



AN BILLE IASCAIGH MARA AGUS DLÍNSE MHUIRÍ 2005
SEA-FISHERIES AND MARITIME JURISDICTION BILL 2005

Mar a tionsnaíodh
As Initiated

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AN BILLE IASCAIGH MARA AGUS DLÍNSE MHUIRÍ 2005
SEA-FISHERIES AND MARITIME JURISDICTION BILL 2005

BILL

entitled

5 AN ACT TO REVISE WITH AMENDMENTS PART XIII OF
THE FISHERIES (CONSOLIDATION) ACT 1959 AND
THE MARITIME JURISDICTION ACTS 1959 TO 1988, TO
AMEND AND EXTEND THE FISHERIES ACTS 1959 TO
10 2003, THE MERCANTILE MARINE ACT 1955, THE FISH-
ERY HARBOUR CENTRES ACT 1968, THE DUMPING AT
SEA ACT 1996 AND THE MARITIME SAFETY ACT 2005,
TO AMEND OR REPEAL CERTAIN ENACTMENTS AND
TO PROVIDE FOR CONNECTED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

15

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Sea-Fisheries and Maritime
Jurisdiction Act 2005.

Short title,
collective citation
and construction.

20 (2) The Act of 2003 (other than Part 5), *Part 2* and *Chapter 2* of
Part 4 may be cited together as the Sea-Fisheries Acts 2003 and 2005
and shall be construed together as one.

25 (3) The Fisheries (Amendment) Act 1997, sections 2, 3 and 4 of
the Fisheries and Foreshore (Amendment) Act 1998, the Fisheries
(Amendment) Act 2001 and *section 68* may be cited together as the
Aquaculture Acts 1997 to 2005 and shall be construed together as
one.

(4) The Fisheries Acts 1959 to 2003 and this Act (other than *Part*
3 and *sections 67, 69, 70* and *71*) may be cited together as the Fisher-
ies Acts 1959 to 2005 and shall be construed together as one.

30 (5) The Act of 1955 and *section 67* may be cited together as the
Mercantile Marine Acts 1955 and 2005.

(6) The collective citation “Fishery Harbour Centres Acts 1968 to
2005” includes *section 69*.

(7) The Dumping at Sea Acts 1996 and 2004 and *section 70* may be cited together as the Dumping at Sea Acts 1996 to 2005.

(8) The collective citation “the Maritime Safety Acts 1992 to 2005” includes *section 71*.

Interpretation.

2.—(1) In this Act—

5

“Act of 1894” means Merchant Shipping Act 1894;

“Act of 1955” means Mercantile Marine Act 1955;

“Act of 2003” means Fisheries (Amendment) Act 2003;

“Community law” means an act adopted by an institution of the European Communities;

10

“Department” means Department of Communications, Marine and Natural Resources;

“foreign sea-fishing boat” means a sea-fishing boat which is not an Irish sea-fishing boat;

“Irish sea-fishing boat” means a sea-fishing boat which is—

15

(a) entered in the Register of Fishing Boats,

(b) required by regulations under *section 44* to be so entered, or

(c) exempt from such registration by regulations under that section;

20

“Minister” means Minister for Communications, Marine and Natural Resources;

“Principal Act” means Fisheries (Consolidation) Act 1959;

“Register of Fishing Boats” means the register maintained under *section 42*.

25

(2) In this Act—

(a) a reference to a section or Part is a reference to a section or Part of this Act, unless it is indicated that reference to some other enactment is intended,

(b) a reference to a Chapter is a reference to the Chapter of the Part of this Act in which the reference occurs, unless it is indicated that reference to some other Chapter is intended,

30

(c) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended,

35

(d) a reference to an enactment includes a reference to that enactment as amended or extended by or under any subsequent enactment including this Act.

40

3.—(1) The Minister may make regulations in relation to any Regulations.
matter referred to in *Part 2* as prescribed.

5 (2) Every regulation made under *Part 2, section 44* or section 25
of the Act of 2003 shall be laid before each House of the Oireachtas
as soon as may be after it is made and, if a resolution annulling the
regulation is passed by either such House within the next 21 days on
which that House has sat after the regulation is laid before it, the
regulation shall be annulled accordingly, but without prejudice to the
validity of anything previously done under it.

10 4.—Each enactment specified in column (2) of *Schedule 1* to this Repeals.
Act is repealed to the extent specified in column (3) of that Schedule.

5.—The expenses incurred by the Minister in the administration Expenses.
of this Act shall, to such extent as may be sanctioned by the Minister
for Finance, be paid out of moneys provided by the Oireachtas.

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PART 2

SEA-FISHERIES

CHAPTER 1

Preliminary

6.—In this Part— Definitions (*Part 2*).

20 “Act of 1967” means Criminal Procedure Act 1967;

“Act of 1972” means European Communities Act 1972;

“Act of 1994” means Fisheries (Amendment) Act 1994;

“Act of 1999” means Criminal Justice Act 1999;

25 “capacity plan” means an up to date drawing or description of the
fish room of a sea-fishing boat giving the storage capacity in cubic
metres, and where the fish are stored in chilled or refrigerated sea-
water tanks the capacity plan shall indicate the storage capacity at
10cm intervals;

30 “common fisheries policy” means the common fisheries policy of the
European Communities;

35 “Community Regulation” means a Regulation of an institution of
the European Communities on the conservation and sustainable
exploitation of fisheries resources under the common fisheries policy
or the matters related thereto, and includes a reference to a Regu-
lation of an institution of the European Communities amending or
replacing the Regulation;

“equipment” includes any thing, instrument or machinery (other
than fishing gear) used or capable of being used for handling, weigh-
ing, transporting, processing or storing fish;

40 “exclusive fishery limits” means exclusive fishery limits of the State;

“exclusive fishery limits of the State” has the meaning given to it by
section 55;

“fish” and “sea-fish” includes anadromous and catadromous species during their marine life, and references to a fish are to be read as including references to part of that fish;

“fishing effort” and “fishing opportunities” have the meaning assigned to them, respectively, in Council Regulation (EC) No. 2371/2002 of 20 December 2002¹ and any Community regulations made under it on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy;

“fishing gear” includes any thing, instrument or machinery, or part of it or attachment to it, of whatsoever kind used or capable of being used for catching fish;

“ICES” means the International Council for the Exploration of the Sea;

“master”, when used in relation to a sea-fishing boat, means the master, skipper or other person for the time being in charge of the boat;

“net” means an implement comprised mainly of netting wherever found, stored or used for the capture of fish in the sea whether static or towed or hauled or intended to be towed or hauled;

“owner” in relation to a sea-fishing boat, means the person registered as its owner or, if no person is so registered, the person who owns the boat, and includes any part owner, charterer, hirer, manager or operator of the boat;

“prescribed” means prescribed by regulations made by the Minister and “prescribe” is to be read accordingly;

“prosecutor” means the Attorney General and, from the day appointed by an order made under *section 40*, the Director of Public Prosecutions;

“records” means any logbook, document or any other written or printed material in any form including any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form;

“relevant provision” means *Chapter 2* or *Part 4* of the Act of 2003;

“sea-fishing” means fishing for or taking fish or sea-fish;

“sea-fishing boat” means any ship, boat or other vessel of whatsoever kind used for sea-fishing and includes any vessel or boat used for the treatment of fish or partly or wholly for the transport of fish;

“sea-fisheries protection officer” means a person declared by *section 16* to be a sea-fisheries protection officer;

“Secretary General” means Secretary General of the Department;

“specified area” means waters falling within the ICES sub-areas and divisions as described in Communication (85/C347/05) from the Commission of the European Communities on the description of the ICES sub-areas and divisions used for the purposes of fishing statistics and regulations in the North East Atlantic;

“State’s fishing quota” means the State’s share of the total allowable catch fixed by a Regulation of the Council of the European Communities relating to certain species of fish in respect of a particular period;

¹OJ No. L358, 31.12.2002, p.59

“Table” means a Table to *section 28*.

7.—This Part extends to the Moville Area (within the meaning of the Foyle Fisheries Act 1952) and the Louth Area (within the meaning of section 31 of the British-Irish Agreement Act 1999).

Moville and Louth areas.

5

CHAPTER 2

Regulation of Sea-Fishing

8.—(1) It is not lawful for any foreign sea-fishing boat to enter within the exclusive fishery limits except for—

Restriction on foreign sea-fishing boats entering exclusive fishery limits.

(a) a purpose or purposes recognised by—

- 10 (i) Community law,
- (ii) international law, or
- (iii) any convention, treaty or arrangement for the time being in force between the State and the country to which the boat belongs, or

15 (b) any other lawful purpose or purposes.

(2) If a foreign sea-fishing boat enters within the exclusive fishery limits in contravention of *subsection (1)* the master of the boat commits an offence.

20 9.—(1) If a foreign sea-fishing boat enters within the exclusive fishery limits for—

Provisions in relation to foreign sea-fishing boats lawfully entering exclusive fishery limits.

(a) a purpose or purposes recognised by—

- (i) Community law,
- (ii) international law, or
- 25 (iii) any convention, treaty or arrangement for the time being in force between the State and the country to which the boat belongs, or

(b) any other lawful purpose or purposes,

then—

30 (I) the boat must leave the exclusive fishery limits as soon as the purpose for which the boat so entered has been answered, and

 (II) any regulations made under *subsection (2)* and for the time being in force shall be duly observed.

35 (2) The Minister may make regulations in relation to the maintenance of good order amongst foreign sea-fishing boats for the time being within the territorial seas of the State and the persons on board such boats.

(3) If there has been in relation to a foreign sea-fishing boat which has lawfully entered within the exclusive fishery limits or in relation

to the persons on board that boat, a contravention (whether by commission or omission) of *subsection (1)*, the master of the boat commits an offence.

Unauthorised fishing while on board foreign sea-fishing boat within exclusive fishery limits.

10.—(1) A person on board a foreign sea-fishing boat shall not fish or attempt to fish while the boat is within the exclusive fishery limits unless he or she is authorised by law to do so. 5

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

Contravention of EC Regulation (common fisheries policy).

11.—(1) Unless otherwise provided by law, a person who contravenes or fails to comply with an obligation imposed on the person by a Community Regulation commits an offence. 10

(2) *Subsection (1)* does not apply to an obligation imposed on the State by a Community Regulation.

(3) This section applies to—

(a) sea-fishing boats within the exclusive fishery limits, or

(b) an Irish sea-fishing boat in waters, wherever it may be, and 15

(c) any person engaged in landing, trans-shipping, buying, handling, weighing, transporting, processing, storing, documenting or selling fish.

(4) Where there is a contravention of or a failure to comply with an obligation imposed by a Community Regulation on, or by, a sea-fishing boat and where a person is not specified in the Community Regulation to have contravened or failed to comply with the obligation, the master and the owner of the boat each commits an offence. 20

(5) Where there is a contravention of or a failure to comply with an obligation imposed by a Community Regulation by a person involved in landing, trans-shipping, buying, handling, weighing, transporting, processing, storing, documenting or selling fish, the person contravening or failing to comply with such obligation commits an offence. 25
30

Management of State's fishing quota — notices.

12.—(1) The Minister may, for the proper management and conservation and rational exploitation of the State's fishing quota under the common fisheries policy, issue notices to be complied with by the owners or masters of Irish sea-fishing boats and persons on board them with regard to prohibitions or restrictions on the catching of fish or the quantity of fish which may be caught in a specified area. 35

(2) A notice may restrict or prohibit for a specified period the catching, retention on board or landing of a specified fish stock or group of fish stocks or a quantity of such in a specified area and may be addressed to all or certain types, lengths, sizes or classes of sea-fishing boats. 40

(3) The master of an Irish sea-fishing boat shall not engage in or cause or permit any person on board to engage in fishing for fish in a specified area in which the catching, retention on board or landing of such fish is prohibited by a notice. 45

- (4) An Irish sea-fishing boat shall not have or retain, and the master of the boat shall not cause or permit the boat or any person on board to have or retain, any fish on board which is prohibited by a notice.
- 5 (5) An Irish sea-fishing boat or a person on board the boat shall not have or retain on board in a specified area or specified period—
- (a) more than the quantity of fish, or
 - (b) such quantities of fish which are more than the catch composition,
- 10 permitted by a notice in respect of the area nor land more than that quantity.
- (6) The master of an Irish sea-fishing boat shall not during the specified period in a notice cause or permit the boat to be used, in a specified area mentioned in the notice, for the trans-shipment of fish
- 15 specified in the notice or cause or permit such boat to engage in trans-shipment operations at sea.
- (7) The master of an Irish sea-fishing boat—
- (a) before setting out on a voyage to fish for fish specified in a notice the fishing of which is restricted by the notice, shall, if required by the notice, inform a sea-fisheries protection officer of the expected port at which the fish is intended to be landed from the boat on completion of the voyage,
- 20
- (b) in a specified area mentioned in a notice before any entry into port or trans-shipment of fish from the boat, shall if required by the notice, inform a sea-fisheries protection officer of the time and location of the entry or trans-shipment, as the case may be, whether inside or outside the State and the quantity of fish concerned, and
- 25
- (c) shall if required by the notice not land the fish at any port or place, unless on each occasion a sea-fisheries protection officer has given prior approval of the landing.
- 30
- (8) A notice, specifying the date from which it comes into force, not being a day earlier than the day after its first publication, shall be published, in such manner as the Minister considers appropriate and expedient in the circumstances (including electronic means, whether by electronic-mail, facsimile, the internet, or otherwise, or by publication in a newspaper published and circulating in the State or to organisations the Minister considers representative of the
- 35
- 40 interests of persons engaged in sea-fishing).
- (9) Without prejudice to *subsection (8)*, notice of the publication of a notice shall be made by publishing the notice in the *Iris Oifigiúil*.
- (10) A copy of the *Iris Oifigiúil* purporting to contain a notice may be produced in every court and in all legal proceedings and is
- 45 evidence, unless the contrary is shown, of the notice.
- (11) A copy of a notice, which has endorsed on it a certificate purporting to be signed by an officer of the Department (authorised in that behalf by the Secretary General) stating that the copy is a true copy of the notice may, without proof of signature of that officer, be

produced in every court and in all legal proceedings and is evidence, unless the contrary is shown, of the notice.

(12) The master of an Irish sea-fishing boat who contravenes *subsection (3), (4) or (6)* commits an offence.

(13) Where there is a contravention of *subsection (5)* the master of the Irish sea-fishing boat upon which the contravention occurred commits an offence. 5

(14) The master of an Irish sea-fishing boat who fails to comply with *subsection (7)* commits an offence.

(15) It is the duty of the master of an Irish sea-fishing boat to keep himself or herself informed of notices relating to fishing from his or her boat. 10

(16) The Minister may authorise in writing an officer of the Department to issue a notice on his or her behalf.

(17) In this section “notice” means a notice issued under *subsection (17)*. 15

Management and
Regulation of
State’s fishing
opportunities and
fishing effort —
authorisations.

13.—(1) The Minister may, for the proper and effective management and conservation and rational exploitation of fishing opportunities and fishing effort for Irish sea-fishing boats under the common fisheries policy, at his or her discretion— 20

(a) upon—

(i) the application from, in such form as the Minister decides, or

(ii) the Minister’s own initiative in respect of any person who— 25

(I) is the owner of an Irish sea-fishing boat which is entered in the Register of Fishing Boats, and

(II) to whom a sea-fishing boat licence has been granted, and

(b) upon the person giving to the Minister such information as the Minister may reasonably require in relation to the application or the fishing capacity or operation of the boat concerned, 30

grant to the person an authorisation (“authorisation”) in respect of the boat, authorising, subject to this section, the utilisation of the boat’s fishing effort for the capture and retention on board of a specified fish stock (“stock”) or group of fish stocks (“stocks”) from the boat in a specified area mentioned in the authorisation and the landing or trans-shipment of the specified stock or stocks taken in that area during such period as is specified in the authorisation. 35 40

(2) The Minister may renew, subject to this section, without application, at his or her discretion, an authorisation for such period as may be stated in the renewed authorisation, where the Minister is satisfied that—

(a) the holder of the authorisation upon its expiration continues to be the owner, charterer or hirer, as the case may 45

be, of the boat in respect of which the authorisation was granted, and

(b) the boat concerned upon the expiration of the authorisation continues to be—

5 (i) the subject of a sea-fishing boat licence, and

(ii) entered in the Register of Fishing Boats.

