

(i) upon the expiry of the time limit for appealing against the decision to serve the notice; or

(ii) where such an appeal is made, on the date of withdrawal of the appeal or on the date of its final determination, subject to any directions the Court may make.

116. Information as to compliance with notices

(1) A person on whom a notice has been served, or is deemed to have been served, under this Act must, if so required by an Environment Officer, inform the Environment Officer whether and how the requirements of the notice have been complied with.

(2) Any person who, without reasonable excuse or lawful justification, fails to comply with the request of an Environment Officer made pursuant to subsection (1) commits an offence, and upon conviction will be liable to a fine not exceeding $5,000.

Part 18

Instant Penalties

117. Establishment of instant penalty

If the Director has reasonable cause to believe that—

(a) an offence against this Act that carries a penalty of a fine not exceeding $100,000 may have been committed by any person;

(b) information or charge has not been laid in respect of the alleged offence;

(c) the nature of the individual's act or omission that has caused the offence is deemed to be of a minor nature;

(d) the person involved has no previous record of offending against this Act; and

(e) in all the circumstances it would be appropriate to impose a penalty under this section rather than pursue a prosecution,

the Director may serve an instant penalty notice on that person.

118. Form of instant penalty

An instant penalty notice served under this Act must be in writing and contain—

(a) the date and nature of the alleged offence;

(b) a full summary of the facts on which the allegation is based;

(c) any other matters that the Director considers relevant to the imposition of a penalty;

(d) a statement setting out the provisions of this section and section 119; and

(e) a statement inviting written submissions within 28 days from date of service as to the matters the person may wish the Director to take into account in determining any penalty.

119. Procedure for instant penalty

(1) Any person on whom an instant penalty notice is served may, within 28 days of service, serve written notice on the Director, either

(a) admitting the offence and making submissions as to the matters the person wishes the Director to take into account in determining any penalty; or

(b) not admitting the offence and requiring that the alleged offence must be dealt with before a court, in which case the following provisions apply—

(i) no further proceedings may be taken under this section by the Director;

(ii) nothing in this section may be construed to prevent the subsequent laying of any information or charge, or conviction, in respect of the alleged offence.

(2) Any person on whom an instant penalty notice is served who does not serve a written notice on the Director in accordance with subsection (1), is deemed to have admitted the offence.

120. Imposition of instant penalty

(1) If, following service of an instant penalty notice, a person admits or is deemed to have admitted an offence, the Director, after taking into account any submissions made by the person in accordance with section 119(1)(a), must impose on that person by written notice a monetary penalty, payable to the Service within 28 days of the notice, for an amount not exceeding one-fifth of the maximum monetary penalty to which the person would be liable if the person were convicted of the offence by a court.

(2) The imposition of a monetary penalty on a person under subsection (1) —

(a) does not affect any powers to suspend, withdraw, or modify any environmental approval, permit, consent, or other authority that may be held by that person under this Act or any other enactment;

(b) does prevent any further information or charge being laid against the person in respect of the admitted offence.

Part 19

Offences, Jurisdiction and Liability

121. General penalty for offences

Any person who is convicted of an offence against this Act for which a maximum penalty upon conviction is not specified, will be liable—

(a) in the case of a body corporate, to a fine not exceeding $200,000, and if the offence is a continuing one to a further fine not exceeding $2,000 for each day or part of a day that the offence continues;

(b) in the case of an individual, to a fine not exceeding $100,000 or to imprisonment for a term not exceeding one year, or to both, and if the offence is a continuing one to a further fine not exceeding $1000 for each day or part of a day that the offence continues,

122. Restoration after an offence

In addition to or instead of any fine and imprisonment for an offence against this Act, the Court may order a convicted person to do all or any of the following—

(a) under the supervision and to the satisfaction of a person nominated by the court, to clear up any harmful substance or remedy any damage caused to the environment as a consequence of the offence within such period and upon such conditions as may be specified in the order, with the intent that any damaged area be restored as near as possible to a satisfactory, environmentally sound state;

(b) to remove any structure, fill or other material placed in contravention of this Act;

(c) to pay such amount as the Court may assess in respect of the expenses and costs that have been or are likely to be incurred clearing up harmful substances, remedying damage, removing material or otherwise restoring the environment to its state immediately before the offence.

123. Strict liability

(1) It is not necessary for the prosecution to prove that a defendant intended to commit an offence for any offence against this Act, save where the provision describing the offence specifies that such proof is required.

