

## **Conservation Act 1986-1987**

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**1986-87, No. 29**

An Act to establish a Conservation Service as a corporation and to make provision for the conservation and protection of the environment and national resources and the establishment of national parks and reserves

(15 April 1987)

**BE IT ENACTED** by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title - This Act may be cited as the Conservation Act 1986-87.

2. Interpretation - In this Act, unless the context otherwise requires -

"Animal" means any member, alive or dead, of the animal kingdom (other than man); and includes -

(a) Fish of any kind, including, but without limiting the generality of the term, shellfish, crustaceans and turtles;

(b) Eggs or parts of eggs; and

(c) The skin, feathers, horns, shell, or any other part of an animal;

"Coastal zone" means all those areas comprising coastal waters and the foreshore;

"Coastal waters" means all that area having as its inner boundary the mean low water mark, and as its outer boundary, the outer limit of the territorial sea, and includes every lagoon and the bed of such sea or lagoon;

"Cook Islands waters" means the waters of the territorial sea of the Cook Islands as defined in section 3 of the Territorial Sea and Exclusive Economic Zone Act 1977 and the internal waters of the Cook Islands as defined in section 4 of that Act and includes the waters of any river, stream, or lake;

"Council" means the Conservation Council established under this Act;

"Conservation Officer" means a Conservation Officer appointed under this Act;

"Director" means the Director of Conservation appointed under this Act;

"Discharge" includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

"Environment" means the physical features of the surroundings of human beings, including the land, water, atmosphere, climate, sound, odours, tastes, the biological features of animals and plants, and the social features of aesthetics;

"Foreshore" means -

(a) all that area between the mean low water mark and a line connecting those points landward and measured at right angles to a distance of 50 metres from the mean low water mark; and

(b) every stream river and lake together with the bed of any stream river and lake and includes that area extending landward and measured at right angles to a distance of 5 metres from the bank of any such stream, river and lake;

"National park" means a national park established under this Act;

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

"Minister" means the Minister charged with the responsibility for conservation;

"Plant" includes any plant, tree, shrub, herb, flower, nursery stock, culture, vegetable, or other vegetation; and also includes any fruit, seed, spore, and portion or product of any plant;

"Reserve" means a reserve established under this Act;

"Service" means the Conservation Service established by this Act;

"Vessel" means every description of watercraft or other artificial contrivance used or capable of being used as a means of transportation on water;

"Wildlife" means -

(a) Animals and plants that are indigenous to the Cook Islands or to Cook Islands waters;

(b) Migratory animals that periodically or occasionally visit the Cook Islands or Cook Islands waters;

(c) Any other animals and plants described by regulations made under this Act.

3. Act to bind the Crown - This Act shall bind the Crown.

4. Application of Act - (1) This Act shall apply to such parts of the Cook Islands and Cook Islands waters as are specified from time to time by the Queen's Representative by Order in Executive Council, and different Parts may be so specified in respect of different parts of the Cook Islands.

(2) Where the provisions of this Act or of any regulations or orders made under this Act are inconsistent with any of the provisions of any other Act, or of any regulations, by-laws, or other laws made under any other Act, the provisions of this Act or of the regulations or orders made under this Act shall prevail.

## PART I CONSERVATION SERVICE

5. Conservation Service - (1) There is hereby established a body corporate to be called the Conservation Service, with perpetual succession and a common seal, which shall be capable of holding real and personal property and of suing and being sued, and of doing and suffering all such other acts and things as corporations may lawfully do and suffer.

(2) The Conservation Service shall comprise the Conservation Council established under section 8, the Director and such other officers and employees as may be appointed pursuant to section 15.

6. Functions - The functions of the service shall be -

(a) To administer, manage, and control national parks and reserves;

(b) To protect, conserve, manage, and control wildlife;

(c) To protect, conserve, manage, and control forest and tree resources, and carry out afforestation and tree-planting measures;

(d) To protect, conserve, manage, and control water catchments and Cook Islands waters;

(e) To protect, conserve, manage, and control soil resources and the coastal zone;

(f) To prevent, control, and correct pollution of air, water, and land resources, and to promote litter control;

(g) To provide, and assist in the provision of training in the skills associated with performing any of the foregoing functions;

(h) To carry out investigations and research relevant to the protection and conservation of the environment;

(i) To make recommendations to the Minister in relation to -

(i) The establishment and naming of national parks and reserves;

(ii) The protection and preservation of the environment;

- (j) To prepare provide disseminate promote and publicise educational and promotional material relating to conservation and to publicise the benefits to present and future generations of the conservation of natural and historic resources of the Cook Islands;
- (k) To do anything incidental or conducive to the performance of any of the foregoing functions.

7. Powers - (1) The Service shall have power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions and, in particular shall have power -

- (a) To enter into contracts;
- (b) To erect buildings and structures and carry out works in the public interest on any national park or reserve;
- (c) To accept gifts, devices, and bequests made to the Service whether on trust or otherwise, and to act as trustee of money or other property vested in the Service upon trust;
- (d) To do anything incidental to any of its powers.