(3) Without prejudice to the Minister's discretion to refuse to grant or renew an authorisation, the Minister may refuse to grant or renew an authorisation where the applicant for or holder of an
10 authorisation, as the case may be, has previously had such an authorisation held by him or her revoked.

(4) An authorisation shall not authorise the fishing for a specified stock or stocks in the area, or the divisions, or sub-areas specified in the authorisation, or the landing or trans-shipment of a specified
15 stock or stocks taken on board a boat or caught in that area, or in those divisions or sub-areas, in contravention of a Community Regulation.

(5) The Minister may attach to an authorisation conditions—

20 (a) specifying the quantities and types of fishing gear which may be kept on board the boat or used for the purposes of fishing for the specified stock or stocks, and the manner in which such gear may be used or stored,

(b) specifying conditions for the use of fishing effort,

25 (c) prohibiting the trans-shipment or landing of the specified stock or stocks other than at specified places and within specified hours,

(d) requiring the giving of specified advance notice of entry into port, and any other information as may be specified in the authorisation,

30 (e) requiring the authorisation by a sea-fisheries protection officer for the landing of the specified stock or stocks,

(f) requiring the separate storage of specified stocks,

35 (g) requiring the collection, collation and submission of all specified data considered necessary in relation to fishing, trans-shipment or landing for the specified stocks,

(h) requiring the provision of assistance to and co-operation with sea-fisheries protection officers in carrying out their duties,

40 (i) requiring the keeping of such records in relation to the activities of the boat as may be specified in the authorisation,

45 (j) requiring the facilitation of the placing of any person appointed by the Department or its agencies on board the boat for the purposes of ensuring compliance with the requirements of the authorisation, fisheries legislation, scientific observation, and requiring the provision of

assistance and co-operation to that person in carrying out his or her duties or otherwise,

- (k) requiring the keeping of the authorisation on the boat concerned.

(6) Conditions under *subsection (5)* may be attached to an authorisation at the time it is granted or at any time while it is in force. A condition or term may be altered at any time while the authorisation is in force and further conditions or terms may be added. Notification of such conditions or terms and alterations shall be made in writing (including writing in electronic form) to the holder of the authorisation.

(7) The Minister may, as a condition of the authorisation, from time to time, restrict the quantity of fish, during such period as he or she decides—

- (a) that may be taken or retained, on board a particular authorised boat in any specified area or part of it, or

- (b) in respect of fish so taken or retained, that may be landed or trans-shipped from the boat.

(8) The Minister may, as a condition of the authorisation, from time to time, restrict the fishing effort by a particular authorised boat in any specified area or specified time period on any specified stock or stocks or types of fishing gear.

(9) Where an authorised boat is engaged with another authorised boat in pair fishing for a specified stock or stocks in an area specified in an authorisation, the boat may, notwithstanding any restriction under *subsection (7)*, take on board such quantity allowed to the other boat under *subsection (7)(a)*, or land or trans-ship the other boat's share of the specified stock or stocks so taken, subject to such conditions as may be specified in the authorisation relating to the other boat.

(10) Any restriction under *subsection (7)* and (8) is deemed a condition of the authorisation to which it relates and the holder of the authorisation and the master of the authorised boat concerned shall comply with it.

(11) The master of a licensed boat who contravenes or fails to comply with any condition of an authorisation relating to the boat or causes or permits such a contravention or failure commits an offence.

(12) If the Minister is satisfied that there has been a failure to comply with a Community Regulation or this Act or with a condition specified in an authorisation, the Minister may revoke or withdraw for a period the authorisation.

(13) Where the Minister proposes to revoke or withdraw for a period an authorisation he or she shall notify in writing the holder of the authorisation of the proposal and the reasons for it and the holder may within 14 days of service of the notification make representations to the Minister about the proposal. The Minister shall consider such representations. The authorisation stands suspended from the date of issue of the notification until the Minister makes a decision on the proposal.

(14) A notification under *subsection (13)* shall be addressed to the holder of the authorisation concerned and sent or given in any of the following ways:

5 (a) by delivering it to the holder of the authorisation or the master of the boat concerned;

(b) by leaving it at the address at which the holder ordinarily resides or carries on business or in a suitably secure and conspicuous position on board the boat in respect of which the authorisation was granted; or

10 (c) by sending it by prepaid post to the holder at such address.

(15) An authorisation stands revoked if—

(a) the holder of the authorisation ceases to be the owner of the boat in respect of which the authorisation was granted,

15 (b) a sea-fishing boat licence in relation to the boat is revoked or has expired, or

(c) the boat ceases to be registered in the Register of Fishing Boats.

20 (16) A person shall not, other than pursuant to an authorisation, fish for, retain on board, or trans-ship or land from, an Irish sea-fishing boat, a specified stock or stocks where the Minister has determined that, for that stock or stocks and for that boat or type of boat, an authorisation is required.

25 (17) The owner or master of an Irish sea-fishing boat, shall not, other than pursuant to an authorisation, cause or permit—

(a) the boat or any person on board the boat to fish for the specified stock or stocks in the specified area, or

30 (b) the landing or trans-shipment from, or retention on board, the boat of the specified stock or stocks taken in the specified area.

(18) A person who contravenes *subsection (16)* or *(17)* commits an offence.

35 (19) The Secretary General may authorise in writing such officers of the Department as he or she considers necessary to grant authorisations on behalf of the Minister and to add or alter conditions and terms to authorisations.

(20) In this section—

“authorisation” means an authorisation granted under *subsection (1)*;

40 “authorised boat” means an Irish sea-fishing boat in respect of which an authorisation, which is in force, has been granted;

“pair fishing” means, in relation to an authorised boat, the towing or trawling of a trawl, seine or other net in the sea by the boat jointly with another authorised boat for the purpose of catching fish;

45 “sea-fishing boat licence” means a licence granted under section 4 (inserted by *section 64*) of the Act of 2003.

14.—(1) Without prejudice to the generality of section 3(1) of the Act of 1972, the Minister may by regulations prescribe measures to give effect to any provision either of the treaties governing the European Communities or Community law which authorises any or all of the Member States of the European Communities to restrict, or otherwise regulate in respect of the common fisheries policy in a manner specified in the provision, fishing or fishing gear or equipment or buying, handling, weighing, trans-shipping, transporting, landing, processing, storing, documenting or selling fish. Such regulations may apply to any or all of the following:

- (a) sea-fishing boats within the exclusive fishery limits;
- (b) an Irish sea-fishing boat, wherever it may be; and
- (c) any person engaged in buying, handling, weighing, trans-shipping, transporting, landing, processing, storing, documenting or selling fish.

(2) Regulations under this section may, in particular—

- (a) prescribe measures such as—
 - (i) prohibitions of or restrictions on areas or times or methods of fishing or use of fishing boats or fishing gear or equipment on them,
 - (ii) prohibitions of or restrictions on fishing effort,
 - (iii) prohibitions of or restrictions on or requirements as regards the equipment of fishing boats or fishing gear, or the use, modification or maintenance or storage thereof or interference therewith,
 - (iv) prohibitions of or restrictions on the catching, handling, composition of catch, retention and storage on board, trans-shipment and landing of fish, including permitted—
 - (I) size and type of fish which may be caught, and
 - (II) times, locations and conditions of landings, orsuch other measures as may be prescribed,
- (b) impose obligations on the holder of a sea-fishing boat licence including, in particular, obligations in relation to—
 - (i) the catching, handling, composition of catch, retention and storage on board, trans-shipment and landing of fish, and
 - (ii) the taking, making and keeping of records and assisting and co-operating with any person appointed by the Department or its agencies to be on that boat, and
- (c) include such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purposes of the regulations (including provisions repealing, amending or applying, with or without modification, other law, exclusive of this Act).

(3) Where there is a contravention of a regulation under this section—

(a) in relation to a sea-fishing boat or to fishing gear or equipment on board the boat, the master and owner of the boat and the owner of the fishing gear or equipment each commits an offence, or

(b) in relation to fish, the master and owner of the boat concerned and the buyer, handler, weigher, transporter, processor, person storing or documenting and seller of the fish each commits an offence.

(4) In any proceedings for an offence under this section it shall be for the accused to show (as the case may be) entitlement to any exemption or relief from any prohibition or restriction or requirement alleged to have been contravened.

15 **15.—**(1) The Minister may to supplement the common fisheries policy, as he or she thinks proper, by regulations prescribe measures for the purpose of protecting, conserving or allowing the sustainable exploitation of fish or the rational management of fisheries that restrict, or otherwise regulate, fishing or fishing gear or equipment or
20 the buying, handling, weighing, trans-shipping, transporting, landing, processing, storing, documenting or selling of fish. Such regulations may apply to any or all of the following:

National regulatory measures to supplement common fisheries policy.

(a) fishing boats within the exclusive fishery limits or internal waters;

(b) an Irish sea-fishing boat, wherever it may be;

(c) any person engaged in buying, handling, weighing, trans-shipping, transporting, landing, processing, storing, documenting or selling of fish; and

(d) nets and their usage during any time or season or at any place within the exclusive fishery limits or internal waters.

(2) Regulations under this section may, in particular—

(a) prescribe such measures as—

(i) prohibitions of or restrictions on areas or times or methods of fishing or use of sea-fishing boats or equipment on them,

(ii) prohibitions of or restrictions on fishing effort,

(iii) prohibitions of or restrictions on or requirements as regards the equipment of fishing boats or fishing gear, or the use, modification or maintenance or storage thereof or interference therewith,

(iv) prohibitions of or restrictions on the catching, handling, composition of catch, retention and storage on board, trans-shipment and landing of fish, including permitted—

(I) size and type of species which may be caught, and

(II) times, locations and conditions of landings,

- (v) permitted by a Community Regulation which the State may take in relation to an Irish sea-fishing boat or to a sea-fishing boat within the exclusive fishery limits or may apply to a buyer, handler, seller, weigher, transporter, processor of fish which supplement or go beyond a Community Regulation or other European Community law, but are compatible with Community law and in conformity with the common fisheries policy, or

(b) impose obligations on the holder of a sea-fishing boat licence including, in particular, obligations in relation to—

- (i) the catching, handling, composition of catch, retention and storage on board, trans-shipment and landing of fish, and

- (ii) the taking, making and keeping of records and assisting or co-operating with any person appointed by the Department or its agencies to be on that boat, or

(c) include such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purposes of the regulations.

(3) Where there is a contravention of a regulation under this section—

- (a) in relation to a fishing boat or to fishing gear or equipment on board the boat, the master and owner of the boat and the owner of the fishing gear or equipment each commits an offence, or

- (b) in relation to fish, the master and owner of the boat concerned and the buyer, handler, weigher, transporter, processor, person storing or documenting and seller of the fish each commits an offence.

(4) In any proceedings for an offence under this section it shall be for the accused to show (as the case may be) entitlement to any exemption or relief from any prohibition or restriction or requirement alleged to have been contravened.

(5) In this section “internal waters” means the internal waters of the State (within the meaning of *section 53*).

CHAPTER 3

Sea-Fisheries Protection Officers — Detention of boats — Related offences

Sea-fisheries
protection officers.

16.—(1) Each of the following persons is, for the purposes of the *Sea-Fisheries Acts 2003* and *2005*, a sea-fisheries protection officer—

- (a) an officer of the Department authorised in that behalf by the Secretary General,

- (b) a member of the Permanent Defence Forces (not below the rank of leading seaman or corporal) for the time

being serving on board any ship, vessel or aircraft belonging to or employed in the service of the State,

(c) a member of the Garda Síochána, and

(d) an officer of Customs and Excise authorised in that behalf by the Revenue Commissioners.

(2) A sea-fisheries protection officer, authorised by the Minister or the Revenue Commissioners to be a sea-fisheries protection officer under section 220 of the Principal Act, who is such an officer immediately before the passing of this Act continues to be such an officer as if authorised under *subsection (1)*.

17.—(1) A sea-fisheries protection officer is authorised and empowered to do all or any of the following things, that is to say:

Powers of sea-fisheries protection officer related to the inspection, examination and detention of sea-fish, etc.

(a) to stop any person conveying or believed to be conveying sea-fish of any kind and to inspect any sea-fish which the person is found to be conveying and for that purpose to open, search and examine any vehicle, equipment or package in which such sea-fish is or may be or is believed to be conveyed,

(b) at all reasonable times, to enter upon or stop, as appropriate and have free access to the interior of—

(i) any premises in which sea-fish is or is believed to be sold, or kept, exposed for sale, stored, processed or disposed of,

(ii) the premises of any person engaged in the business of carrying goods which relate to the common fisheries policy,

(iii) any pier, quay, wharf, jetty, dock or dock premises, sea food factory or processing facility or warehouse,

(iv) any ship, boat, railway wagon, lorry, tanker, trailer or other vessel or vehicle used for the conveyance of goods,

(v) the premises of any person engaged in the business of retaining documents containing information on activities relating to the common fisheries policy,

(c) to examine all sea-fish found in any place which he or she is authorised by this section to enter and for that purpose to open any package found in such place and containing or believed to contain sea-fish,

(d) to verify the accuracy of the information in any document or record which relates to the common fisheries policy,

(e) to check the size, weight, characteristics and condition of sea-fish and the operation of any equipment used for the measurement, weighing, handling, storage, trans-shipment, transportation and processing of sea-fish,

(f) to stop, board and examine or search, on any part of the sea or the sea shore, any boat used or believed to be used

for fishing or containing illegally caught or retained sea-fish, and to examine all fish and all nets, fishing gear and other equipment found on or in it, or used from it and for that purpose to open any package, hold, tank, container or other article which contains or is suspected of containing any fish, nets or fishing gear or other such equipment, 5

(g) to take, remove, and detain in his or her custody any sea-fish (either together with or without any package or container in which the fish may be contained) found in the course of the exercise of any of the powers conferred by this section in respect of which an offence under this Part is being or is suspected of being or to have been committed, 10

(h) to take, remove, and detain in his or her custody any net or fishing gear or other equipment used in fishing or capable of being used for fishing or any article which is liable or is believed to be liable to forfeiture under this Part, 15

(i) to request and take the name and address of the person having custody of any sea-fish or other article which he or she is authorised under this section to examine, and also to request and take from such person the name and address of the owner of such sea-fish or other article, 20

(j) to require the owner of or any person connected with—

(i) any premises referred to in *paragraph (b)(i)* and *(ii)* and *(v)*, 25

(ii) any pier, quay, wharf, jetty, dock or dock premises, seafood factory or processing facility or warehouse referred to in *paragraph (b)(iii)*, or

(iii) any ship, boat, railway wagon, lorry, tanker, trailer or other vessel or vehicle referred to in *paragraph (b)(iv)*, 30

to give to him or her such information and to produce to him or her such records within the power or procurement of that person as he or she may reasonably require relating to the common fisheries policy, 35

(k) to examine and take the documents or records or copies of, or extracts from, such documents or records relating to the common fisheries policy,

(l) take evidence, including photographic evidence or electronically recorded evidence, of anything relating to an offence under this Part which is being committed or suspected of being or having been committed. 40

(2) When a sea-fisheries protection officer detains in his or her custody under this section any sea-fish or other article, he or she shall, as soon as conveniently may be, take such steps as may be proper to have the person accused of the alleged offence committed in relation to such sea-fish or other article dealt with according to law. 45

(3) Where a sea-fisheries protection officer detains in his or her custody under this section any sea-fish and the sea-fish is likely to 50

5 become unfit for human food before the matter can conveniently be dealt with by any court, he or she may produce the sea-fish to a designated officer (where he or she is not a designated officer), and, if authorised so to do by the designated officer, shall destroy, sell or otherwise dispose properly of the sea-fish.