(2) It is a defence to an offence under this Act if the defendant proves that the defendant took all reasonable steps to ensure that a required action was taken, or that a prohibited action was not taken.

124. Liability of principals and agents

(1) If an offence against this Act is committed by an agent or employee of another person, that person is, without prejudice to the liability of the agent or employee, guilty of the same offence if it is proved—

(a) that the act or omission that constituted the offence took place with the authority, permission or consent of that person; or

(b) that person—

(i) knew or should have known that the offence was to be or was being committed; and

(ii) failed to take reasonable steps to prevent or stop it.

(2) Where a body corporate is convicted of an offence against this Act, every director or person similarly concerned in the management of the body corporate, is guilty of the same offence if it is proved—

(a) that the act or omission that constituted the offence took place with the authority, permission or consent of that person; or

(b) that person—

(i) knew or should have known that the offence was to be or was being committed; and

(ii) failed to take reasonable steps to prevent or stop it.

Part 20

General and Miscellaneous Provisions

125. Protection of Officials

No Environment Officer or member of an Island Environment Authority or the Council will be liable to be prosecuted, or to pay damages, for anything done or omitted to be done in the exercise or performance in good faith of the functions, duties, or powers vested this Act, or for the purposes of any evidence given to proceedings held under this Act.

126. Regulations

(1) The King's Representative may from time to time by Order in Executive Council make such regulations as are contemplated by any provision of this Act or are necessary for giving full effect to the provisions of this Act.

(2) Without limiting the generality of subsection (1), regulations may be made for all or any of the following purposes, which may cover individual islands, or the Cook Islands generally, —

(a) providing for the protection, conservation and management of biodiversity, protected species, or other plants or animals;

(b) implementing at the national level, the obligations of international or regional agreements to which the Cook Islands is or intends to become a party;

(c) imposing further reporting obligations on the Service;

(d) establishing rules for the composition or operation of the Technical Experts Register of the Service;

(e) establishing priority areas for environmental monitoring and reporting by the Service, detailing required monitoring programmes, or setting environmental targets;

(f) detailing measures or plans designed to improve the state of the environment of the Cook Islands;

(g) regulating or prohibiting trade and commerce or other activities relating to plants and animal, including protected species;

(h) prescribing rules or conditions for the grant of environmental approvals, consents or permits for activities relating to protected or invasive species;

(i) regulating or prohibiting the pollution of air, water, or land, and the discharge or management of pollution, plastics, waste, or any substance of a dangerous, noxious, or offensive nature;

(j) regulating or prohibiting the supply, exportation, importation, or transport of hazardous wastes, or wildlife, into or out of the Cook Islands;

(k) designating pollutants, and procedures for management of their use, including the application of a pollution levy;

(l) regulating or promoting activities related to recycling;

(m) controlling soil erosion and siltation, and regulating or prohibiting the taking of gravel, sand, soil, rock, coral or similar material;

(n) prescribing procedures for the preparation of and giving effect to management plans;

(o) establishing island protected areas and marine protected areas, setting fees for entrance or activities within such areas, and managing, regulating or prohibiting activities within those areas;

(p) further criteria for defining significant environmental impact for the purposes of this Act, and categorising or establishing procedures for determining whether a proposed activity is Tier 1, Tier 2 or Tier 3;

(q) regulating the undertaking of Tier 1, Tier 2, and Tier 3 activities;

(r) prescribing the content or format, or processes for preparation of, environmental impact statements, environmental management and monitoring plans, or strategic environmental assessment reports required under the Act;

(s) prescribing thresholds or procedures for environmental approvals, consents or permits under the Act;

(t) prescribing rules for requiring an environmental bond as a condition of an environmental permit;

(u) prescribing thresholds and procedures for bioprospecting;

(v) relating to recognised environmental organisations;

(w) with the consent of the Minister responsible for finance, determining sources of money for the Environment Protection Fund; and rules and procedures for its management and operation;

(x) prescribing procedures for entry, inspection, or search of premises, arrest of a person, seizure or forfeiture of property, and the taking and testing of samples, in the exercise of powers conferred by this Act;

(y) prescribing offences and penalties, including administrative penalties, community service or fines—

(i) in the case of a body corporate, not exceeding $200,000 and, in the case of continuing offences, a fine not exceeding $2000 for every day on which the offence continues;

(ii) in any other case, not exceeding $100,000 and, in the case of continuing offences, a fine not exceeding $1000 for every day on which the offence continues;

(z) prescribing forms, fees or other procedures or functions to be used for the purposes of this Act; or

(aa) providing for any matter incidental to or connected with any of the foregoing.