(2) The Service shall have power to perform any of its functions in co-operation with a Department of State or with any organisation.

8. Conservation Council - (1) There shall be a Conservation Council which shall be responsible for carrying out those functions set out in section 6 and exercising those powers set out in section 7.

(2) The Council shall consist of 5 members comprising:

- (a) The Director of Conservation, who shall be Chairman of the Council; and
- (b) Four other persons appointed by the Minister at least one of whom shall be appointed from the private sector being a person who, in the opinion of the Minister possesses suitable knowledge relating to conservation and environmental matters. Such person shall not by reason only of his appointment as a Council member be deemed to be employed in the Public Service within the meaning of the Public Service Act 1975.

9. General discretion - The Council shall, in the exercise of the functions and powers conferred upon it by this Act, have as its principal objective the protection and conservation of the environment.

10. Tenure of office - (1) Except as otherwise provided by this section, every appointed member of the Council shall be appointed for a term of 3 years, but may from time to time be re-appointed.

(2) Any member of the Council may at any time resign by giving notice in writing to the Minister.

(3) The Minister may by notice in writing remove an appointed member from the Council in the case of a member becoming incapacitated by illness, incompetence, or is otherwise unable or unfit to discharge his functions as a member.

(4) Where any appointed member of the Council ceases to be a member before the expiration of his appointed term of office the Minister may appoint another member in his stead for the balance then remaining of his term of office.

11. Meetings of the Council - (1) Every meeting of the Council shall be presided over by the Chairman. In the absence of the Chairman the members present shall appoint one of their number to be the Chairman of that meeting.

(2) The first meeting of the Council shall be held on a date to be appointed by the Chairman, and subsequent meetings shall be held at such times as the Council may from time to time determine being in any event not less than once every two months.

(3) The Chairman may at any time convene a special meeting and, on the requisition in writing of any two members, shall forthwith convene a special meeting.

(4) At all meetings of the Council the quorum necessary to transact business shall be three members.

(5) Every question before a meeting of the Council shall be determined by a majority of valid votes of the members present and, in the case of equality of votes the Chairman shall have a casting as well as a deliberative vote.

(6) Subject to the provisions of this Act and any regulations made hereunder, the Council may regulate its proceedings in such manner as it thinks fit.

12. Minutes of meetings - (1) The council shall cause minutes of all meetings to be kept in a book provided for the purpose of all resolutions and proceedings at its meetings.

(2) The minutes shall be signed by the Chairman at the meeting immediately after the meeting at which they were passed.

(3) A copy of the minutes of every meeting shall be furnished to every member of the Council.

13. Remuneration of Council members - Every Council member may be paid out of the public account such remuneration expenses and allowances as may be determined by the Queen's Representative by Order in Executive Council.

14. Disclosure of conflicting interests - (1) Any member who, otherwise than in his capacity as a member; is directly or indirectly interested in any arrangement or agreement entered into or proposed to be entered into by the Council shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Council.

(2) A disclosure under this section shall be recorded in the minutes of the meeting and the member shall thereafter not take part in any deliberations or decisions relating to the arrangement or agreement but shall be counted as present for the purpose of forming a quorum of the Council for any such deliberation or decision.

## PART II DIRECTOR, OFFICERS, AND EMPLOYEES

15. Director, other officers, and employees - (1) There shall be a Director of Conservation, who shall be appointed by the Minister, and shall be the administrative head of the Service who may subject to the consent of the Council exercise such functions and powers as are conferred on the Service.

(2) Such other officers and employees of the Service as may be required shall be appointed by the Director with the approval of the Minister.

(3) The Director and other officers and employees of the Service shall be deemed not to be members of the Cook Islands Public Service:

Provided that the provisions of any law for the time being in force relating to the tenure of office of employees of the Cook Islands Public Service, the grounds upon which such employees may be dismissed or suspended, the rights of such employees to appeal against dismissal or suspension, the rights of such employees to apply for other positions in the Cook Islands Public Service, and the rights of such employees to join superannuation schemes administered by the Cook Islands Public Service shall, except as otherwise provided in this Act, apply to the Director and the other officers and employees of the Service as if they were employees of the Cook Islands Public Service.

(4) The Director may, with the prior approval of the Council and Minister, employ such consultants as he considers necessary to assist the Service in the performance of its functions.

16. Delegation of powers - (1) Subject to any directions in writing by the Council, the Director may, by writing signed by him, delegate to any officer of the Service all or any of his 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 shall not prevent the exercise of a power or the performance of a function by the Director.

### PART III CONSERVATION OFFICERS

17. Appointment of Conservation Officers - (1) The Director may, with the approval of the Minister, by instrument in writing, appoint officers or employees of the Service to be Conservation Officers.

(2) The Director shall, by virtue of his appointment, be deemed to be a Conservation Officer.

(3) Every constable shall, by virtue of his office, have all the powers of a Conservation Officer under this Act.