10 (4) Where a sea-fisheries protection officer detains in his or her custody under this section any live sea-fish, he or she may produce the sea-fish to a designated officer (where he or she is not a designated officer) and, if authorised so to do by the designated officer, shall return the sea-fish to the sea.

15 (5) A designated officer to whom any sea-fish is produced under this section or which he or she has detained in his or her authority as a sea-fisheries protection officer shall, if he or she is of opinion that the sea-fish ought in the circumstances to be destroyed or returned to the sea, give to the sea-fisheries protection officer producing the sea-fish or create for himself or herself, as the case may be, a certificate in writing describing the sea-fish and any marks, peculiarities or other particulars thereof pointed out to him or her by the sea-fisheries protection officer and authorising the officer to destroy the sea-fish or return the sea-fish to the sea, as the case may be. The certificate shall be conclusive evidence in every court of all such matters of fact stated in it.

25 (6) A sea-fisheries protection officer shall avoid the use of force except when and to the degree necessary to ensure the safety of the officer and where the officer is threatened, obstructed, intimidated or interfered with in exercising his or her duties. The degree of force shall not exceed that reasonably required in the circumstances.

30 (7) A sea-fisheries protection officer, who is not in uniform, shall if requested by a person affected produce evidence of his or her authority.

35 (8) A sea-fisheries protection officer when exercising any powers under this section may be accompanied by other persons and may take with him or her, or those persons may take with them, any equipment or materials to assist the officer in the exercise of those powers.

(9) In this section “designated officer” means an officer of the Department or such other person designated by the Secretary General to whom a sea-fisheries protection officer produces sea-fish for the purposes of this section.

40 **18.—**(1) A sea-fisheries protection officer, for the purposes of enforcing the *Sea-Fisheries Acts 2003* and *2005* or a Community Regulation with respect to any sea-fishing boat within a port in the State, the exclusive fishery limits or (subject to Community law or international law) outside those limits, may—

Powers of sea-fisheries protection officer relating to fishing boats.

- 45 (a) if the boat is underway, order it to be stopped or be manoeuvred as directed for the purposes of identification or of allowing the officer to go on board it,
- (b) board the boat,
- 50 (c) require the owner, master or member of the crew of the boat to produce the certificates of registry, licences, authorisations, logbooks or other records relating to the boat or any equipment thereon, the crew or any member of

the crew, which are in his or her possession or control, and inspect and take extracts from or copies of them,

- (d) require the master of the boat to give an explanation concerning the boat or any equipment on it or concerning the boat's fishing activity and the certificates, licences, authorisations, logbooks, or other records relating to it, 5
- (e) inspect the satellite-tracking device and any other positioning equipment on the boat and require the owner, master or member of the crew of the boat to demonstrate the operation of that equipment, for the purposes of verifying whether that equipment is operated properly, has not been tampered with or otherwise modified or interfered with and is protected against improper use, 10
- (f) search the boat (including any package, hold, tank, container or boat or other craft on board), 15
- (g) request and take the name and address of any person on board the boat,
- (h) request co-operation and assistance from the master or crew of the boat in relation to the inspection, examination and detention of the boat or any equipment or sea-fish on it, 20
- (i) if he or she reasonably suspects that there has been a contravention by any person on board the boat of this Part, without summons, warrant or other process—
 - (i) if the boat is not in a port, take or instruct that the boat and all persons on board be taken to port or order the master of the boat to take the boat directly to a specified port, and pending the taking of the steps required by *section 20* or *21*, as may be appropriate, detain the boat and the persons on board, or 25 30
 - (ii) if the boat is in a port, detain the boat and the persons on board at the port or take it and them to a more convenient port and there detain it and them, pending (in either case) the taking of those steps.

(2) A sea-fisheries protection officer shall avoid the use of force except when and to the degree necessary to ensure the safety of the officer and where the officer is threatened, obstructed, intimidated or interfered with in exercising his or her duties. The degree of force shall not exceed that reasonably required in the circumstances. 35

(3) A sea-fisheries protection officer, who is not in uniform, shall if requested by a person affected produce evidence of his or her authority. 40

(4) A sea-fisheries protection officer when exercising any powers under this section may be accompanied by other persons and may take with him or her, or those persons may take with them, any equipment or materials (including firearms or other weapons (where he or she or any of those other persons is a member of the Defence Forces or the Garda Síochána)) to assist the officer in the exercise of those powers. 45

(5) If an order given by a sea-fisheries protection officer under this section to the master of a sea-fishing boat or to a fishing boat to 50

stop, or to go directly to a specified port or to manoeuvre as directed, is disobeyed or disregarded, the officer may, after causing a gun to be fired as a signal, fire at or into the boat.

5 (6) (a) A gun may only be fired for the purposes of *subsection (5)* by a member of the Permanent Defence Forces or the Garda Síochána.

10 (b) The Minister for Defence, after consultation with the Chief of Staff of the Defence Forces and the Commissioner of the Garda Síochána, may give directions in writing in relation to procedures to be followed for the purposes of *subsection (5)*.

15 **19.**—(1) Where a sea-fisheries protection officer has, in the exercise of the powers conferred on him or her by *section 18* or by *section 26(2)(e)* of the Act of 2003, detained a boat and the persons on board the boat at a port, any sea-fisheries protection officer who suspects that a person on board the boat has committed an offence under a relevant provision shall (unless he or she is proceeding under *section 21*), as soon as may be, apply to a judge of the District Court for an order authorising the continued detention of the boat and those persons, and the judge may grant an order authorising such detention for a period of 48 hours if he or she is satisfied that the applicant sea-fisheries protection officer has such suspicion and it is reasonable.

Detention of boats and persons on board when offences suspected.

(2) Upon the expiration of the period of 48 hours—

25 (a) the boat shall be released, unless an order or an application for an order providing for its further detention has been made under this section before the expiration of that period of 48 hours, and

30 (b) each person on board the boat shall be released, unless an order providing for his or her further detention has been made under this section before the expiration of that period.

(3) In this section “application for an order” includes mentioning to the court that an application will be made to the court.

35 **20.**—(1) Where a sea-fisheries protection officer has in exercise of the powers conferred on him or her by *section 18* or by *section 26(2)(e)* of the Act of 2003 detained a boat and the persons on board the boat at a port, any sea-fisheries protection officer shall, as soon as may be, bring the master of the boat and any other persons on board the boat against whom proceedings for an offence under a relevant provision have been or are about to be instituted before a judge of the District Court.

Detention of boats and persons charged or to be charged pending prosecution.

45 (2) Subject to *subsection (3)*, the judge shall, if he or she is satisfied that such proceedings have been or are about to be instituted against the master and those other persons or any one or more of them, by order, directed to a sea-fisheries protection officer, require the officer to detain at a specified port in the State the boat and each such person (including the master) in respect of whom he or she is satisfied that proceedings have been or are about to be instituted, until the proceedings have been determined.

(3) The judge may order the release on bail of a person against whom such proceedings have been instituted before the proceedings have been determined.

Detention of boats
pending
determination of
any proceeding
(including appeals)
under relevant
provision.

21.—(1) (a) Where—

- (i) a person is convicted by a judge of the District Court of an offence under a relevant provision or proceedings in relation to such an offence are dismissed by a judge of the District Court, and 5
- (ii) the boat, on which the person committed the offence or to which the proceedings related, has been detained under *section 18* or *section 26(2)(e)* of the Act of 2003, 10

the judge shall, by order directed to a sea-fisheries protection officer, require the officer in the event of an appeal from, or any other proceedings in relation to the order of the District Court or the order of any other court to which the case is brought, whether by way of appeal or otherwise, to detain the boat further pending the determination of the appeal or other proceedings (and any proceedings consequent upon the appeal or the other proceedings) at a specified port in the State. 15 20

(b) Where—

- (i) a person is sent forward for trial or for sentence by a judge of the District Court to a court other than the District Court, charged with an offence under a relevant provision, and 25
- (ii) the boat on which the person committed, or is alleged to have committed, the offence has been detained under *section 18* or *section 26(2)(e)* of the Act of 2003,

the judge shall, by order directed to a sea-fisheries protection officer, require the officer— 30

- (I) to detain the boat further at a specified port in the State pending the determination of the case in that other court, and
- (II) in the event of an appeal from, or other proceedings in relation to the order of the District Court or of the other court to which the person is sent forward under this paragraph or of any other court to which the case is brought, whether by way of appeal or otherwise, to detain the boat further pending the determination of the appeal or the other proceedings (and any proceedings consequent upon the appeal or the other proceedings) at a specified port in the State. 35 40 45

- (2) (a) Where, in respect of an offence under a relevant provision, an order is made under *section 20* or *subsection (1)* in relation to a boat, a judge of the District Court may, at his or her discretion, by order directed to a sea-fisheries protection officer, require the boat to be released if security, which in the opinion of the judge is satisfactory, 50

is given for payment, in the event of conviction of the defendant in respect of the offence or in the event of his/her failure to attend before any court when such attendance is required, in relation to the offence or any trials, appeals or other proceedings in relation to the offence, of a sum that, in the opinion of the judge, is sufficient to provide for—

(i) payment of the maximum fine ordered, or which may be ordered, to be paid in respect of the offence,

(ii) the estimated amount of the costs (if any) of any trials, appeals or other proceedings in relation to the offence awarded, or which may be awarded, against the defendant concerned, and

(iii) the estimated value of any forfeitures ordered, or which may be ordered, to be made upon the final determination of any trials, appeals or other proceedings in relation to the offence.

(b) The security provided for in *paragraph (a)* is in addition to and not in substitution for any other bond or recognisance which the defendant concerned may be required to enter into by the judge of the District Court concerned in relation to any trials, appeals or other proceedings in respect of the offence concerned.

(3) Where an order is made under this section for the detention or release of a boat, the boat shall be detained or released, as the case may be, in accordance with its terms.

22.—(1) The following provisions have effect in relation to the recovery of a fine for an offence under a relevant provision and the costs (if any) ordered to be paid by the person convicted of the offence—

Recovery of fine for offence under relevant provision and possession by sea-fisheries protection officer of articles forfeited.

(a) the Court shall fix a time within which such costs and fine (if any) are to be paid;

(b) where the boat to which such person belongs is, at the time of the hearing of the proceedings for such offence, detained under this Chapter, the Court shall by order directed to a sea-fisheries protection officer or officers require such officer or officers to detain further, until such fine and costs (if any) are paid, at a specified port in the State such boat, and such boat shall be detained accordingly;

(c) in the event of such fine and costs (if any) not being paid within the said time, such fine and costs (if any) may be recovered by distress and the sale of such boat (including the capacity thereof);

(d) nothing in the foregoing paragraphs of this subsection shall prevent such fine and costs (if any) being recovered from such person by ordinary process of law.

(2) Where—

(a) any article on board a boat is ordered under *Chapter 4*, by a court to be forfeited or, as a statutory consequence of

conviction by a court, stands, under *Chapter 4*, forfeited,
and

- (b) the boat is detained under *section 19* or *section 26(2)(e)* of the Act of 2003,

the Court may, on the application of the prosecutor, by order 5
directed to a sea-fisheries protection officer, authorise such officer
to detain such boat until possession has been taken of the article
forfeited, and such boat may be detained accordingly.

(3) Where an article on board a boat is forfeited under a relevant 10
provision, a sea-fisheries protection officer may request the master
of such boat to make available such facilities (including the moving
of the boat from place to place and the doing of things upon, to or
with such boat, its equipment or machinery) as such sea-fisheries
protection officer may reasonably require for the purpose of
enabling him to take possession of the article. 15

(4) Where the master of a boat fails or refuses to comply with a
request made to him or her under *subsection (3)*, he or she commits
an offence and is liable on summary conviction to a fine not
exceeding €5,000.

Trial in District
Court of person
charged with
offence on boat
detained by sea-
fisheries protection
officer.

23.—(1) Where— 20

- (a) a sea-fisheries protection officer has in exercise of the
powers conferred on him or her by *section 18* or by
section 26(2)(e) of the Act of 2003 detained a boat and
the persons on board it at a port in the State, and

- (b) a person (being one of those persons) is alleged to have 25
committed an offence under this Part,

the person may be brought before the appropriate judge of the Dis-
trict Court and—

- (i) if the offence is not an offence under a section specified in
a Table, that judge may hear and determine the case, and 30
(ii) if the offence is an offence under a section specified in that
Table, that judge has jurisdiction to deal with the case
under *section 28(2)* or *(3)*, as may be appropriate.

(2) In this section “appropriate judge of the District Court” means 35
the judge for the time being assigned to the district court district in
which is situated the port in which the boat and persons concerned
are detained.

(3) *Subsection (1)* shall not be read as affecting *section 79* of the
Courts of Justice Act 1924.

Offence —
obstruction, etc., of
sea-fisheries
protection officer.

24.—(1) A person who— 40

- (a) obstructs or impedes any sea-fisheries protection officer in
the exercise of any of the powers conferred on such
officer by this Part,

- (b) refuses or fails to comply with any requirement or direc- 45
tion lawfully made or given by such officer under this
Part,

(c) fails to answer any question lawfully asked by such officer under this Part, or

(d) where—

(i) his or her name and address is requested of him or her by a sea-fisheries protection officer under *section 17(1)(g)* or *18(1)(f)*, refuses or fails to give his or her name and address or gives a name or address which is false or misleading, or

(ii) the name and address of any other person is lawfully requested of him or her by a sea-fisheries protection officer under *section 17(1)(g)*, refuses or fails, knowing such name and address, to give the name or address or gives a name or address which is false or misleading,

commits an offence and is liable on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 2 months, or to both.

(2) If a person—

(a) obstructs or impedes a sea-fisheries protection officer so as to prevent or to attempt to prevent the officer exercise any of his or her powers under this Part, or

(b) whose name and address is lawfully required by a sea-fisheries protection officer under this section refuses to give his or her name and address or gives, as his or her name or address, a name or address which is reasonably believed by such officer to be false or misleading,

the officer or another sea-fisheries protection officer may (being a member of the Defence Forces or Garda Síochána or an officer of Customs and Excise) arrest, without warrant, the person and, if that officer is not a member of the Garda Síochána, shall, as soon as practicable, deliver the person into the custody of a member of the Garda Síochána to be dealt with according to law.

25.—(1) A person who assaults a sea-fisheries protection officer in exercise of any power conferred on a sea-fisheries protection officer under this Part or Part 4 of the Act of 2003 commits an offence and is liable—

Offence —
assaulting sea-
fisheries protection
officer.

(a) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months, or to both, or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years, or to both.

(2) If a person assaults a sea-fisheries protection officer in the exercise of his or her powers under this Part or the Act of 2003 the officer or another sea-fisheries protection officer may (being a member of the Defence Forces or Garda Síochána or an officer of Customs and Excise) arrest, without warrant, the person and, if that officer is not a member of the Garda Síochána, shall, as soon as practicable, deliver the person into the custody of a member of the Garda Síochána to be dealt with according to law.

(3) Section 15(1) of the Act of 1994 is amended by deleting “sea-fisheries protection officer”.

Immunity of sea-fisheries protection officer.

26.—A sea-fisheries protection officer or a person acting under the orders of a sea-fisheries protection officer is not liable in any proceedings for anything done in the purported exercise of the powers of a sea-fisheries protection officer under this Part if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it. 5

CHAPTER 4

Matters relating to indictable fishery offences, proceedings, forfeiture 10

Option for accused persons as regards proceedings in relation to indictable offences under *Sea-Fisheries Acts 2003 and 2005*.