127. Adoption of Island Government bylaws

(1) An Island Government may refer to the Minister for the approval of an Island Government bylaw relating to the protection or management of the environment.

(2) If the Minister considers it appropriate the Minister may by notice in the Gazette approve that bylaw.

(3) A bylaw approved by the Minister under this section will be deemed to have the force of regulations.

(4) Despite any provision of the Island Government Act 2012-2013 to the contrary, every person who commits an offence against a by-law approved by the Minister under this section will be liable to a fine not exceeding $50,000, and in the case of a continuing offence, to an additional fine not exceeding $1,000 for every day on which the offence continues.

128. Repeal

Subject to sections 129 to 132, the Environment Act 2003 is repealed.

129. Transitional provisions concerning the Suwarrow National Park

In Suwarrow, the Suwarrow National Park Declaration of 1978 and any rules relating to the island's management issued under the 2003 Act have effect as if they were regulations made under section 126, unless and until such time that an island protected area under this Act, or another Cook Islands enactment, is established to cover the relevant site.

130. Transitional provisions concerning regulations made under the Environment Act 2003

All regulations lawfully promulgated under the Environment Act 2003 shall continue to have effect as if they were regulations made under section 126, unless and until such time that they are repealed and replaced by new regulations made under this Act.

131. Transitional provisions for Island Environment Authorities

In respect of any Island Environment Authority established under the Environment Act 2003 apply until either—

(a) the Island Environment Authority passes a resolution that its membership and other rules of procedure are consistent with this Act; or

(b) two years after the entry into force of this Act,

whichever occurs first.

132. Transitional provisions for Environment Officers

Every person deemed to be an Environment Officer, immediately before the coming into force of this Act is deemed to be an Environment Officer under this Act, subject to any contract of employment applying to the person immediately before the coming into force of this Act.

133. Amendments to Other Acts

(1) In the Prevention of Marine Pollution Act 1998 –

(a) delete both sub-paragraphs of 3(2)(b), namely the text: *"(b) from any place on land; or' and '(b) the occupier of any place on land;*";

(b) in section 3(3)(c) add the words "*in consultation with the Director of the National Environment Service*" after the words "*approved by the Secretary*";

(c) in section 7, add a new subsection (3): "*(3) The Secretary shall immediately share any report received under this section with the Director of the National Environment Service*"*;*

(d) in section 15, add a new subsection (2)*bis* "*The Secretary shall consult with the Director of the National Environment Service before issuing any permits under this section*".

(e) In section 19, add a new subsection (7) "*The Secretary shall consult with the Director of the National Environment Service before issuing any instruction or taking any measure under this section*".

(2) In section 4 of the Marine Resources Act 2005, add a new paragraph (f) "*The views and technical inputs of the National Environment Service in any matter relevant to the environment*".

(3) Section 9(2) of the Disaster Risk Management Act 2007 is replaced with the following—"*(2) The Council consists of nine members being—*

(a) the Prime Minister, or his delegate, who will act as the Chair;

(b) the Financial Secretary;

(c) the Police Commissioner;

(d) the Director;

(e) the Public Service Commissioner;

(f) the Chief Executive Officer of Office of the Minister of Island Administration;

(g) the Secretary of Ministry of Works;

(h) the Director of the Metrological Services; and

(i) the Director of the National Environment Service".

(4) In section 4 of the Marae Moana Act 2017, add "***Biodiversity** means the variability among living organisms from all sources including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part, and this includes diversity within species, between species and of ecosystems, but for the purposes of this Act does not include humans*".

(5) Section 21(4) of the Seabed Minerals Act 2019, is replaced with the following addition: "*The Commissioner, and any constable assisting or accompanying the Commissioner or another inspector while the Commissioner or inspector is performing functions or exercising powers conferred under this Act, **and any Environment Officer appointed in accordance with the Environment Act [2023]** is deemed to be an inspector for the purpose of this Act.*"

(6) In the Environment (Atiu and Takutea) Regulations 2008 -

(a) in sections 15 and 16, replace all reference to 'protected areas' with 'special management areas'.

(7) In the Environment (Mitiaro) Regulations 2008 -

(a) in sections 14 and 15, replace all reference to 'protected areas' with 'special management areas'.

This Act is administered by the National Environment Service.

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