(4) The Director shall cause to be issued to each Conservation Officer, other than a constable, an identity card in such form as the Director thinks fit, containing a photograph of the holder.

(5) Any person who ceases to be a Conservation officer shall forthwith return his identity card to the Director.

18. Power of Conservation Officer to make search - (1) A Conservation Officer may, on producing his identity card issued under section 17, and in the presence of a constable, search a vehicle, aircraft, or vessel if he believes on reasonable grounds that there is in or on that vehicle, aircraft or vessel-

- (a) Any animal, plant, or article in respect of which an offence against this Act has been committed; or
  - (b) Anything that will afford evidence as to the commission of an offence against this Act,
- and may for that purpose stop or detain a vehicle, aircraft or vessel.

19. Arrest by Conservation Officer - (1) Any Conservation Officer may without warrant, in the presence of a constable arrest any person whom he reasonably believes to have committed an offence against this Act or regulations made under this Act.

(2) Before arresting any person under subsection (1), the Conservation officer shall produce and show his identity card to the person being arrested.

(3) Any person arrested under subsection (1) shall be brought before the High Court as soon as practicable after his arrest to be dealt with in accordance with law.

20. Power of Conservation Officer to seize vehicle, aircraft, vessel, and article - A Conservation Officer may, in the presence of a constable, seize any vehicle, aircraft, vessel, or article that he reasonably believes to have been used or otherwise involved in the commission of an offence against this Act or regulations made under this Act, and may retain it for a period of 3 months from the date of its seizure, or, if a prosecution for an offence against this Act is instituted within that period, until the prosecution is terminated and, in the event of an appeal against the decision in that prosecution, until the appeal has been determined.

21. Additional powers of Conservation Officer - (1) A Conservation Officer may in a national park, or reserve, on producing his identity card issued under section 17 -

(a) Order a person whom he finds committing or whom he suspects of having committed an offence against this Act or any regulations under this Act, to disclose his full name and usual place of residence;

(b) Order a person whom he finds committing or whom he, suspects of having committed an offence against this Act or any regulations under this Act, to leave forthwith that national park, or reserve;

(c) Order any person whom he reasonably suspects of having done an act in respect of which the person is required to hold a licence, permit, or other authority under this Act to produce such a licence, permit, or evidence of such an authority.

(2) Every person commits an offence against this Act who fails forthwith to comply with any order under this section, and is liable to a fine not exceeding \$500.

22. Assaulting or threatening Conservation Officer an offence - Every person who assaults or threatens any Conservation Officer acting in the performance of his duties commits an offence, and is liable to a fine not exceeding \$500 or to imprisonment for a period not exceeding 3 months or to both.

23. Impersonation of Conservation officer an offence - Every person commits an offence who by words or conduct falsely represents that he is or impersonates a Conservation officer, and is liable to a fine not exceeding \$500 or to imprisonment for a period not exceeding 3 months or to both.

24. High Court may order release of vehicle, aircraft, vessel, or article - The High Court may



on application by the person from whom it was seized, or the owner, order any vehicle, aircraft, vessel, or article seized under section 20 to be released to its owner or to the person from whom it was seized, either unconditionally or upon such conditions as the Court, in its absolute discretion, considers necessary.

25. Order for forfeiture may be imposed in addition to fine and imprisonment - Upon the conviction of any person of any offence against this Act, the Court may, in addition to imposing any penalty by way of fine or imprisonment or both, order the forfeiture to the Cook Islands Government of any vehicle, aircraft, vessel, or article used or otherwise involved in the commission of the offence.

26. Disposal of forfeited vehicle, aircraft, vessel, or article - Any vehicle, aircraft, vessel, or article forfeited under section 25 may subject to the directions of the High Court be sold or otherwise disposed of as the Director thinks fit. The proceeds of anything sold pursuant to this section shall be paid into the Public Account.

#### PART IV NATIONAL PARKS AND RESERVES

27. National parks - (1) The Queen's Representative may, from time to time, on the advice of the Minister, proclaim, by notice published in the Cook Islands Gazette, that any land, lagoon, reef, or island, or any Cook Islands waters, or portion of the sea-bed of those waters shall be required for a national park subject to this Act.

(2) The Queen's Representative may from time to time, on the advice of the Minister, by further proclamation add any land, lagoon, reef, or island, or any Cook Islands waters or portion of the sea-bed of those waters to any national park proclaimed under subsection (1).

28. Reserves - The Queen's Representative may from time to time, on the advice of the Minister, proclaim, by notice published in the Cook Islands Gazette, that any land, lagoon, reef, or island, or any Cook Islands waters or portion of the sea-bed of those waters shall be a reserve subject to this Act, and may specify the purposes for which such reserve is so proclaimed.