- 27.**—(1) (a) A person charged with an indictable offence under *Chapter 2* or the Act of 2003 may, with the consent of the prosecutor, elect to be sent forward for trial in the Circuit Court on a plea of not guilty.
- (b) In that event, the prosecutor shall cause to be served on the accused person or the solicitor (if any) for that person, within 42 days after the not guilty plea is entered (or such longer period as the District Court may determine under *subsection (2)(a)*), any documents that under section 4B or 4C (inserted by section 9 of the Act of 1999) of the Act of 1967 are required to be served and have not already been served and a copy of those documents to be furnished to the District Court. 15 20
- (2) (a) The District Court may, on the application of the prosecutor, extend the period within which any documents required under section 4B of the Act of 1967 are to be served, if satisfied that— 25
- (i) there is good reason for doing so, and
- (ii) it would be in the interests of justice to do so.
- (b) An application may be made and an extension may be granted under *paragraph (a)* before or after the expiry of— 30
- (i) the period of 42 days mentioned in *subsection (1)*, or
- (ii) any extension of that period granted under *paragraph (a)*. 35
- (c) Where it refuses to grant an extension, the District Court shall strike out the proceedings against the accused in relation to the offence.
- (d) The striking out of proceedings under *paragraph (c)* does not prejudice the institution of any further proceedings against the accused by the prosecutor. 40

Penalties and forfeiture for certain indictable fishery offences.

- 28.**—(1) A person guilty of an offence under a provision of—
- (a) *Chapter 2* specified in *Table 1*, or
- (b) Part 2 of the Act of 2003 specified in *Table 2*,

is liable, on conviction on indictment, to the fine specified in *column* (3) of that Table at the reference number at which that provision is specified and to the forfeiture specified in *subsection* (5).

5 (2) A judge of the District Court has jurisdiction to try summarily any offence referred to in *subsection* (1) if—

(a) the judge is of opinion that the facts proved or alleged against a defendant charged with such an offence constitute a minor offence fit to be tried summarily,

(b) the prosecutor consents, and

10 (c) the defendant (on being informed by the judge of his or her right to be tried by a jury) does not object to being tried summarily,

15 and, upon conviction under this subsection, the defendant is liable to a fine not exceeding €5,000 and to the forfeiture specified in *subsection* (6).

(3) If at any time a judge of the District Court ascertains that a person charged with an offence referred to in *subsection* (1) wishes to plead guilty and the judge is satisfied that the person understands the nature of the offence and the facts charged, he or she may—

20 (a) with the consent of the prosecutor, deal with the offence summarily, in which case the accused is liable to a fine not exceeding €5,000 and to the forfeiture specified in *subsection* (6), or

25 (b) if the accused signs a plea of guilty, send him or her, with the consent of the prosecutor, forward for sentence with that plea to a court to which, if he or she had not pleaded guilty, he or she could lawfully have been sent forward for trial.

30 (4) Section 13(1) to (3) of the Act of 1967 does not apply in relation to an offence referred to in *subsection* (1). In *section* 13(4) (as amended by section 10 of the Act of 1999) of the Act of 1967 a reference to a person sent forward for trial under paragraph (a) of that section shall be read as including a reference to a person sent forward for trial under *subsection* (3)(b) of this section.

35 (5) Where a person is convicted on indictment of an offence specified in a Table, in addition to any fine the court may impose under this section—

40 (a) in the case of a conviction under *section* 8 or 9, it may order the forfeiture of all or any fish and fishing gear found on the boat to which the offence relates, or

45 (b) in the case of a conviction under any provision mentioned in a Table, any fish and fishing gear found on the boat to which the offence relates or in any other place where they may be are, as a statutory consequence of the conviction, forfeited.

(6) Where a person is convicted summarily of an offence specified in a Table, in addition to any fine the court may impose under this section—

- (a) in the case of a conviction under *section 8* or *9*, it may order the forfeiture of all or any of the following found on the boat to which the offence relates—
- (i) any fish unlawfully caught, and
 - (ii) any fishing gear used in the commission of the offence or to which the offence relates, or
- (b) in the case of a conviction under any other provision mentioned in a Table, all of the following found on the boat to which the offence relates, namely—
- (i) any fish unlawfully caught, and
 - (ii) any fishing gear used in the commission of the offence or to which the offence relates,

are, as a statutory consequence of the conviction, forfeited.

- (7) (a) The court may, in addition to any fine and forfeiture which it may impose or is as a statutory consequence of conviction imposed under this section, revoke or suspend, for such period as it sees fit, the sea-fishing boat licence granted in relation to the boat concerned.
- (b) A licence revoked or suspended under this subsection shall be delivered as soon as practicable to the licensing authority after it is revoked or suspended.
- (c) A person who fails to comply with *paragraph (b)* commits an offence and is liable on summary conviction to a fine not exceeding €500.

TABLE 1 — Fines - Provisions of *Chapter 2*

Reference Number	Provision	Fine on conviction on indictment not exceeding amount specified below
(1)	(2)	(3)
1.	Section 11, 14 or 15 in so far as it relates to—	
(a)	a contravention relating to capacity plans of a sea-fishing boat,	€200,000
(b)	illegal nets or other equipment, or	€100,000
(c)	any other contravention or failure of compliance.	€35,000
2.	Section 8(2), 9(3) or 10(2)	€100,000
3.	Section 12 or 13	€35,000

TABLE 2 — Fines - Provisions of Act of 2003

	Reference Number	Provision	Fine on conviction on indictment not exceeding amount specified below
5	(1)	(2)	(3)
	1.	Section 4(12) (fishing without or in contravention of sea-fishing boat licence).	€100,000
10	2.	Section 25(3) (fishing in contravention of conservation regulations).	€200,000
15	3.	Section 27(5) (failure to return to port immediately on order of sea-fisheries protection officer).	€200,000

29.—(1) Where on conviction on indictment of a person for an offence under a provision specified in a Table—

Forfeiture of boats used in commission of certain offences.

(a) that offence (or that offence when taken in conjunction with any other offence or offences, under any of those sections, of which that person has been so convicted) is considered by the court to constitute a serious abuse of obligations imposed by an Community Regulation, a contravention of or a failure to comply with a notice under *section 12* or an authorisation under *section 13* or measures prescribed under *section 14(1)* or *15(1)*, or

(b) (i) the conviction is a second or subsequent conviction on indictment for an offence under any of those sections committed on board the same boat within 3 years of the date of the commission of the previous offence and whether the person convicted is or is not the same person on each occasion, and

(ii) the boat is at the time of the commission of the offence owned or part owned by a person who was the owner or part owner of the boat on the occasion of the commission of any of the previous offences referred to in *subparagraph (i)*,

the court may, at its discretion, in addition to any other fines and forfeitures to which the person may be liable, order the boat used in the commission of the offence to be forfeited.

(2) Where—

(a) the conviction is a second or subsequent conviction on indictment for an offence under one of the sections mentioned in *subsection (1)* committed on board the same boat and the date of the second or subsequent offence is within 3 years of the date of commission of the previous offence and whether the person convicted is or is not the same person on each occasion, and

(b) the ownership has changed between the commission of the first and second or subsequent offences,

then if the court is satisfied that there are reasonable grounds for believing that the change of ownership has been effected in order to evade a possible forfeiture of the boat upon a subsequent conviction the onus shall be on the owner to furnish to the court sufficient evidence showing, to the satisfaction of the court that—

5

(i) neither the legal or beneficial ownership of nor any legal or beneficial interest in the boat remains with the owner or a part owner of the boat at the time of the previous offence, and

(ii) the sale, assignment or transfer of the boat was done in good faith and for valuable consideration reflecting the market price or worth of the boat when it was acquired,

10

and where such evidence fails to satisfy the court, the court may, at its discretion, in addition to any other fines and forfeitures to which the person may be liable, order the boat to be forfeited.

15

(3) For the purposes of this section owner and part owner includes a person who, although no longer the legal owner or part owner, handles, manages or carries on the operation of the boat.

(4) The court shall not order any boat to be forfeited pursuant to *subsection (1) or (2)* if a person claiming to be the owner of or otherwise interested in it applies to be heard before the court to show cause why the order should not be made.

20

(5) The court in ordering the forfeiture of a boat under this section may, if a mortgagee or chargeholder satisfies the court that he or she granted a mortgage or charge in respect of the boat to its owner or owners in good faith, order that the boat be sold and that some or all of the proceeds be paid to the mortgagee or chargeholder to meet the outstanding mortgage or charge.

25

Non-obligation of Court to pronounce or record forfeiture where forfeiture falls as a statutory consequence of conviction.

30.—Where a person is convicted by a court of an offence specified in a Table and any gear or fish under *section 28* or any boat under *section 29*, is, as a statutory consequence of the conviction, forfeited, then, notwithstanding any rule of law, it is not necessary for the court—

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(a) to pronounce the fact of such forfeiture at the time of adjudication, or

35

(b) to record the fact of such forfeiture in the judge's minute book, the charge sheet or in the order of conviction.

Disposal of forfeitures.

31.—Where any thing which, either as a statutory consequence of conviction or by an order of a court, is forfeited under *section 28* or *29*, is lawfully seized, the Secretary General may direct that such thing shall be sold or otherwise disposed of in such manner as he or she thinks fit for the benefit of the Exchequer.

40

Forfeiture of proceeds from disposal of illegally-caught fish.

32.—(1) Where it is shown to the satisfaction of the court on the balance of probability that fish were caught in contravention of any law of the State or of Community law or in contravention of any international agreement to which the State is a party, the appropriate market value from disposal of that fish shall be forfeited to the State and may be recovered, in accordance with this section, from—

45

- 5 (a) in the case of an Irish sea-fishing boat, the owner or owners of that boat as recorded in the Register of Fishing Boats if the boat is registered in that register or the holder of the sea-fishing boat licence for the boat concerned, or
- (b) in the case of any other sea-fishing boat, the owner or owners of the boat concerned.
- (2) A forfeiture under *subsection (1)*—
- 10 (a) shall be in addition to and not in substitution for any fine or other forfeiture which a court may impose in relation to the sea-fishing boat or sea-fishing concerned and shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance directs, and
- 15 (b) may be imposed where there were no proceedings for an offence in relation to the sea-fishing boat or sea-fishing concerned.
- (3) *Prima facie* evidence that fish were caught illegally may be adduced by a sea-fisheries protection officer from the logbook or
20 other records relating to the sea-fishing boat or sea-fishing concerned.
- (4) In order to establish an appropriate valuation of the proceeds to be forfeited so as to reflect the economic effects of the illegal sea-fishing concerned, the court shall have regard to the greater of the
25 following amounts—
- (a) the amount of the proceeds of disposal according to any documentary evidence submitted by the owner of the sea-fishing boat concerned, within such period as the court may specify, or
- 30 (b) the appropriate market value of the sea-fish concerned involving a willing seller and a willing buyer operating at arms' length, in so far as that value could reasonably be established:
- 35 Provided that where the sea-fish concerned were first disposed of for storage and were subsequently disposed of otherwise at a different value, the appropriate market value of the sea-fish concerned shall be taken to be the value of the disposal with the greater value.
- (5) Proceedings under *subsection (1)* may be brought by or at the suit of the Seafood Control Manager.
- 40 (6) In this section—
- “disposal” includes sale, exchange, barter or other transaction based on a valuation of the fish concerned;
- “sea-fishing boat concerned” includes an Irish sea-fishing boat wherever it may be and any other sea-fishing boat which disposes of
45 fish within the exclusive fishery limits or in a port or other landing place in the State.

Prosecutor may
appeal dismissal of
proceedings in
District Court.

33.—(1) Where any proceedings tried summarily in the District Court for an offence under the *Sea-Fisheries Acts 2003 and 2005* are dismissed, whether on the merits or without prejudice, the prosecutor may appeal against the order of dismissal to the judge of the Circuit Court within whose Circuit the courthouse where the order was made is situated. 5

(2) The judge of the Circuit Court on an appeal under *subsection (1)* may vary, confirm or reverse the order and his or her decision is final and conclusive and not appealable.

Proof that boat is
foreign sea-fishing
boat.

34.—(1) Where in any proceedings for an offence under this Part or the Act of 2003 there is evidence from which it appears to the court that the sea-fishing boat to which the alleged offence relates, or on board which such offence is alleged to have been committed, is either of a foreign character or of foreign origin or that at or about the time of the alleged offence such boat— 10 15

(a) wore no flag or wore a flag other than the national flag,

(b) had marked on its stern the name of any place other than a port mentioned in the Second Schedule to the Act of 1955, or

(c) had on board any books, papers or other documents from which it so appears that the boat was not an Irish ship (within the meaning of section 9 of that Act), 20

then, until the contrary is shown, such evidence shall be sufficient to prove that such boat is a foreign sea-fishing boat.

(2) Where in proceedings for an offence under this Part or the Act of 2004 it is proved that the sea-fishing boat to which the alleged offence relates, or on board which such offence is alleged to have been committed, wore at or about the time of the alleged offence a flag other than the national flag, the presumption raised by *subsection (1)*, insofar as it depends on that proof, may be rebutted by the defendant proving that the flag so worn was not a flag distinctive of nationality. 25 30

Offence by body
corporate, etc.

35.—Where an offence under the *Sea-Fisheries Acts 2003 and 2005* is committed by a body corporate or by a person purporting to act on behalf of a body corporate or on behalf of an unincorporated body of persons and it is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any other person who, when the offence was committed, was, or purported to act as, a director, manager, secretary or other officer (including a member of such body), such other person as well as the body, or the person so purporting to act on behalf of the body, commits an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence. 35 40

Service of trial
documents —
persons resident
outside State.

36.—(1) Where a judge of the District Court proposes to make an order for the release on bail of a defendant before him or her, charged with an offence under the *Sea-Fisheries Acts 2003 and 2005*, who is ordinarily resident outside the State, he or she shall, unless he or she is satisfied that the following documents can be duly served on the defendant in the State, direct that all documents (including an indictment) required by law to be served on the defendant in 45 50

connection with or for the purpose of the charge or of any proceedings arising out of or connected with the charge may, in lieu of being served on the defendant, be served on a person specified in the direction who is ordinarily resident in the State.

5 (2) Where a judge of the District Court who has given a direction under *subsection (1)* or another judge of the District Court acting in his or her place is satisfied that, owing to the death or absence from the State of a person specified in the direction or for any other reason a document referred to in *subsection (1)* cannot be served on
10 that person, the judge shall direct that the document may be served on another person specified in the direction who is ordinarily resident in the State.

(3) Service of a document referred to in this section on a person specified in a direction under this section is deemed for all purposes
15 to be service on the defendant concerned.

37.—Where an offence under a relevant provision has been committed by any person on board a sea-fishing boat, and where the master, the owner or the charterer of the boat is charged with having committed the offence, it is a defence for him or her to show that he
20 or she used due diligence to prevent the commission of the acts alleged to constitute the offence and they were done without his or her consent, connivance or wilful default.

38.—In a prosecution of an offence in relation to the catching, retention, storage on board, trans-shipment or landing of the fish
25 concerned in contravention of *Chapter 2* or section 25 of the Act of 2003, it shall be presumed, unless the contrary is shown, that the sea-fishing boat concerned was, at the time of the alleged offence, used for the catching, retention, storage on board, trans-shipment or landing of the fish concerned in contravention of the provision concerned, from—
30

- (a) any fish relevant to the offence on board such sea-fishing boat,
- (b) any nets or other equipment or articles on board such sea-fishing boat indicating use of the boat for fishing, the
35 retention, storage on board, trans-shipment or landing of fish relevant to the offence,
- (c) evidence that such sea-fishing boat had on board any records from which it appears to the court that on the day on which the offence is alleged to have been committed fish relevant to the offence were caught, retained, stored on board, trans-shipped or landed contrary to the
40 provision concerned,
- (d) any admission by any person who is for the time being the master or another member of the crew, of such sea-fishing boat that at such time she was so used,
45
- (e) any photographic evidence from which it so appears that the sea-fishing boat was so used or which in the opinion of the court suggests, or tends to suggest, that the sea-fishing boat was so used, or
- (f) any data received by a Fisheries Monitoring Centre (within the meaning of Commission Regulation (EC) No.
50

2244/2003 of 18 December 2003² laying down detailed provisions regarding satellite-based vessel monitoring systems) monitoring the fishing activities of the boat from which it so appears that the sea-fishing boat was so used or which in the opinion of the court suggests, or tends to suggest, that the boat was so used. 5

Prosecution of summary offences — *Sea-Fisheries Acts 2003 and 2005*.