29. Revocation of proclamation - A proclamation made under this Part shall not be revoked except by Act of Parliament.

#### PART V MANAGEMENT PLANS

30. Management plans - (1) The Director shall from time to time prepare one or more draft management plans for the protection, conservation, management, and control of -

- (a) National parks;
- (b) Reserves;
- (c) Cook Islands waters and water resources;
- (d) Coastal zones;
- (e) Indigenous forests;
- (f) Soil erosion;
- (g) Pollution;
- (h) Any other matter relating to the environment which in the opinion of the Council will benefit from a management plan.

(2) When the Director has prepared a draft management plan and such plan has been approved by the Council, the Director shall, by public notice -

- (a) State that a management plan has been prepared and the areas affected by the plan;
- (b) Specify the place or places where such a plan is displayed and may be inspected by interested persons;
- (c) Invite interested persons to make representations in connection with the draft management plan by a specified date, being not less than 1 month after the publication of the notice;
- (d) Specify an address to which such representations may be forwarded.

(3) The Council shall give due consideration to any representations so made, and may alter, amend, or vary the proposed management plan.

(4) In the preparation of the management plan regard shall be had to the following objects:

- (a) In the case of a national park, the protection, conservation, and management of wildlife and natural features, and the encouragement and regulation of the appropriate use, appreciation, and enjoyment of the park by the public;
- (b) In the case of a reserve, the protection and regulation of the use of the reserve for the purpose for which it was declared;
- (c) The protection of special features, including objects and sites of biological, archaeological, geological, and geographical interest of those areas within the plan;
- (d) The protection of the water catchment values of those areas within the plan;
- (e) The protection, conservation, control and management of soil resources, erosion, related works, and coastal zones of those areas within the plan.

(5) The Council shall submit to the Minister the draft management plan, together with such comments and representations as have been made.

(6) The Minister may -

- (a) Accept or decline to accept the draft management plan as so submitted; or
- (b) Refer it to the Council, together with his suggestions for further consideration and for any necessary amendment to the draft management plan.

(7) Where the Minister has referred the draft management plan to the Council under subsection (6) (b), the Council shall consider the Minister's suggestions, and may alter, amend, or vary the draft plan before re-submitting the draft plan to the Minister for his approval.

(8) As soon as practicable after a management plan has been accepted by him, the Minister shall cause it to be laid before Cabinet for adoption.

(9) Cabinet may approve and adopt any management plan or refer the plan to the Council for reconsideration and revision.

(10) An approved management plan shall come into force by Order in Executive Council, and the Service shall then manage those areas within the management plan in accordance with that plan.

31. Amendment and review of management plan - (1) Every approved management plan may be amended in the manner provided in section 30.

(2) Every approved management plan shall be reviewed upon the expiration of 5 years after coming into force.

32. Contravention of management plan - Every person commits an offence, and is liable to a fine not exceeding \$500, who does any act in contravention of any provision of a management plan that is in force.

## PART VI COASTAL ZONES

33. Protection of foreshore - No person shall, except with the prior consent in writing of the Council -

(a) Remove any silt, sand, gravel, cobble, boulders or coral from the foreshore, provided that such consent shall not be granted unless the Council is of the opinion that such removal will result in the restoration or preservation of the natural configuration and features of the foreshore or the natural flow of water; or

(b) Carry out any excavation, dredging, clearing, paving, grading, ploughing or other activity within the foreshore which may result in the alteration of the natural configuration of the foreshore; or

(c) Place any fill or material of any type within the foreshore; or

(d) Carry out the construction or erection of any structure within the foreshore.

34. Protection of coastal waters - No person shall, except with the prior written consent of the Council -

(a) Remove any silt sand gravel cobble boulders or coral from the coastal waters; or

(b) Carry out any excavation, dredging, clearing, paving, grading, ploughing or other activity within the coastal waters; or

(c) place any fill or material of any type within the coastal waters, or

(d) carry out the construction or erection of any structure in, on, across or under the coastal waters.

35. Director may require or take remedial action - where the Director is of the opinion that any person has acted in contravention of sections 33 or 39 or not in accordance with the written consent of the Council, the Director may -

(a) require that person to desist from so acting and take such remedial action as the Director may determine; or

(b) where that person refuses to take such remedial action as may be determined by the Director, take such remedial action as may be necessary in the circumstances.

36. Penalties - (1) Every person commits an offence and shall be liable on conviction to a fine not exceeding \$5,000 who acts in contravention of any of the provisions of this Part.

(2) The High Court may, in addition to any penalty provided for by this Part, order the offender to repair or restore under the supervision of the director any damage done by him as a consequence of his having acted in contravention of this Part, and, if the Conservation Service shall have undertaken work pursuant to section 35(b), the Court may in its discretion, order the offender to pay to the Conservation Fund all or part of the expenses incurred by the Service in so doing and the amount so awarded shall be deemed to be a judgement debt due to the Service from the offender and may be enforced in any manner in which a judgement or order of the Court for the payment of a civil debt may be enforced.

PART VII  
POLLUTION OF SEAS AND INLAND WATERS

37. Pollution of Cook Islands waters - (1) Every person commits an offence against this Act who -

- (a) Throws, discharges, or deposits, or causes, suffers, or procures to be thrown, discharged, or deposited into any Cook islands waters, either from or out of any ship, barge, or other floating craft of any kind, or from the shore or any wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever; or
- (b) Deposits, or causes, suffers, or procures to be deposited material of any kind in any place where the same shall be liable to be washed into such waters whereby navigation shall or may be impeded or obstructed or the level of pollution of such waters increased.

Provided that the Director may upon application in writing being made and upon being satisfied that no harm, damage, or injury will be caused to navigation and the environment, and with the consent of the harbourmaster in the case of waters forming part of a harbour for which there is a harbourmaster, permit the deposit of any material in any Cook Islands waters upon such terms and conditions as he considers necessary to impose.

(2) Except in case of emergency imperilling life or property, or unavoidable accident, collision, or stranding, and except as otherwise permitted by -regulations made under this Act, no person shall discharge or suffer or permit to be discharged any oil, noxious liquid substances, or other harmful substances, by any method, means, or manner, into or upon any Cook Islands waters.

(3) Every person who commits an offence against this section -

- (a) Is liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year or to both; and
- (b) Is also liable to pay such amount as the High Court may assess in respect of the expenses and costs that have been incurred or will be incurred in removing or cleaning up or dispersing any oil or noxious liquid substance, or other harmful substance to which the offence relates from any Cook Islands waters or from any land or harbour works in the Cook Islands.

(4) Where the offence is committed through the discharge of oil or noxious liquid substances or other harmful substances from a vessel, the clearance of any such vessel by the Collector of Customs shall be withheld until -

- (a) All proceedings before the High Court have been finally dealt with; and
- (b) Any amount payable pursuant to subsection (3) is paid, and the amount shall constitute a lien on such vessel, which may be recovered in proceedings by action in the High Court.

PART VIII  
MARINE CASUALTIES

38. Powers of Minister in relation to ships - (1) Without prejudice to any rights or powers of the Crown exercisable, whether under international law or otherwise, apart from the powers conferred by this section, the powers conferred by this section shall only be exercised and the measures authorised by this section shall only be taken where, as the result of a shipping casualty, -

- (a) In the Cook Islands waters, or
- (b) Outside those waters, -

where it appears to the Minister necessary to prevent or reduce or eliminate pollution from oil or from any noxious or harmful substance in, or the risk of any such pollution to, Cook Islands waters or to the coast of the Cook Islands or to related interests.

(2) Where it appears to the Minister that, as a result of a shipping casualty a ship constitutes or is likely to constitute a serious risk of pollution in or to Cook Islands waters, or to the coast of the Cook Islands or to related interests, then, for the purposes mentioned in subsection (1), he may -

(a) Issue instructions to the master or to the owner of the ship, or to any person in charge of any salvage operation or his servant or agent, requiring any specified action be taken or that no action be taken or that no specified action be taken with respect to the ship or its cargo both; or

(b) Take any measures whatsoever with respect to the ship or the cargo or both, whether or not he has issued instructions under paragraph (a).

(3) Without limiting the generality of the powers conferred by this section, the measures the Minister may direct to be taken or may himself take under subsection (2) (b) for the purposes mentioned in subsection (1) may include with respect to the ship or its cargo or both, operations relating to -

(a) The removal to another place of the ship or its cargo or both; or

(b) The salvage of the ship or its cargo or both; or

(c) The sinking or destruction of the ship or the destruction of its cargo or both; or

(d) The taking over of control of the ship.

(4) In order to carry out any of the measures referred to in subsection (2)(b) the minister may, after consulting the owner of the ship to whose master the instructions are to be given, -

(a) Instruct the master of any Cook Islands ship or any other ship within Cook Islands waters, to render assistance to any ship that is or is likely to be a shipping casualty; and

(b) to instruct the master of any Cook Islands ship take on board any equipment, to sail to any place, to render assistance to any ships engaged in assisting a shipping casualty or engaged in any operations for the clearing up, removal, or dispersal of any oil or noxious or harmful substance, and to obey the instructions of any person for the time being authorised by the Minister to exercise control over or responsibility for a shipping casualty.

(5) The master or owner of the ship shall be notified of any measures the minister proposes to take under subsection (2)(b):

Provided that the Minister may dispense with such notice where in his opinion the urgency of the situation is such that the measures must be taken immediately.

(6) The powers of the Minister under this section to issue instructions under subsection (2)(a) or to take measures under subsection (2)(b) shall be exercisable by any person duly authorised by him.

(7) Any instructions issued under this section by the Minister or by any person so authorised shall be served on the persons specified in subsection (2)(a) or, as the case may require, subsection (5).