39.—(1) Proceedings for an offence under the *Sea-Fisheries Acts 2003 and 2005* (other than a section specified in a Table) may be prosecuted summarily by the Minister.

(2) Notwithstanding anything contained in any other enactment, 10 an offence under the *Sea-Fisheries Acts 2003 and 2005*, other than an offence specified in a Table, may be determined in a summary way by a judge of the District Court upon the complaint, verbal or otherwise, of a sea-fisheries protection officer.

(3) For the purposes of giving jurisdiction under the *Sea-Fisheries Acts 2003 and 2005*, proceedings for an offence under those Acts 15 may be taken in any place in the State and the offence is deemed to have been committed in that place.

Prosecution of sea-fisheries offences by DPP and saver.

40.—(1) The Government may by order appoint a day from which the Director of Public Prosecutions, subject to *subsection (2)*, is the 20 prosecutor, in lieu of the Attorney General, of offences for the purposes of *sections 27, 28, and 33*. That Order shall be laid before each House of the Oireachtas as soon as may be after it is made.

(2) Any proceedings which have been instituted in the name of the Attorney General before the commencement of an order under 25 *subsection (1)* and are still pending and have not been determined before that commencement continue in the name of the Attorney General after that commencement.

(3) Until the commencement of an order made under *subsection (1)*— 30

(a) section 3 of the Prosecution of Offences Act 1974 does not apply to the prosecution of an offence under a section specified in a Table or to any functions in relation to that matter to which, but for this subsection, it would apply, and 35

(b) references in section 62 of the Courts of Justice Act 1936 and section 6 of the Courts Act 1964 to the Director of Public Prosecutions are, in so far as those sections apply in relation to the offences referred to in *paragraph (a)* or to any functions referred to in that paragraph, to be 40 construed as references to the Attorney General.

(4) *Subsection (3)* stands repealed upon the commencement of an order made under *subsection (1)*.

CHAPTER 5

Seafood Control Manager 45

Seafood Control Manager.

41.—(1) The Secretary General shall appoint—

²OJ No. L333, 20.12.2003, p.17

(a) one of the senior officers of the Department to be known as the Seafood Control Manager to perform the functions conferred on the Seafood Control Manager under this section, and

5 (b) one or more of the officers of the Department to be known as Deputy Seafood Control Manager—

(i) to perform the functions of the Seafood Control Manager under his or her superintendence, and

10 (ii) to act as deputy for the Seafood Control Manager when he or she is unavailable,

and references in this section to the Seafood Control Manager shall be read as including references to the Deputy Seafood Control Manager.

15 (2) The Secretary General may revoke an appointment under subsection (1) for stated reasons.

(3) Subject to this section, the Seafood Control Manager shall be independent in the exercise of his or her functions.

20 (4) It shall be the duty of the Seafood Control Manager to arrange for the enforcement of the *Sea-Fisheries Acts 2003* and *2005* and food safety law through inspections and other activities by the effective and efficient deployment of sea-fisheries protection officers who are officers of the Department and other resources as are provided for that purpose, from time to time, by the Secretary General.

25 (5) Without prejudice to the generality of subsection (4), the Seafood Control Manager shall—

30 (a) advise the prosecutor as soon as may be of any contravention of the *Sea-Fisheries Acts 2003* and *2005* and food safety law detected by him or her or by any personnel deployed by him or her, for the purpose of determining what proceedings or other enforcement action may be appropriate to be taken in relation thereto,

35 (b) promote compliance with the *Sea-Fisheries Acts 2003* and *2005* and food safety law and, in particular, promote the achievement of high standards of hygiene and safety in the production or distribution within the State of fish and fishery products for human consumption, and

(c) provide policy advice to the Minister and Secretary General in relation to any of the functions referred to.

40 (6) The Seafood Control Manager shall, as soon as practicable but not later than 6 months after each financial year, give a report on the performance of his or her functions to the Minister and the Secretary General. The Minister shall cause copies of the report to be laid before each House of the Oireachtas.

45 (7) The Seafood Control Manager shall report as required to the Secretary General on the performance of his or her functions, in order to meet reporting obligations of the State to the Commission of the European Communities and otherwise.

(8) No action or other proceedings shall lie or be maintainable against the Seafood Control Manager or any personnel deployed by

him or her for the recovery of damages in respect of any injury to persons, damage to property or other loss alleged to have been caused or contributed to by a bona fide failure to perform or comply with any enforcement functions to which this section relates.

(9) In this section— 5

“food safety law” means—

- (a) food legislation (within the meaning of section 2(1) of the Food Safety Authority of Ireland Act 1998) relating to the safety and hygiene of fish or fishery products, and
- (b) the legal obligations of the State in relation to fish or fish- 10
ery products arising under any law of an institution of the European Communities or other international agreement which is binding on the State (whether or not such legal obligation is the subject of regulations under the Act of 15
1972 or any other enactment);

“functions” includes powers and duties and references to the performance of functions include, with respect to powers and duties, references to the exercise of the powers and the carrying out of the duties.

CHAPTER 6 20

*Registration of sea-fishing boats and miscellaneous offences
involving sea-fishing boats*

Register of Fishing
Boats.

42.—(1) The Register of Fishing Boats continues in existence as the Register of Fishing Boats (“Register”) for the purposes of this section and shall continue to be maintained by the Registrar General 25
of Fishing Boats in such form as he or she considers appropriate (including in an electronic or other non-documentary form) and shall be revised or amended as he or she considers necessary from time to time.

(2) There continues to be a registrar of fishing boats known as 30
the Registrar General of Fishing Boats (“Registrar General”).

(3) The Registrar General shall be appointed by the Minister who may remove him or her from office for stated reasons.

(4) The Minister may appoint, and terminate for stated reasons 35
the appointment of, a Deputy Registrar General of Fishing Boats (“Deputy Registrar General”) to act for or perform the functions of the Registrar General during any absence from duty or inability to act of the Registrar General or as the Registrar General may from time to time direct. References in this Chapter to the Registrar General shall be read as including references to the Deputy Registrar 40
General.

(5) The persons who immediately before the passing of this Act hold the position of Registrar General and Deputy Registrar General shall be the first Registrar General and Deputy Registrar General 45
under this section.

(6) There continues to be local registrars of sea-fishing boats for such ports as provided for in the Regulations of 2005 unless otherwise provided for in regulations under *section 44*.

43.—(1) Subject to *subsections* (2) and (3), every Irish sea-fishing boat shall be entered in the Register and shall be lettered and numbered in accordance with regulations under *section 44* and with any Community law for the time being in force.

Registration,
lettering and
numbering of sea-
fishing boats.

5 (2) In the interests of the proper management of the capacity of Irish sea-fishing boats, in accordance with—

(a) the requirements of the Community law, or other international obligations which are binding on the State, or

(b) any regulations under *section 44*,

10 the Registrar General may enter a sea-fishing boat in the Register or remove it from the Register.

15 (3) (a) A sea-fishing boat shall not be entered in the Register unless at the time of the entry there is in relation to the boat a sea-fishing boat licence and which is for the time being in force or, if it is not so in force, is to come into force on the boat's being so registered.

20 (b) A ship which is a sea-fishing boat shall not be registered under the Act of 1955 unless, at the time of registration, there is in relation to the ship a sea-fishing boat licence and which is for the time being in force or, if it is not so in force, is to come into force on the ship's being so registered.

(4) (a) A certificate of registration shall be issued in respect of a boat entered in the Register.

25 (b) The certificate of registration shall be carried on board the boat in respect of which it is issued.

30 (c) A certificate of registration issued in respect of a particular boat, or a certificate signed by the Registrar General that a boat specified in the certificate is not entered in the Register, is sufficient evidence that the boat is or is not registered, as the case may be.

35 (5) (a) In any proceedings against the owner or skipper of or any person belonging to any boat entered in the Register, or for the recovery of damages for injury or loss caused by such boat, the Register shall be evidence (unless the contrary is shown) that the person entered in the Register at any date as the owner or owners of the boat was or were the owner or owners of the boat at that date and that the boat is an Irish sea-fishing boat.

40 (b) *Paragraph (a)* does not—

(i) prevent any proceedings being instituted against any person not so entered who is beneficially interested in the boat,

45 (ii) affect the rights of the owners among themselves, or affect the rights of any owner entered in the Register against any person not so entered who is beneficially interested in the boat, or

(iii) otherwise confer, take away or affect any title to or interest in any boat.

(6) If an Irish sea-fishing boat is used for sea-fishing and—

- (a) is not entered in the Register, but is required to be so entered,
- (b) is entered in the Register, but there is not on board the boat the certificate of registration issued in respect of that boat (or a copy of that certificate), or 5
- (c) is not lettered and numbered in accordance with regulations under *section 44* and Community law applicable to the lettering and numbering of that boat,

the master and the owner of the boat each commits an offence and 10
is liable on summary conviction to a fine not exceeding €5,000.

(7) If a sea-fishing boat required to be entered in the Register is not so entered, it shall not be entitled to any of the privileges or advantages of an Irish sea-fishing boat, but all obligations, liabilities and penalties with reference to that boat and the punishment of 15
offences committed on board the boat, or by any persons belonging to it, and the jurisdiction of sea-fisheries protection officers or other officers and courts shall be the same as if the boat were entered in the Register.

(8) For so long as a ship which but for *subsection (3)* would be 20
required to be registered under the Act of 1955 is not so registered, section 18(3) of that Act applies to that ship as if it were required by section 18(1) of that Act to be so registered.

Regulations.

44.—The Minister may make regulations for the registration, lettering and numbering of sea-fishing boats so as to— 25

- (a) provide for a system of registry, lettering and numbering of sea-fishing boats and the making of details of registration available to the public,
- (b) define the boats or classes of boats to which the regulations or any of them are to apply and the exemption of 30
any boats or classes of boats from the regulations or any of them,
- (c) provide further for the appointment, functions and removal of local registrars,
- (d) specify procedures for application for registration and for 35
entry of a sea-fishing boat in the Register,
- (e) specify procedures and methods for determining the dimensions and tonnage of sea-fishing boats,
- (f) specify procedures for the removal of a sea-fishing boat 40
from the Register,
- (g) make such provision as is necessary to ensure compliance with an obligation relating to the registration of sea-fishing boats, the marking and numbering of sea-fishing boats, the measurement of sea-fishing boats and the 45
determination of the tonnage and engine power of sea-fishing boats imposed by or under Community law or other international obligations which are binding on the State,

(h) require (with the consent of the Minister for Finance) the payment of such fee before an application for registration or removal of a sea-fishing boat from the Register can be considered, or

5 (i) provide for any other necessary matters relating to the registration of sea-fishing boats and the removal of sea-fishing boats from the Register.

45.—(1) Every fee received by the Department under *section 44* Fees.
shall be disposed of for the benefit of the Exchequer in such manner
10 as the Minister for Finance directs.

(2) The Public Offices Fees Act 1879 does not apply to a fee required under *section 44*.

46.—The Regulations of 2005, if in operation on the passing of this Act, continue in force as if made under *section 44*. Continuanace of Regulations of 2005.

15 **47.**—(1) If a foreign sea-fishing boat is found within the exclusive fishery limits without having on board official papers evidencing the nationality of the boat, the master of the boat commits an offence. Miscellaneous offences involving sea-fishing boats.

(2) If any sea-fishing boat within the exclusive fishery limits fails to observe the provisions, relating to lights to be carried and exhibited, of the regulations for the prevention of collisions at sea made
20 under section 418 of the Act of 1894, and applicable to the boat, the master and the owner of the boat each commits an offence.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding €5,000.

25 **48.**—In this Chapter—

Definitions.

“certificate of registration” means a certificate signed by the Registrar General stating that the Irish sea-fishing boat to which it relates is entered in the Register;

30 “Regulations of 2005” means Merchant Shipping (Registry, Lettering and Numbering of Fishing Boats) Regulations 2005 (S.I. No. 261 of 2005);

“sea-fishing boat licence” means a licence granted under section 4 (inserted by *section 65*) of the Act of 2003.

PART 3

35 MARITIME JURISDICTION (INCLUDING EXCLUSIVE ECONOMIC ZONE AND EXCLUSIVE FISHERY LIMITS) OF THE STATE

49.—(1) In this Part—

Definitions (*Part 3*).

“exclusive economic zone” has the meaning given to it by or under *section 54*;

40 “exclusive fishery limits” has the meaning given to it by *section 55*;

“foreign ship” means a ship which is not an Irish ship (within the meaning of section 9 of the Act of 1955);

“internal waters” has the meaning given to it by *section 53*;

“island” means a naturally formed area of land surrounded by water which is above water at high water; 5

“low-tide elevation” means a naturally formed area of land which is surrounded by and above water at low water but submerged at high water;

“nautical mile” means the length of one minute of an arc of a meridian of longitude; 10

“ship” includes every description of vessel used in navigation whether on or under the surface of the water, howsoever propelled, and also includes a seaplane while it is in contact with the water;

“territorial seas” has the meaning given to it by *section 50*.

Territorial seas. **50.**—The territorial seas of the State is that portion of the sea which lies between the baseline and the outer limit of the territorial seas. 15

Outer limit of territorial seas. **51.**—The outer limit of the territorial seas is the line every point of which is at a distance of 12 nautical miles from the nearest point of the baseline. 20

Baseline. **52.**—(1) Save as otherwise provided, the baseline is low-water mark—

(a) on the coast of the mainland or of any island, or

(b) on any low-tide elevation situated wholly or partly at a distance not exceeding 12 nautical miles from the mainland or an island. 25

(2) The Government may by order (which they may by order revoke or amend) prescribe straight baselines in relation to any part of the State and the closing line of any bay or mouth of a river, and any line so prescribed shall be taken as the baseline. 30

(3) The Maritime Jurisdiction Act 1959 (Straight Baselines) Order 1959 (S.I. No. 173 of 1959), if in operation on the passing of this Act, continues in force as if made under this section.

Internal waters. **53.**—The internal or inland waters of the State extend to all sea areas which lie on the landward side of the baseline of the territorial seas and all such sea areas shall be subject to the jurisdiction of the State to the same extent in all respects as its ports and harbours, bays, lakes and rivers, subject to any right of innocent passage for 35

foreign ships in those sea areas which previously had been considered as part of the territorial seas or of the high seas.

54.—(1) The exclusive economic zone of the State is the area beyond and adjacent to the territorial seas subject to the specific legal regime established in Part V of the United Nations Convention on the Law of the Sea (“Convention”), done at Montego Bay on 10 December 1982, the text of which, in the English language, is, for convenience of reference, set out in *Schedule 2* to this Act.

Exclusive economic zone of State.

(2) Subject to *subsection (3)*, the outer limit of the exclusive economic zone is the line every point of which lies at a distance of 200 nautical miles from the nearest point of the baseline.

(3) Where because of the proximity of a similar maritime zone of another state the outer limit of the exclusive economic zone specified in the *subsection (2)* cannot be applied, the boundary of the exclusive economic zone is the equitable equidistant line between the State and the other state. The Government may by order (which they may by order revoke or amend) prescribe the co-ordinates of latitude and longitude of the appropriate equitable equidistant line or lines.

(4) In the exclusive economic zone the State has—

(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds,

(b) jurisdiction as provided for in the relevant provisions of the Convention with regard to—

(i) the establishment and use of artificial islands, installations and structures,

(ii) marine scientific research, and

(iii) the protection and preservation of the marine environment,

and

(c) other rights and duties provided for in international law.