(8) In this section -

"Related interests" includes interests directly affected or threatened, including (but without limiting the generality of this definition) maritime, coastal, port, or estuarine activities (including fisheries activities constituting an essential means of livelihood of the persons concerned), tourist attractions, public health and welfare, and the conservation of living marine resources and of wildlife;

"Ship" means every description of vessel (including any boat, barge, craft, or other contrivance) used in or on or under Cook Island waters, without regard to the method of or the lack of propulsion; and "Cook Islands ship" means a ship licensed under the laws for the time being in force in the Cook Islands relating to the licensing of ships;

"Shipping casualty" means a collision of ships, the loss, stranding or abandonment of any ship, or other incident occurring outside any ship or on board any ship or to any ship resulting in material damage or the risk of material damage to any ship or cargo or both.

39. Right to compensation - (1) Where any action duly taken by any person pursuant to instructions issued under subsection (2) (a) or subsection (9) of section 38, or any measures taken by the Minister under subsection (2) (b) of section 38, -

(a) were not reasonably necessary to eliminate or prevent or reduce pollution or the risk of pollution; or

(b) Were such that the good the action or measures taken, did, or were likely to do, was disproportionately less than the expense incurred or the loss or damage suffered as a result of that action or those measures, -

a person who has incurred expense or loss or damage as a result of taking that action or of those measures or as a result of his taking those measures himself may recover compensation from the Crown.

(2) Where a claim is brought against the crown for compensation under subsection (1), the High Court, in determining whether subsection (1) (b) applies, shall take into account,

(a) The extent and probability of imminent damage if the measures had not been taken; and

(b) The likelihood of the measures taken being effective; and

(c) The extent of the damage which has been caused by the measures taken.

40. Offences - (1) Every person commits an offence who -

(a) Fails to comply with the instructions issued by the Minister under section 38 or by any person authorised by him; or

(b) Wilfully obstructs a person acting in compliance with any instructions issued by the Minister under that section. or by any person authorised by him; or

(c) Wilfully obstructs the Minister or any person acting on behalf of the Minister in carrying out any of such powers conferred on the Minister by that section.

(2) Every person who commits an offence against this section is liable to a fine not exceeding \$5,000 for each day or part of each day on which the offence has continued.

(3) In any proceedings for an offence against this section, it shall be a defence to prove that the failure to comply with any instructions issued under section 38, or, as the case may be, that the wilful obstruction of any person acting in compliance with any such instructions duly issued or of any person acting on behalf of the Minister, resulted from the need to save life at sea.

(4) In any proceedings for an offence against this section, it shall also be a defence to prove

that the person charged used all due diligence to comply with the instructions.

41. Protection of Minister and other persons - Where,-

(a) The Minister or any person duly authorised by him has taken any measures under subsection (2) (b) of section 38; or

(b) Any person has taken any action or refrained from taking any action pursuant to instructions issued under subsection (2) (a) or subsection (4) of section 38 -

then, subject to section 39, the Minister or that person, as the case may be, shall not be under any civil liability in respect thereof.

## PART IX FINANCIAL PROVISIONS

42. Conservation Fund - (1) There shall be a Conservation Fund, which shall consist of -

(a) All money from time to time appropriated by the Parliament of the Cook Islands;

(b) All money from time to time received by way of grants, donations, and subsidies, for purposes authorised under this Act;

(c) All other money received by the Service in any manner and from any source as part of its general revenue.

(2) The Conservation Fund shall be administered by the Department of Treasury.

(3) The money of the Conservation Fund shall be applied only -

(a) In the payment or discharge of the costs, expenses, and other obligations incurred by the Service in the performance of its functions; and

(b) In payment of any remuneration and allowances and of compensation payable under this Act.

## PART X CONTROL OF LITTER

43. Interpretation - In this Part, unless the context otherwise requires -

"Depositing", in relation to litter, includes-

(a) Casting, placing, throwing, or dropping litter; and

(b) Allowing litter to be cast, thrown, dropped or, without reasonable excuse, to escape, from any motor vehicle, trailer, receptacle or place;

"Litter" includes any refuse, rubbish, animal remains, glass, metal, garbage, debris, dirt, filth, rubble, ballast, stones, earth, or waste matter, or any other thing of a like nature;

"Occupier", in relation to any land or premises, means any lessee, licensee, or other occupant of the land, and includes the owner or the agent of the owner where there is no apparent occupier;

"Private land" means every place other than a public place;

"Public place" means any place used by the public or to which the public have or are permitted to have access whether with or without payment and includes every road, street, footpath, access way, service lane, court, mall, thoroughfare, park, garden, reserve, place of recreation, foreshore, Cook Islands waters, wharf, pier, airport, but does not include an area designated by the Minister pursuant to section 44;

44. Designation of litter and rubbish areas - The Minister may by notice in the Gazette -

(a) Designate any Crown land as an area for the depositing of, litter and rubbish; and

(b) subject to the terms on which such land is held by the Crown, designate any other land occupied by the Crown by lease licence or otherwise as an area for the depositing of litter and rubbish.

45. Powers and duties of Conservation Officers - (1) Every Conservation Officer is authorised to enforce the provisions of this Part and may, without further authority than this section, summarily interfere to prevent the deposit or attempted deposit of litter in any public place or onto private land if he has good reason to believe the deposit or attempted deposit has been or is being made without the consent of the occupier of that land.