55.—For the purposes of *Part 2*, the exclusive fishery limits of the State comprise all seas that lie inside the outer limit of the exclusive economic zone.

Exclusive fishery limits of State.

56.—(1) Every offence committed within the territorial seas or internal waters is an offence within the jurisdiction of the State and may be dealt with by a court of competent jurisdiction although committed on board or by means of a foreign ship and a person who commits such offence may be arrested, tried and punished accordingly.

Jurisdiction in case of offence.

(2) For the purpose of arresting any person charged with an offence declared by this section to be within the jurisdiction of the State, the territorial seas and internal waters shall be deemed to be within the jurisdiction of any court or judge having power within the State to issue warrants for the arrest of persons charged with offences committed within the jurisdiction of such court or judge. 5

Prosecution of non-national for offence on foreign ship.

57.—(1) Proceedings (other than the taking of depositions) for the prosecution of a non-national for an offence alleged to have been committed in the territorial seas on board or by means of a foreign ship shall not be instituted without the certificate of the Minister for Foreign Affairs that the institution of the proceedings is in his or her opinion expedient. 10

(2) This section does not apply to an offence under the *Sea-Fisheries Acts 2003* and *2005*.

Saving as to jurisdiction.

58.—Nothing in this Part shall be read to be in derogation of any jurisdiction enjoyed by the State under international law or conferred on it by Community law, or to affect or prejudice such jurisdiction or any jurisdiction conferred upon it by any other enactment or now by law existing. 15

Evidence as to extent of internal waters, territorial seas, exclusive economic zone and exclusive fishery limits.

59.—(1) The Government may by order (which they may by order revoke or amend) prescribe the charts which may be used for the purpose of establishing low-water mark, or the existence and position of any low-tide elevation, or any other matter in reference to the internal waters, the territorial seas, exclusive economic zone or the exclusive fishery limits, and any chart purporting to be a copy of a chart of a kind or description so prescribed shall, unless the contrary is proved, be received in evidence as being a prescribed chart without further proof. 20 25

(2) The Maritime Jurisdiction Act 1959 (Charts) Order 1959 (S.I. No. 174 of 1959), if in operation on the passing of this Act, continues in force as if made under this section. 30

Adaptation of enactments.

60.—(1) References in any enactment to sea areas and waters within 3 miles, 3 nautical miles, or one league of the coast or shore and cognate expressions shall be construed as references to sea areas and waters lying within the outer limit of the territorial seas. 35

(2) For the purposes of any other enactment the territorial seas shall be taken to comprise the sea area to which *section 50* applies.

(3) Section 3 of the Sea Pollution Act 1991 is amended by substituting for subsection (2A) (inserted by section 13 of the Sea Pollution (Amendment) Act 1999) the following: 40

“(2A) A reference in this Act to the State includes a reference to—

(a) the inland waters of the State,

(b) the territorial seas of the State, and the seabed and subsoil beneath those seas, and 45

(c) the exclusive economic zone of the State (within the meaning of *section 54* of the *Sea-Fisheries and Maritime Jurisdiction Act 2005*).”.

5 (4) Section 117 of the Patents Act 1992 is amended by substituting “*section 53 of the Sea-Fisheries and Maritime Jurisdiction Act 2005*” for “section 5 of the Maritime Jurisdiction Act 1959”.

(5) Section 36(4) of the Criminal Justice Act 1994 is amended by substituting “*Section 57 of the Sea-Fisheries and Maritime Jurisdiction Act 2005*” for “Section 11 of the Maritime Jurisdiction Act 1959”.

10 (6) Section 1 of the Sea Pollution (Amendment) Act 1999 is amended by substituting for *subsection* the following:

“(2) A reference in this Act to the State includes a reference to—

(a) the inland waters of the State,

15 (b) the territorial seas of the State, and the seabed and subsoil beneath those seas, and

(c) the exclusive economic zone of the State (within the meaning of *section 54* of the *Sea-Fisheries and Maritime Jurisdiction Act 2005*).”.

20 (7) Sections 185 and 290 of the Copyright and Related Rights Act 2000 are each amended, in paragraph (a)(ii), by substituting “*section 53 of the Sea-Fisheries and Maritime Jurisdiction Act 2005*” for “section 5 of the Maritime Jurisdiction Act 1959”.

25 (8) Section 2 of the Sea Pollution (Hazardous Substances) (Compensation) Act 2005 is amended by substituting for subsection (2) the following:

“(2) A reference in this Act to the State includes a reference to—

(a) the inland waters of the State,

30 (b) the territorial seas of the State, and the seabed and subsoil beneath those seas, and

(c) the exclusive economic zone of the State (within the meaning of *section 54* of the *Sea-Fisheries and Maritime Jurisdiction Act 2005*).”.

35 **61.**—Every order made by the Government under this Part shall be laid before each House of the Oireachtas as soon as may be after it is made and (except in the case of an order made under *section 59(1)*), if a resolution annulling the order is passed by either House within the next 21 days on which that House has sat after the order
40 has been laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.

Laying of orders before Houses of Oireachtas.

PART 4

AMENDMENTS TO FISHERIES ACTS 1959 TO 2003, MERCANTILE MARINE ACT 1955, FISHERY HARBOUR CENTRES ACT 1968, DUMPING AT SEA ACT 1966 AND MARITIME SAFETY ACT 2005

CHAPTER 1

5

Trial of Offences

Provisions in relation to cases in District Court.

62.—Section 309 of the Principal Act is amended by substituting for subsection (1) (inserted by section 49 of the Fisheries Act 1980) the following:

“(1) Notwithstanding anything contained in any other enactment, an offence under the *Fisheries Acts 1959 to 2005*, other than the *Sea-Fisheries Acts 2003 and 2005*, may be heard and determined in a summary way by a judge of the District Court upon the complaint, verbal or otherwise, of a member of the Garda Síochána, the Central Board, a regional board, an officer or employee of a board, a private waterkeeper (within the meaning of Part XVIII) or any other person.”.

Prosecution of summary offences — *Fisheries Acts 1959 to 2005*.

63.—(1) Proceedings for an offence under the *Fisheries Acts 1959 to 2005* may be prosecuted summarily by the Minister.

(2) This section does not apply to the *Sea-Fisheries Acts 2003 and 2005*.

CHAPTER 2

Licensing of sea-fishing boats and miscellaneous amendments to Act of 2003

Sea-fishing boat licences.

64.—(1) The following section is substituted for section 4 of the Act of 2003:

“4.—(1) This section applies to any Irish sea-fishing boat.

(2) A sea-fishing boat to which this section applies shall not be used for sea-fishing (whether within the exclusive fishery limits of the State or otherwise) nor shall a person on board such a boat fish for sea-fish or attempt so to fish, save under and in accordance with a licence (‘sea-fishing boat licence’) granted or renewed for the purposes of this section and in relation to the boat by the licensing authority.

(3) (a) The licensing authority may grant sea-fishing boat licences for such period as is specified in the licence.

(b) An application for a sea-fishing boat licence shall be—

(i) made to the licensing authority,

(ii) in such form and contain such particulars as the licensing authority may specify, and

(iii) made by or on behalf of the owner of the boat in respect of which the application is made.

(c) Where an application is made for a sea-fishing boat licence, the licensing authority may, subject to subsection (5) allow or refuse the application.

(d) In deciding on the grant or refusal of a sea-fishing boat licence or the attachment of terms and conditions to licences the licensing authority may take account of economic and social benefits which the operation of a boat would be likely to contribute to the coastal communities and regions which the quotas within the meaning of Council Regulation No. 2371/2002 of 20 December 2002³ are designed to benefit, including—

(i) the projected annual number of landings at ports in the State,

(ii) the projected annual tonnage and value of fish landed in the State,

(iii) the projected annual level of expenditure in the State on wages, fuel, supplies, equipment and services, and

(iv) the projected annual level of social security and tax payments in the State in respect of employees and the operation of the boat, and the protection, conservation and sustainable exploitation of living marine aquatic species and requirements of the Common Fisheries Policy of the European Communities.

(4) (a) The licensing authority may renew a sea-fishing boat licence, without the holder or the licensee making an application under subsection 3(b), renew a sea-fishing boat licence for such period or periods as he or she may consider appropriate.

(b) Section 7 of this Act does not apply to the renewal of a licence under paragraph (a).

(5) The licensing authority shall not grant a sea-fishing boat licence unless the sea-fishing boat in relation to which the licence is granted is wholly owned by a national of a Member State or a state belonging to the European Economic Area or a body corporate established under and subject to the law of a Member State and having its principal place of business in a Member State or a state belonging to the European Economic Area.

(6) Where a sea-fishing boat is owned by a body corporate, the name, address and nationality of the beneficial owner or owners of the shares in, or of the person or persons who otherwise controls or control, the body corporate, shall be given to the licensing authority—

(a) on application for a sea-fishing boat licence in respect of the boat, or

(b) where a sea-fishing boat licence is in force in respect of the boat, if there is any change in such ownership or control.

³OJ No. L358, 31.12.2002, p.59

- (7) (a) A body corporate which is applying for a sea-fishing boat licence or holds a sea-fishing boat licence must have an agent in the State and give the licensing authority the name and address of the agent and details of contacting the agent at any time by or on behalf of the licensing authority. 5
- (b) The licensing authority may, as the case may be, refuse to grant or suspend (for such period as he or she sees fit) or revoke a sea-fishing boat licence where he or she considers that a body corporate is not complying with paragraph (a) to the satisfaction of the authority. 10
- (8) (a) The licensing authority may attach to a sea-fishing boat licence such terms (including terms specifying an event or other circumstances on the occurrence of which the licence is to come into force or cease to be in force) and conditions (including conditions precedent to the licence's becoming operative) as he or she shall think fit and he or she may also attach further terms or conditions to or vary the terms or conditions already attached to such a licence or remove any such terms or conditions. 15 20
- (b) Without prejudice to the generality of paragraph (a), a term or condition attached to a sea-fishing boat licence may— 25
- (i) restrict sea-fishing by the boat to which the licence relates in a manner specified in the term or condition,
- (ii) require that for so long as the licence is in force the members of the crew of such boat, or of any proportion of such members specified in the condition, shall be of a nationality specified in the term or condition, or 30
- (iii) specify an event or other circumstance on the occurrence of which the licence shall cease to be in force. 35
- (c) Where the licensing authority is satisfied that a person has fished in contravention of a term or condition attached to a sea-fishing boat licence or that a person has attempted so to fish, the licensing authority may, if he or she thinks fit, revoke or suspend (for such period as he or she sees fit) the licence. 40
- (9) (a) It is a condition of a sea-fishing boat licence that the licensee shall ensure that the licensed boat complies with requirements specified by or under the Merchant Shipping Acts 1894 to 2005. 45
- (b) Where by or under the Merchant Shipping Acts 1894 to 2005 a survey is required to be carried out of a sea-fishing boat for the purpose of establishing whether or not such boat complies with the requirements specified by or under those Acts, the licensing authority shall not grant or renew a sea-fishing boat licence in respect of the boat unless the licensing 50

authority is satisfied that the boat complies with such requirements.

5 (c) Where a code of practice published by the Minister relating to the safety and sea-worthiness of sea-fishing boats of a class to which paragraph (b) does not apply requires a survey to be carried out of a sea-fishing boat of such class for the purpose of establishing whether or not such boat complies with the requirements specified in the code of practice, the
10 licensing authority shall not grant or renew a sea-fishing boat licence in respect of the boat unless a declaration of compliance with the code of practice has been provided to the licensing authority.

15 (10) (a) The holder of a sea-fishing boat licence suspended or revoked under subsection (7)(b) or (8)(c) shall, as soon as practicable, surrender the licence to the licensing authority.

20 (b) A person who fails to comply with paragraph (a) of this subsection commits an offence and is liable on summary conviction to a fine not exceeding €500.

25 (c) Where a licence has been suspended under subsection (7)(b) or (8)(c) the District Court may, upon application to it, direct the licensing authority to re-issue and return the licence or it may reduce the period of suspension.

(11) Without prejudice to the generality of subsection (3)(c) where the licensing authority receives an application for a sea-fishing boat licence and—

30 (a) the application relates to a sea-fishing boat which is owned by a body corporate and the licensing authority is not satisfied that the body corporate is under the control of, beneficially owned by or under the control of and beneficially owned by a person or persons who, or, as may be appropriate, each of whom,
35 is either a qualified individual or a qualified body, or

(b) the licensing authority is satisfied that the applicant has previously used or attempted to use a sea-fishing boat for sea-fishing in contravention of, or that the applicant has fished for sea-fish or has attempted so
40 to fish contrary to, subsection (2),

he or she may refuse the application.

(12) (a) Where the holder of a sea-fishing boat licence—

(i) ceases to be the owner of the sea-fishing boat to which the licence relates, or

45 (ii) is a body corporate which ceases to be under the control of or beneficially owned by or under the control of and beneficially owned by a person or persons who, or, as may be appropriate, each of whom, is either a qualified individual or a
50 qualified body,

the licence ceases to have effect and the holder of the licence shall, as soon as practicable, deliver the licence to the licensing authority.

- (b) A person who fails to comply with paragraph (a) commits an offence and is liable on summary conviction to a fine not exceeding €500. 5

- (13) (a) A person who uses or attempts to use a sea-fishing boat in contravention of subsection (2) commits an offence.

- (b) A person who, while on board a sea-fishing boat, fishes for sea-fish or attempts to so fish in contravention of subsection (2) commits an offence. 10

- (14) In this section—

‘Irish sea-fishing boat’ means a sea-fishing boat which is—

- (a) registered in the Register of Fishing Boats maintained under section 42 of the *Sea-Fisheries and Maritime Jurisdiction Act 2005*, or is required to be so registered, or 15

- (b) exempt from such registration by regulations under that section; 20

‘qualified body’ means a body corporate in which all of the shares are beneficially owned, or the body is otherwise controlled, by one or more individuals who, or, as may be appropriate, each of whom is, a qualified individual;

‘qualified individual’ means an individual person who is a national of a Member State or a state belonging to the European Economic Area; 25

‘licensing authority’ has the meaning assigned to it by section 3;

‘Member State’ means a Member State of the European Communities.’. 30

(2) A sea-fishing boat licence granted or renewed under section 222B of the Principal Act which is in force immediately before the commencement of this section continues in force as if made or renewed under the corresponding provision of section 4 (inserted by this section) of the Act of 2003. 35

Tax clearance
certification
requirement for
applicants for sea-
fishing boat
licences.

65.—(1) The following section is inserted after section 5 of the Act of 2003:

Tax clearance
certification
requirement
for applicants
for sea-fishing
boat licences.

5A.—(1) A sea-fishing boat licence shall not be granted by the licensing authority unless the applicant produces to the licensing authority a tax clearance certificate. 40

(2) In this section ‘tax clearance certificate’ means a tax clearance certificate issued under section 1095 (inserted by section 127 of the Finance Act 2002) of the Taxes Consolidation Act

5 1997.”.

(2) This section comes into operation on such day as the Minister may appoint by order. That order shall be laid before each House of the Oireachtas as soon as may be after it is made.

66.—The Act of 2003 is amended—

Miscellaneous
amendments to Act
of 2003.

10 (a) in section 2(1) by substituting “section 4(3)” for “section 222B(3) of the Principal Act”,

(b) in section 3—

(i) by substituting for subsection (3) the following:

15 “(3) A policy directive given under subsection 2(b) may provide for measures to control and regulate the capacity, structure, equipment, use and operation of sea-fishing boats for the purpose of protecting, conserving or allowing the sustainable exploitation of living marine aquatic species or the rational management of fisheries, in furtherance of national policy objectives and to comply with requirements of the common fisheries policy of the European Communities or other international obligations which are binding on the State.”,

25 (ii) in subsection (6), by substituting “section 4” for “section 222B of the Principal Act”,

(iii) in subsection (9)(a), by substituting “section 4(3)” for “section 222B(3) of the Principal Act”,

30 (iv) in subsection (9)(b), by substituting “section 4(3)” for “section 222B(3) (inserted by section 4)”,

(v) by inserting after subsection (9) the following:

35 “(9A) The licensing authority is not liable in any proceedings for anything done in good faith in the purported exercise of his or her powers in relation to granting or renewing sea-fishing boat licences or maintaining the Register of Fishing Boats.”,

and

40 (vi) in section 3(10), by substituting “*section 42 of the Sea-Fisheries and Maritime Jurisdiction Act 2005*” for “Regulation 5 of the Merchant Shipping (Registry, Lettering and Numbering of Fishing Boats) Regulations 1997 (S.I. No. 294 of 1997)”,

(c) in section 5—

45 (i) by substituting for paragraph (b) of subsection (1) the following:

- “(b) an authorisation under section 13 or a licence, authorisation or permit under any regulation made under *section 14 or 15* of the *Sea-Fisheries and Maritime Jurisdiction Act 2005* or section 25 of the 2003 Act”, 5
- (ii) by substituting for paragraph (b) of subsection (2) the following:
- “(b) an authorisation under section 13 or a licence, authorisation or permit under any regulation made under *section 14 or 15* of the *Sea-Fisheries and Maritime Jurisdiction Act 2005* or section 25 of the 2003 Act”, 10
- (iii) in subsection (4), by substituting “licensing authority, the Minister or and appeals officer” for “licensing authority or the Minister”, and 15
- (iv) by inserting after subsection (6) the following:
- “(7) The Public Offices Fees Act 1879 does not apply to a fee prescribed under this section.”, 20
- (d) in section 6, by substituting for subsection (4) the following:
- “(4) A policy directive given under subsection 3(b) may provide for measures to control and regulate the capacity, structure, equipment, use and operation of sea-fishing boats for the purpose of protecting, conserving or allowing the sustainable exploitation of living marine aquatic species or the rational management of fisheries, in furtherance of national policy objectives and to comply with requirements of the common fisheries policy of the European Communities or other international obligations which are binding to the State.”, 25 30
- (e) in section 7(1), by substituting for paragraph (b) the following:
- “(b) A person other than the applicant for or holder of the licence concerned may only appeal under paragraph (a) if he or she made representations in writing to the licensing authority before the expiration of a period of one month beginning on the date on which the application for the licence concerned was published by the licensing authority in accordance with section 3(8).”, 35 40
- (f) in section 9(2)(a), by substituting “section 4” for “section 222B of the Principal Act”, 45
- (g) in section 25, by substituting for subsection (3) the following:
- “(3) A person who fishes or attempts to fish in contravention of any conservation regulation commits an offence.”, 50

(h) in section 27, by substituting for subsection (5) the following:

“(5) A person who fails to comply with subsection (3)(a) commits an offence.”,

(i) in section 29(1), by substituting “under a section specified in a Table to *section 29* of the *Sea-Fisheries and Maritime Jurisdiction Act 2005*” for “under section 221, 222, 222A, 222B, 222C, 223, 223A, 224B, 226 or 227 of the Principal Act, a conservation regulation or section 27(5)”,

(j) in section 32, by inserting after subsection (6) the following:

“(6A) The Public Offices Fees Act 1879 does not apply to a fee prescribed under this section.”,

and

(k) in paragraph 7(d) of Schedule 1, by substituting “section 4” for “section 222B of the Principal Act”.

CHAPTER 3

Mercantile Marine

67.—The Act of 1955 is amended—

Amendment of Act
of 1955.

(a) by inserting after section 16 the following:

“Persons
qualified to
own registered
sea-fishing
ships.

16A.—(1) Section 16 of this Act does not apply to sea-fishing ships.

(2) Subject to section 19 of this Act respecting reciprocating states, the following shall alone be qualified to own a registered sea-fishing ship or a share in it—

(a) the Government,

(b) a Minister of the Government,

(c) a national of a Member State, or

(d) a body corporate established under and subject to the law of a Member State and having its principal place of business in a Member State.

(3) Every ship to which the provisions of subsection (2) apply shall be registered under this Act unless the ship is exempt under section 18(2) of this Act from the obligation to so register.

(4) In this section, “Member State” means a Member State of the European Communities.”,

(b) in section 18(2), by inserting after paragraph (d) the following:

“(e) a sea-fishing boat of less than 15 metres in length overall and required to be registered in the Register of Fishing Boats maintained under section 42 of the *Sea-Fisheries and Maritime Jurisdiction Act 2005* or exempt from such registration by regulations under section 44 of that Act.”,

and

(c) in section 19—

(i) by inserting after subsection (2) the following:

“(2A) Notwithstanding subsection (2) of this section, the Government may by order provide that the citizens, subjects or nationals of a state declared under subsection (1) of this section to be a reciprocating state or bodies corporate established under and subject to the laws of that state shall—

(a) be qualified to own only a registered ship (or a share in it) which is of a particular class or description specified in the order, or

(b) not be qualified to own a registered ship (or a share in it) which is of a class or description so specified,

and subsection (2) of this section is to be construed and have effect subject to the terms of the order.”,

and

(ii) subsection (3), by deleting “subsection (1) of”.

CHAPTER 4

Aquaculture

Miscellaneous
amendments to
Fisheries
(Amendment) Act
1997 —
aquaculture.

68.—The Fisheries (Amendment) Act 1997 is amended—

(a) in section 6(2), by substituting—

(i) “€300” for “£200”, and

(ii) “€2,000” for “£1,000”,

(b) in section 10, by substituting for subsection (4) (inserted by Regulation 17 of the European Communities (Environmental Impact Assessment) (Amendment) Regulations 1999 (S.I. No. 93 of 1999) the following:

“(4) Where the submission to the Minister of an environmental impact statement is required under regulations made under subsection (3)(d) in respect of an application for a licence, the Minister, if requested by the applicant, shall, after consultation with such persons as the

Minister considers appropriate, give a written opinion to the applicant of the information to be contained in the statement, before the applicant submits the statement.”,

(c) by inserting after section 19 the following:

“Renewal of
licence after its
expiration.

19A.—(1) The power of the licensing authority to renew or to further renew an aquaculture licence under section 19 is exercisable notwithstanding the expiration of the period for which the licence was granted or renewed.

(2) Where, prior to the passing of the *Sea-Fisheries and Maritime Jurisdiction Act 2005*, an aquaculture licence has been renewed or further renewed after the expiration of the period for which the licence was granted or renewed, such renewal shall be and be deemed always to have been as valid and effectual as if the licence had been renewed or further renewed on the expiration of the period in question.

(3) If, because of the validation expressed to be effected by subsection (2), that subsection would, but for this subsection, conflict with a constitutional right of any person, the validation shall be subject to such limitation as is necessary to secure that it does not so conflict but shall be otherwise of full force and effect.

(4) A licensee who has applied for the renewal or further renewal of an aquaculture licence shall, notwithstanding the expiration of the period for which the licence was granted or renewed but subject otherwise to the terms and conditions of the licence, be entitled to continue the aquaculture or operations in relation to aquaculture authorised by the licence pending the decision on the said application.”,

(d) in section 34, by substituting for subsection (6) the following:

“(6) Where the Minister is satisfied that a member of the Board has failed to comply with subsection (1), the Minister may, if he or she thinks fit, remove that member from office or take such other action as he or she considers appropriate and, in case a person is removed from office pursuant to this subsection, he or she shall thereafter be disqualified from membership of the Board.

(7) Where the Board is satisfied that a person who is not a member of the Board has failed to comply with subsection (1), the Board shall decide the appropriate action (including removal from office or termination of contract) to be taken.

(8) For the purposes of this section a person shall not be regarded as having an interest in any matter by reason

only of an interest of that person, or of any company in which he or she has an interest, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering, discussing or in voting on, any question relating to the matter, or in performing any function in relation to that matter.”, 5

(e) in section 57(6), by substituting “€600” for “£500”,

(f) in section 65—

(i) by substituting for subsection (2) the following:

“(2) A person guilty of an offence under subsection (1), section 6(1), 20 or 67(2) is liable— 10

(a) on summary conviction, to a fine not exceeding €5,000, or

(b) on conviction on indictment, to a fine not exceeding €250,000. 15

(2A) A person guilty of an offence (other than an offence under a provision mentioned in subsection (2) or under section 6(2) or 57(6)) is liable on summary conviction to a fine not exceeding €2,000.”,

and 20

(ii) by inserting after subsection (3) the following:

“(4) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under subsection (1) or section 6(1) may be instituted within 12 months from the date on which the offence was committed.”, 25

(g) by inserting after section 65 the following:

“Offence by body corporate, etc. 65A.—Where an offence under this Act is committed by a body corporate or by a person purporting to act on behalf of a body corporate or on behalf of an unincorporated body of persons and it is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any other person who, when the offence was committed, was, or purported to act as, a director, manager, secretary or other officer (including a member of such body) such other person as well as the body, or the person so purporting to act on behalf of the body, is guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence. 30 35 40

Prosecutor may appeal dismissal of proceedings in District Court. 65B.—(1) Where any proceedings tried summarily in the District Court for an offence under this Act are dismissed, whether on the merits or without prejudice, the prosecutor may appeal against the 45

order of dismissal to the judge of the Circuit Court within whose Circuit the courthouse in which the order was made is situated.

(2) The judge of the Circuit Court on an appeal under subsection (1) may vary, confirm or reverse the order and his or her decision is final and conclusive and not appealable.”,

(h) by inserting after section 67 the following:

“Reduction in
licensed area,
etc.

67A.—The Minister may, on the application of a licensee and subject to such conditions (if any) as the Minister may consider appropriate in the circumstances and specifies in writing, reduce the area or permitted aquaculture or both to which the licensee’s licence relates, absolutely or for such period as the Minister specifies in writing and the licence shall have effect and be noted accordingly in the register of licences maintained under section 78.

Permission of
use of novel or
experimental
equipment by
licensee.

67B.—The Minister may, on the application of a licensee and subject to such conditions (if any) as the Minister may consider appropriate in the circumstances and specifies in writing, permit the licensee to use novel or experimental equipment within the licensed area for such period as the Minister specifies in writing. Such permission shall be granted only if the Minister is satisfied that the use of the novel or experimental equipment will have no greater environmental or visual impact than that which existed prior to the introduction and use of such equipment and shall be noted in the register of licences maintained under section 78.”,

(i) in section 68(1) and (2), by deleting “and section 69(2)”, and

(j) by substituting for section 69 the following:

“Cesser of
aquaculture
licences in
certain
circumstances.

69.—(1) (a) Subject to paragraph (b), where aquaculture in respect of which a licence has been granted has not commenced within 2 years after the date on which the licence was granted, the licence ceases to have effect.

(b) A licensee, who considers that there are exceptional reasons why aquaculture, in respect of which a licence has been granted to the licensee, has not been commenced or cannot commence within the period specified in paragraph (a), may

apply to the Minister, giving those reasons, for a determination that the licence concerned shall not cease to have effect.

5

- (c) The Minister may, at his or her discretion, having considered the reasons given by the licensee under paragraph (b), determine whether or not the licence shall cease to have effect. The determination of the Minister is final.

10

- (2) (a) Subject to paragraph (b), where aquaculture in respect of which a licence has been granted has ceased for a continuous period of 2 years, the Minister shall, without compensation to the licensee, revoke the licence.

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- (b) A licensee, who considers that there are exceptional reasons why aquaculture, in respect of which a licence has been granted to the licensee, has ceased or is likely to cease for the period referred to in paragraph (a), may apply to the Minister, giving those reasons, for a determination not to revoke the licence.

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30

- (c) The Minister may, in his or her discretion, having considered the reasons given by the licensee under paragraph (b), determine whether or not to revoke the licence. The determination of the Minister is final.

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- (d) This subsection is deemed to have come into operation on 30 June 1998.”.

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CHAPTER 5

Fishery Harbour Centres

Amendment of
section 4 of Fishery
Harbour Centres
Act 1968.

69.—Section 4 of the Fishery Harbour Centres Act 1968 is amended by—

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- (a) inserting the following subsection after subsection (2):

“(2A) (a) Any ship or boat in respect of which any rate, toll or other charge payable pursuant to an order under subsection (2)(b) is in arrears may not be disposed of without the consent of the Minister.

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- (b) A reference in this subsection and in subsection (2) to a ship or boat includes the capacity of it.”,

and

- (b) deleting subsection (8).

CHAPTER 6

Dumping at Sea

70.—The Dumping at Sea Act 1996 is amended—

Amendment of
Dumping at Sea
Act 1996.

- (a) in section 1—

- (i) by inserting the following definitions:

‘exclusive economic zone of the State’ and “inland waters and territorial seas of the State” have the meanings assigned by *Part 3* of the *Sea-Fisheries and Maritime Jurisdiction Act 2005*;

- (ii) by substituting for the definition of “the maritime area” the following:

‘the maritime area’ comprises—

- (I) the inland waters and territorial seas of the State, and the seabed and subsoil beneath them,

- (II) any area for the time being standing designated by order under section 2 of the Continental Shelf Act 1968 for the purposes of that Act, and the waters above it, and

- (III) the exclusive economic zone of the State;

and

- (iii) by deleting the definition of “territorial seas of the State”,

- (b) in section 6(1), by substituting for paragraph (f) the following:

“(f) Every member of the Permanent Defence Forces (not below the rank of leading seaman or corporal) for the time being serving on board any ship, vessel or aircraft belonging to or employed in the service of the State shall be an authorised officer for the purposes of this Act.”,

- (c) in section 10(2)(b), by inserting after “Attorney General” the following:

“or the Director of Public Prosecutions, from the day appointed by an order made under

section 12 (inserted by *section 71* of the *Sea-Fisheries and Maritime Jurisdiction Act 2005*) of this Act,”

and

(d) by inserting the following section after section 11: 5

“Prosecution
of offences by
DPP.

12.—(1) The Government may by order appoint a day from which the Director of Public Prosecutions, subject to subsection (2), is the prosecutor, in lieu of the Attorney General, of offences under this Act. That order shall be laid before each House of the Oireachtas as soon as may be after it is made. 10

(2) Any proceedings which have been instituted in the name of the Attorney General before the commencement of an order under subsection (1) are still pending and have not been determined before that commencement continue in the name of the Attorney General after that commencement. 15 20

(3) Section 11 of this Act stands repealed upon the commencement of an order made under subsection (1).”.

CHAPTER 7 25

Maritime Safety

Amendment of
Maritime Safety
Act 2005.

71.—(1) The Maritime Safety Act 2005 is amended—

(a) in section 2(1), by substituting “*Part 3* of the *Sea-Fisheries and Maritime Jurisdiction Act 2005*” for “the Maritime Jurisdiction Act 1959 (as amended by the Maritime Jurisdiction (Amendment) Act 1988)”, 30

(b) in section 17(1), by substituting “Part” for “Act”,

(c) in section 36(1)(a), by substituting “any of the matters referred to in section 35(1)” for “the safe operation, or any of the matters referred to in subsection (1), and 35

(d) in section 46(2), by substituting “sections 23, 24, 37 and 38” for “sections 23 and 24”.