(2) Where a Conservation Officer finds a person depositing litter (whether inadvertently or otherwise) in a public place or onto private land without the consent of the occupier of that private land, or has good cause to believe that a person has deposited litter (whether inadvertently or otherwise) in or onto any such place or land, he may -

(a) require that person to remove the litter from that place or land and dispose of it in such manner as will not contravene the provisions of this Act; and

(b) require that person to pay to him within 7 days a fine of \$10.00;

(3) Every -person who is required by a Conservation Officer to pay a fine pursuant to subsection 2(b) -

(a) may elect to pay the sum of \$10 in which case the Conservation Officer shall upon payment acknowledge in writing the receipt of such sum and that person shall not be liable to prosecution pursuant to section 48; or

(b) may elect not to pay the sum of \$10 in which case that person shall be liable to prosecution pursuant to section 48; or

(c) who defaults in payment of the sum of \$10 shall upon such default, be liable to prosecution under section 48.

(4) Where a Conservation Officer has reasonable cause to believe that litter has been deposited (whether inadvertently or otherwise) in a public place or onto private land without the consent of the occupier of that private land, the Conservation Officer may require the person responsible for so depositing that litter to provide his name and place of residence.

(5) A Conservation Officer may, if permitted or requested to do so, by the occupier of any private land, enter that land if so required for the discharge of his duty.

(6) Every person commits an offence who -

(a) refuses to remove and dispose of litter when requested by a Conservation Officer pursuant to subsection.(2) (a); or

(b) refuse to supply his name and place of residence upon request,

and shall be liable upon conviction to a fine not exceeding \$500.

46. Receptacles to be provided in public places - (1) Every person and Department of State shall at all times provide and maintain in every public place under his or its control or management where litter is likely to be deposited, such number of litter receptacles, of suitable construction and design for the temporary deposit of litter as may reasonably be necessary to keep the place free from litter.

(2) Where litter generated on or attributable to any particular land or premises is likely to be



carried or to otherwise escape from that land or those premises onto a public place a Conservation Officer may require the occupier of the land or premises to take all reasonable steps to prevent such litter being carried or escaping onto the public place.

(3) Where a person or Department of State fails to provide suitable litter receptacles in accordance with subsection (1) or an occupier fails to comply with any proper request of a Conservation Officer to take reasonable steps to prevent litter being carried or escaping under subsection (2), a Conservation Officer may provide and install those receptacles or take those steps and recover the cost of so doing from the person or Department of State or occupier as the case may be as a debt due to the Service.

(4) Every person and Department of State shall also make appropriate provision for the emptying of the contents of litter receptacles situated within public places under his or its control or management and for the removal and disposal of those contents. The work shall be executed promptly, efficiently, and at regular intervals.

47. Conservation officer may require occupier of land to clear litter - (1) Any Conservation Officer may serve on the occupier of any land a notice in writing requiring the occupier, to the satisfaction of the Conservation Officer:

- (a) To clear away, or remove, from the land; or
- (b) To clean up; or
- (c) To screen, cover, or otherwise obscure from view,

such litter as may be specified in the notice within such time as may be so specified.

(2) If, upon the representations of an occupier served with a notice under subsection (1) a Conservation Officer is satisfied that steps have been taken to comply with the requirements of the notice but the occupier has been prevented by reasonable cause from completing the necessary work within the time specified, the Conservation Officer may extend the time specified for such further period as he thinks fit.

(3) Every person receiving a notice under subsection (1) may object to the requirements of the notice within 7 days after its receipt on the grounds that those requirements are unreasonable.

(4) Every objection shall be made in writing to the Council, which shall appoint a time and place for hearing the objection, and shall give reasonable notice of that time and place to the objector who shall be entitled to be present and, if present at that time and place, to be heard.

(5) The Council may, after hearing an objection, confirm cancel, or vary the requirements of the notice, and shall, within 7 days after the hearing, give to the objector written notice of its decision.

48. Deposit of litter in public place or on private land - (1) Subject to subsection (2), every person commits an offence and is liable, in the case of an individual, to a fine not exceeding \$500 or, in the case of a body corporate, to a fine not exceeding \$2,000, who, without reasonable excuse-

- (a) Deposits any litter in or on any public place or, in the case of any private land, in or on that private land without the consent of its occupier; or
- (b) Having deposited any litter (whether inadvertently or otherwise) in or on any public place, or in or on any private land without the consent of its occupier, leaves the litter there.

(2) Where any person commits an offence, against subsection (1) and the litter deposited is of such a nature as is likely to endanger any person or to cause physical injury disease or infection to any person coming into contact with it (being in particular any bottle whether broken or not, glass, article containing glass, sharp or jagged material, or any substance of a toxic or poisonous nature) that person is liable -

(a) In the case of an individual, to imprisonment for a term not exceeding 1 month, or to a fine not exceeding \$750, or to both; or

(b) In the case of a body corporate, to a fine not exceeding \$5,000.