ENACTMENTS REPEALED

	Session and Chapter or Number and Year	Short Title	Extent of Repeal
	(1)	(2)	(3)
5	8 & 9 Vict. 1845, c.108	Fisheries (Ireland) Act 1845	Sections 7 and 8
	9 Vict. 1846, c.3	Fisheries (Ireland) Act 1846	The whole Act
10	57 & 58 Vict., c.60	Merchant Shipping Act 1894	Sections 371 to 374
	9 Edw. 7, 1909, c. 8	Trawling in Prohibited Areas Prevention Act 1909	The whole Act
15	No. 33 of 1931	Fisheries (Revision of Loans) Act 1931	The whole Act
	No. 21 of 1951	Freshwater Fisheries (Prohibition of Netting) Act 1951	The whole Act
20	No. 25 of 1951	Fishing Licences (Moville District) Act 1951	The whole Act
	No. 14 of 1959	Fisheries (Consolidation) Act 1959	Part XIII, sections 309(2) and 314(4)
25	No. 22 of 1959	Maritime Jurisdiction Act 1959	The whole Act
30	No. 31 of 1962	Fisheries (Amendment) Act 1962	Sections 19 to 23, 32(3), (4) and (5) and 34 and in the Table to section 32 at Ref. No. 1 “237, 238, 239, 240, 241, 242, 243,” and at Ref. No. 10 “233, 236,”
35	No. 32 of 1964	Maritime Jurisdiction (Amendment) Act 1964	The whole Act
	No. 25 of 1974	Fisheries (Amendment) Act 1974	The whole Act
40	No. 18 of 1978	Fisheries (Amendment) Act 1978	The whole Act
45	No. 1 of 1980	Fisheries Act 1980	Sections 48, 49, 72, 73 and 75 and in the Table to section 50 at Ref. No. 2 “240, 241, 242, 243,” and at Ref. No. 3 “237, 238, 239,”
	No. 27 of 1983	Fisheries (Amendment) Act 1983	The whole Act
50	No. 9 of 1988	Maritime Jurisdiction (Amendment) Act 1988	The whole Act
55	No. 23 of 1994	Fisheries (Amendment) Act 1994	Sections 1(4) and (5), 3 to 14 and 16
	No. 21 of 2003	Fisheries (Amendment) Act 2003	Sections 26(1) and (9), 28 and 30
60	No. 11 of 2005	Maritime Safety Act 2005	Section 53

SCHEDULE 2

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982

PART V - EXCLUSIVE ECONOMIC ZONE

Article 55*Specific Legal Regime of the Exclusive Economic Zone* 5

The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention. 10

Article 56*Rights, Jurisdiction and Duties of the Coastal State in the Exclusive Economic Zone*

1. In the exclusive economic zone, the coastal State has:

(a) sovereign rights for the purpose of exploring and 15
exploiting, conserving and managing the natural
resources, whether living or non-living, of the waters
superjacent to the seabed and of the seabed and its sub-
soil, and with regard to other activities for the economic
exploitation and exploration of the zone, such as the pro- 20
duction of energy from the water, currents and winds;

(b) jurisdiction as provided for in the relevant provisions of
this Convention with regard to:

(i) the establishment and use of artificial islands, instal-
lations and structures; 25

(ii) marine scientific research;

(iii) the protection and preservation of the marine
environment;

(c) other rights and duties provided for in this Convention.

2. In exercising its rights and performing its duties under this Con- 30
vention in the exclusive economic zone, the coastal State shall have
due regard to the rights and duties of other States and shall act in a
manner compatible with the provisions of this Convention.

3. The rights set out in this article with respect to the seabed and
subsoil shall be exercised in accordance with Part VI. 35

Article 57*Breadth of the Exclusive Economic Zone*

The exclusive economic zone shall not extend beyond 200 nautical
miles from the baselines from which the breadth of the territorial sea
is measured. 40

Article 58

Rights and duties of other States in the Exclusive Economic Zone

1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.

2. Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.

3. In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

Article 59

Basis for the resolution of conflicts regarding the attribution of rights and jurisdiction in the Exclusive Economic Zone

In cases where this Convention does not attribute rights or jurisdiction to the coastal State or to other States within the exclusive economic zone, and a conflict arises between the interests of the coastal State and any other State or States, the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.

Article 60

Artificial Islands, Installations and Structures in the Exclusive Economic Zone

1. In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of:

- (a) artificial islands;
- (b) installations and structures for the purposes provided for in article 56 and other economic purposes;
- (c) installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.

2. The coastal State shall have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations.

3. Due notice must be given of the construction of such artificial islands, installations or structures, and permanent means for giving

warning of their presence must be maintained. Any installations or structures which are abandoned or disused shall be removed to ensure safety of navigation, taking into account any generally accepted international standards established in this regard by the competent international organization. Such removal shall also have due regard to fishing, the protection of the marine environment and the rights and duties of other States. Appropriate publicity shall be given to the depth, position and dimensions of any installations or structures not entirely removed.

4. The coastal State may, where necessary, establish reasonable safety zones around such artificial islands, installations and structures in which it may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures.

5. The breadth of the safety zones shall be determined by the coastal State, taking into account applicable international standards. Such zones shall be designed to ensure that they are reasonably related to the nature and function of the artificial islands, installations or structures, and shall not exceed a distance of 500 metres around them, measured from each point of their outer edge, except as authorized by generally accepted international standards or as recommended by the competent international organization. Due notice shall be given of the extent of safety zones.

6. All ships must respect these safety zones and shall comply with generally accepted international standards regarding navigation in the vicinity of artificial islands, installations, structures and safety zones.

7. Artificial islands, installations and structures and the safety zones around them may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

8. Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

Article 61

Conservation of the Living Resources

1. The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone.

2. The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal State and competent international organizations, whether subregional, regional or global, shall cooperate to this end.

3. Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.

4. In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.

5. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned, including States whose nationals are allowed to fish in the exclusive economic zone.

Article 62

Utilization of the Living Resources

1. The coastal State shall promote the objective of optimum utilization of the living resources in the exclusive economic zone without prejudice to article 61.

2. The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch, having particular regard to the provisions of articles 69 and 70, especially in relation to the developing States mentioned therein.

3. In giving access to other States to its exclusive economic zone under this article, the coastal State shall take into account all relevant factors, including, *inter alia*, the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests, the provisions of articles 69 and 70, the requirements of developing States in the subregion or region in harvesting part of the surplus and the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.

4. Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention and may relate, *inter alia*, to the following:

- (a) licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, which, in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry;
- (b) determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or groups of stocks or catch per vessel over a period of time or to the catch by nationals of any State during a specified period;

- (c) regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used;
- (d) fixing the age and size of fish and other species that may be caught; 5
- (e) specifying information required of fishing vessels, including catch and effort statistics and vessel position reports;
- (f) requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programmes and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data; 10
- (g) the placing of observers or trainees on board such vessels by the coastal State;
- (h) the landing of all or any part of the catch by such vessels in the ports of the coastal State; 15
- (i) terms and conditions relating to joint ventures or other cooperative arrangements;
- (j) requirements for the training of personnel and the transfer of fisheries technology, including enhancement of the coastal State's capability of undertaking fisheries research; 20
- (k) enforcement procedures.

5. Coastal States shall give due notice of conservation and management laws and regulations. 25

Article 63

Stocks occurring within the Exclusive Economic Zones of two or more Coastal States or both within the Exclusive Economic Zone and in an area beyond and adjacent to it

1. Where the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal States, these States shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks without prejudice to the other provisions of this Part. 30 35

2. Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area. 40

Article 64

Highly Migratory Species

1. The coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex I shall cooperate directly or through appropriate international organizations with 45

5 a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall cooperate to establish such an organization and participate in its work.

2. The provisions of paragraph 1 apply in addition to the other provisions of this Part.

10 **Article 65**

Marine Mammals

15 Nothing in this Part restricts the right of a coastal State or the competence of an international organization, as appropriate, to prohibit, limit or regulate the exploitation of marine mammals more strictly than provided for in this Part. States shall cooperate with a view to the conservation of marine mammals and in the case of cetaceans shall in particular work through the appropriate international organizations for their conservation, management and study.

Article 66

20 *Anadromous Stocks*

1. States in whose rivers anadromous stocks originate shall have the primary interest in and responsibility for such stocks.

25 2. The State of origin of anadromous stocks shall ensure their conservation by the establishment of appropriate regulatory measures for fishing in all waters landward of the outer limits of its exclusive economic zone and for fishing provided for in paragraph 3(b). The State of origin may, after consultations with the other States referred to in paragraphs 3 and 4 fishing these stocks, establish total allowable catches for stocks originating in its rivers.

30 3. (a) Fisheries for anadromous stocks shall be conducted only in waters landward of the outer limits of exclusive economic zones, except in cases where this provision would result in economic dislocation for a State other than the State of origin. With respect to such fishing beyond the outer limits of the exclusive economic zone, States concerned shall maintain consultations with a view to achieving agreement on terms and conditions of such fishing giving due regard to the conservation requirements and the needs of the State of origin in respect of these stocks.

40 (b) The State of origin shall cooperate in minimizing economic dislocation in such other States fishing these stocks, taking into account the normal catch and the mode of operations of such States, and all the areas in which such fishing has occurred.

45 (c) States referred to in subparagraph (b), participating by agreement with the State of origin in measures to renew anadromous stocks, particularly by expenditures for that purpose, shall be given special consideration by the State of origin in the harvesting of stocks originating in its rivers.

50

- (d) Enforcement of regulations regarding anadromous stocks beyond the exclusive economic zone shall be by agreement between the State of origin and the other States concerned.

4. In cases where anadromous stocks migrate into or through the waters landward of the outer limits of the exclusive economic zone of a State other than the State of origin, such State shall cooperate with the State of origin with regard to the conservation and management of such stocks.

5. The State of origin of anadromous stocks and other States fishing these stocks shall make arrangements for the implementation of the provisions of this article, where appropriate, through regional organizations.

Article 67

Catadromous Species

1. A coastal State in whose waters catadromous species spend the greater part of their life cycle shall have responsibility for the management of these species and shall ensure the ingress and egress of migrating fish.

2. Harvesting of catadromous species shall be conducted only in waters landward of the outer limits of exclusive economic zones. When conducted in exclusive economic zones, harvesting shall be subject to this article and the other provisions of this Convention concerning fishing in these zones.

3. In cases where catadromous fish migrate through the exclusive economic zone of another State, whether as juvenile or maturing fish, the management, including harvesting, of such fish shall be regulated by agreement between the State mentioned in paragraph 1 and the other State concerned. Such agreement shall ensure the rational management of the species and take into account the responsibilities of the State mentioned in paragraph 1 for the maintenance of these species.

Article 68

Sedentary Species

This Part does not apply to sedentary species as defined in article 77, paragraph 4.

Article 69

Right of Land-Locked States

1. Land-locked States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.

2. The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements taking into account, inter alia :

(a) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal State;

(b) the extent to which the land-locked State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States;

(c) the extent to which other land-locked States and geographically disadvantaged States are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it;

(d) the nutritional needs of the populations of the respective States.

3. When the harvesting capacity of a coastal State approaches a point which would enable it to harvest the entire allowable catch of the living resources in its exclusive economic zone, the coastal State and other States concerned shall cooperate in the establishment of equitable arrangements on a bilateral, subregional or regional basis to allow for participation of developing land-locked States of the same subregion or region in the exploitation of the living resources of the exclusive economic zones of coastal States of the subregion or region, as may be appropriate in the circumstances and on terms satisfactory to all parties. In the implementation of this provision the factors mentioned in paragraph 2 shall also be taken into account.

4. Developed land-locked States shall, under the provisions of this article, be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same subregion or region having regard to the extent to which the coastal State, in giving access to other States to the living resources of its exclusive economic zone, has taken into account the need to minimize detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone.

5. The above provisions are without prejudice to arrangements agreed upon in subregions or regions where the coastal States may grant to land-locked States of the same subregion or region equal or preferential rights for the exploitation of the living resources in the exclusive economic zones.

Article 70

Right of Geographically Disadvantaged States

1. Geographically disadvantaged States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.

2. For the purposes of this Part, "geographically disadvantaged States" means coastal States, including States bordering enclosed or

semi-enclosed seas, whose geographical situation makes them dependent upon the exploitation of the living resources of the exclusive economic zones of other States in the subregion or region for adequate supplies of fish for the nutritional purposes of their populations or parts thereof, and coastal States which can claim no exclusive economic zones of their own. 5

3. The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements taking into account, inter alia:

- (a) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal State; 10
- (b) the extent to which the geographically disadvantaged State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States; 15
- (c) the extent to which other geographically disadvantaged States and land-locked States are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it; 20
- (d) the nutritional needs of the populations of the respective States. 25

4. When the harvesting capacity of a coastal State approaches a point which would enable it to harvest the entire allowable catch of the living resources in its exclusive economic zone, the coastal State and other States concerned shall cooperate in the establishment of equitable arrangements on a bilateral, subregional or regional basis to allow for participation of developing geographically disadvantaged States of the same subregion or region in the exploitation of the living resources of the exclusive economic zones of coastal States of the subregion or region, as may be appropriate in the circumstances and on terms satisfactory to all parties. In the implementation of this provision the factors mentioned in paragraph 3 shall also be taken into account. 30 35

5. Developed geographically disadvantaged States shall, under the provisions of this article, be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same subregion or region having regard to the extent to which the coastal State, in giving access to other States to the living resources of its exclusive economic zone, has taken into account the need to minimize detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone. 40 45

6. The above provisions are without prejudice to arrangements agreed upon in subregions or regions where the coastal States may grant to geographically disadvantaged States of the same subregion or region equal or preferential rights for the exploitation of the living resources in the exclusive economic zones. 50

Article 71

Non-Applicability of Articles 69 and 70

5 The provisions of articles 69 and 70 do not apply in the case of a coastal State whose economy is overwhelmingly dependent on the exploitation of the living resources of its exclusive economic zone.

Article 72

Restrictions on Transfer of Rights

10 1. Rights provided under articles 69 and 70 to exploit living resources shall not be directly or indirectly transferred to third States or their nationals by lease or licence, by establishing joint ventures or in any other manner which has the effect of such transfer unless otherwise agreed by the States concerned.

15 2. The foregoing provision does not preclude the States concerned from obtaining technical or financial assistance from third States or international organizations in order to facilitate the exercise of the rights pursuant to articles 69 and 70, provided that it does not have the effect referred to in paragraph 1.

Article 73

Enforcement of Laws and Regulations of the Coastal State

20 1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.

2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.

30 3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.

4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

35 Article 74

Delimitation of the Exclusive Economic Zone between States with opposite or Adjacent Coasts

40 1. The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

45 2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation. 5

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement. 10

Article 75

Charts and Lists of Geographical Coordinates

1. Subject to this Part, the outer limit lines of the exclusive economic zone and the lines of delimitation drawn in accordance with article 74 shall be shown on charts of a scale or scales adequate for ascertaining their position. Where appropriate, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted for such outer limit lines or lines of delimitation. 15

2. The coastal State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations. 20

Section of PART XIII	Affecting provision	Provision of Bill
231	Amended by section 23 of 1962 Act (No. 31) and sections 8 and 9 of 1994 Act (No. 23)	Section 17
232		Sections 11 to 15 (liability of masters, owners, charterers or hirers for offences committed) and 37 (defence where due diligence, etc., proven)
233	Replaced by section 11 of 1978 Act (No. 18) and amended by section 10 of the 1994 Act (No. 23)	Section 18
233A	Inserted by section 12 of the 1978 Act (No. 18) and amended by section 11 of the 1994 Act (No. 23)	Section 19
234	Replaced by section 13 of the 1978 Act (No. 18) and amended by section 12 of the 1994 Act (No. 23)	Section 20
235	Replaced by section 14 of the 1978 Act (No. 18)	Section 21
236	Amended by section 31 of the 1962 Act (No. 31)	Section 22
237 to 243	Amended by section 32 of 1962 Act (No. 31) and section 50 of 1980 Act (No. 1)	Repeal effected by Section 4 of and Schedule 1 to Bill; Section 239 replaced by provisions of Section 15 of Bill

ACTS REFERRED TO		
Act No. and Year		Short Title
No. 14 of 1959		Fisheries (Consolidation) Act 1959
No. 31 of 1962		Fisheries (Amendment) Act 1962
No. 18 of 1978		Fisheries (Amendment) Act 1978
No. 1 of 1980		Fisheries Act 1980
No. 27 of 1983		Fisheries (Amendment) Act 1983
No. 23 of 1994		Fisheries (Amendment) Act 1994
No. 21 of 2003		Fisheries (Amendment) Act 2003

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