49. Wilful breaking of bottles or glass - Every person commits an offence, and is liable to imprisonment for a term not exceeding 1 month or to a fine not exceeding \$750, or to both, who wilfully breaks any bottle, or any glass, or any article made of glass, in or on any public place without lawful authority or without the express consent of the person or Department of State having the control or management of the public place, or in or on any private land without lawful authority or without the express consent of the occupier of the private land.

50. Liability of officers of body corporate - If a body corporate commits an offence against this Part, every director, manager, secretary, or other similar officer of the body corporate, and every person purporting to act in any such capacity, shall also be guilty of that offence if the act or omission constituting the offence occurred with his knowledge and consent.

51. Offender may be ordered to clear area - (1) Without limiting the powers conferred on Conversation Officers by this Act, where any person is convicted of an offence against this Part, the Court may, instead of or in addition to imposing a penalty, order the offender, under the supervision and to the satisfaction of a person nominated by the Court, to clear up and remove the deposited litter within such period and to such place as may be specified in the order; and on the making of any such order the Court may further order that, if the offender fails to comply with the order, he is liable, in addition to any penalty imposed, to a fine not exceeding \$500.

(2) Where the order is complied with to the satisfaction of the person nominated by the Court that person shall give or send to the offender and to the Court, a statement in writing to that effect.

(3) Where an offender fails to comply with any such order, the High Court on the application of the person nominated by the Court to supervise the clearing and removal of the litter, may issue a summons requiring the offender to show cause why the order should not be enforced.

(4) On the hearing of the summons to show cause, the Court may make such order as it thinks fit.

52. Cost of removing litter - Where a Court convicts a person of an offence against this Part, it may, if it thinks fit, in addition to imposing a penalty, order the offender to pay by way of compensation to the person or Department of State having the control or management of the public place or, as the case may be, the occupier of the private land where the offence was committed such sum as it considers reasonable to cover the cost of the removal of the litter; and the amount so awarded shall be deemed to be a judgment debt due to the person, or Department of State, or occupier from the offender and may be enforced in any manner in which a judgment or order of the Court for the payment of a civil debt may be enforced.

PART XI  
MISCELLANEOUS PROVISIONS

53. Contracts - (1) Any contract which, if made between private persons, must be by deed shall, if made by the Corporation be in writing under the common seal of the Corporation.

(2) Any contract which, if made between private persons must be in writing signed by the parties to be charged therewith shall, if made by the Corporation be under the common seal of the Corporation.

(3) Any contract which, if made between private persons, may be made orally may be similarly made by or on behalf of the Corporation by any person acting under its authority, express or implied.

54. Regulations - (1) The Queen'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 and for the due administration thereof.

(2) Without limiting the generality of subsection (1), regulations may be made -

(a) Providing for the functions and powers to be conferred and the duties to be imposed upon Conservation Officers;

(b) Providing for the protection and conservation of wildlife;

(c) Regulating or prohibiting trade and commerce in connection with wildlife;

(d) Regulating or prohibiting the pollution of air, water, or land, and the depositing or dumping of litter, rubbish, or any substance of a dangerous, noxious, or offensive nature;

(e) Providing for the protection and preservation of national parks, reserves, and things in national parks and reserves;

(f) Regulating or prohibiting public use of and entry to national parks, or reserves, or to parts of any national park or reserve;

(g) Providing for the prevention and control of soil erosion and siltation, and of the taking of gravel, sand, soil, rock, coral, or like material;

(h) Providing for the prevention and control of the clearing, cutting, lopping, felling, burning, or removal of trees and other plants;

(i) Regulating or prohibiting the collection of specimens in national parks or reserves;

(j) Prescribing offences against the regulations, and prescribing fines for such offences not exceeding \$5,000 and, in the case of continuing offences, a fine not exceeding \$100 for every day on which the offence has continued;

(k) Providing for any matter incidental to or connected with any of the foregoing.

55. Savings - (1) Notwithstanding any of the provisions of this Act, nothing in this Act shall affect -

(a) The right of any person to fish in any Cook Islands waters or to use such waters for recreational purposes except as may be otherwise provided from time to time by any other enactment or treaty; or

(b) The existing use or occupation of any land or Cook Islands waters (being a use or occupation in being at the date of commencement of this Act).

(2) Notwithstanding the repeal of the Conservation Act 1975, any document or declaration made or any thing whatsoever done pursuant to that Act shall, so far as it is subsisting or in

force at the date of commencement of this Act continue and have effect as if it had been made or done under this Act.

56. Jurisdiction of Justice of the Peace - Notwithstanding the provisions of section 21 (1) of the Judicature Act 1980-81, a Justice of the Peace shall have jurisdiction in respect of any offence set out in Part X.

57. Repeals - The Conservation Act 1975 is hereby repealed.

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This Act is administered by the Conservation Service.

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