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**AN BILLE IASCAIGH MHARA AGUS DLÍNSE MUIRÍ 2005**  
**SEA-FISHERIES AND MARITIME JURISDICTION BILL 2005**  
(as passed by Dáil Éireann on 22 February 2006)

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**EXPLANATORY AND FINANCIAL MEMORANDUM**

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**Introduction**

The main provisions of the Bill are—

- *to revise with amendments PART XIII of the Fisheries (Consolidation) Act 1959 (No. 14) (as amended to date — see Appendix 4) so as to clarify and strengthen the law against illegal sea-fishing and safeguard the implementation of National Fisheries Policy or EC Common Fisheries Policy, notably, by remedying defects in sections 223A and 224B of the 1959 Act (sections 15 and 14), by making it an offence to contravene certain EC Regulations which are directly applicable (section 11), streamlining arrangements for allocating and managing the State's sea-fishing quotas and sea-fishing effort entitlements (sections 12 and 13), and by updating penalties for a wide range of sea-fisheries offences (section 28 and Appendix 3), and making new statutory provisions for forfeiture of proceeds from illegally caught fish (section 31);*
- **to provide for the establishment of an independent statutory Sea-Fisheries Protection Authority for improved enforcement of sea-fisheries law and food safety law in relation to fish and fishery products (section 40 to 73 and Schedule 3);**
- *to provide for the transfer from the Attorney General to the Director of Public Prosecutions of responsibility for the prosecution of sea-fisheries offences (section 39) and for the prosecution of offences under the Dumping at Sea Act 1996 (No. 14) (as amended)(section 103);*
- *to update and replace the Maritime Jurisdiction Act 1959 (No. 22) (as amended) and give effect to Part V — Exclusive Economic Zone of the United Nations Convention on the Law of the Sea 1982\*[Part 3 and Schedule 2];*
- *to safeguard Exchequer revenues, by ensuring due payment of taxes by applicants for sea-fishing boat licences (section 98) and of charges in respect of any vessel availing of services at any of the 5 State-owned Fishery Harbour Centres (Howth, Dunmore East, Castletownbere, Ros a' Mhíl and Killybegs) (section 102);*
- *to clarify the scope of Ministerial policy directives to the Sea-fishing Boat Licensing Authority or to the Appeals Officers, by including a specific reference to measures to control and*

\*Published in the Irish Treaty Series as No. 1 of 1998.

regulate the capacity, etc., of the sea-fishing fleet and the rational management of fisheries (*section 99*);

- *to update the law relating to the registration of sea-fishing boats and miscellaneous offences involving sea-fishing boats (sections 74 to 80);*
- *to clarify and modify aquaculture licensing law*, by copper-fastening the longstanding arrangement whereby the Minister for Communications, Marine and Natural Resources could renew an aquaculture licence, even one that had already expired, relaxing the automatic ending of a licence if the Minister is satisfied that a 2-year delay in starting, or a 2-year cesser of, aquaculture operations arose for *bona fide* reasons (e.g. fish health, environmental conditions, etc) and permitting a reduction in licensed area or production, or the use of novel or experimental equipment in licensed areas, under certain conditions (*section 101*); and
- *to repeal obsolete, spent or superseded provisions of 16 Fisheries Acts and of 7 other Acts listed in Schedule 1 to the Bill, in the interests of regulatory reform (section 4 and Schedule 1).*

The Bill comprises 4 Parts (104 sections) and 3 Schedules.

The Supreme Court on 16 July 2003 (Vincent Browne Case) impugned a purported Ministerial Order under section 223A of the Fisheries (Consolidation) Act 1959 (No. 14) to penalise any breach of the EU prohibition on the use of drift nets (with provision for conviction on indictment) within the area of application of the Common Fisheries Policy (CFP), which includes but extends beyond the 200 nautical-miles exclusive fishery limits of the State. The prohibition should have been the subject of Ministerial Regulations under the European Communities Act 1972 (No. 27) which only provides for summary offences. The alternative of Ministerial Regulations under section 224B of the 1959 Act (with provision for conviction on indictment) was not availed of because that section as it stands only applies to within the 200 nautical-miles exclusive fishery limits of the State. Accordingly section 224B has to be amended to extend its geographical scope and to apply to all activities in breach of the Common Fisheries Policy, and not merely illegal fishing or attempting to fish illegally (e.g. not keeping proper records or proper equipment on board, etc.). *Section 14* of the Bill does so and will provide the basis for giving effect to detailed CFP requirements going forward.

The Supreme Court on 31 May 2005 (Tom Kennedy Case) impugned a purported further Ministerial Order, relating to detailed discretionary national measures to give effect to the CFP, for lack of cover by way of primary legislation. *Section 15* of the Bill fills that gap, in line with *section 14*, as regards such measures.

## **Provisions of Bill**

### **PART 1—PRELIMINARY AND GENERAL (SECTIONS 1 TO 5)**

*Section 1* is a standard feature. It gives the short title of the Bill when enacted, for ease of referencing, and provides for the collective referencing and interpretation of relevant provisions of the Bill with the existing Fisheries Acts 1959 to 2003 or the existing Fishery Harbour Centres Acts 1968 to 2005 or certain other Acts, as appropriate. It also provides three further new collective citations for ease of reference, namely—

- **Sea-Fisheries Acts** [comprising relevant sea-fisheries provisions of the Bill and the Fisheries (Amendment) Act 2003 (No. 21)],
- **Aquaculture Acts** [comprising the Fisheries (Amendment) Act 1997 (No. 23) as amended, including *section 101* of the Bill, relevant provisions of the Fisheries and Foreshore (Amendment) Act 1998 (No. 54) and the Fisheries (Amendment) Act 2001 (No. 40)] and
- **Dumping at Sea Acts** [comprising the Dumping at Sea Act 1996 (No. 14), the Dumping at Sea (Amendment) Act 2004 (No. 35), and *section 103* of the Bill],

for the purposes of their restatement or consolidation into one Act each.

*Section 2* is a standard technical feature which defines certain Acts and terms referred to in the Bill, so as to avoid unnecessary verbiage in the rest of the Bill.

*Section 3* is a standard statutory provision relating to Ministerial Regulations under Part 2 of the Bill, or under section 25 of the Fisheries (Amendment) Act 2003 (No. 21) in relation to conservation and management of straddling and highly migratory fish stocks. Either House of the Oireachtas may, if it sees fit, resolve to annul the Regulations within 21 sitting days after the Regulations are laid before it, but without prejudice to the validity of anything done under the Regulations before that annulment.

*Section 4* (with *Schedule 1*) provides for the repeal of certain provisions of 16 Fisheries Acts and 7 other Acts, as follows:

Provisions		Reason for Repeal
1455 Act providing for ships guarding sea between Ireland and England to have certain tolls	Whole Act	<i>Obsolete.</i>
1460 Act providing for payments by fishermen and for boats protected at sea	Whole Act	<i>Obsolete.</i>
1470 Act providing protection for herring fishery at Dublin	Whole Act	<i>Obsolete.</i>
1516 Act requiring foreigners fishing off coast to land one-third of catch in Ireland	Whole Act	<i>Obsolete.</i>
Fisheries (Ireland) Act 1845	Sections 7 and 8	<i>Obsolete</i> — provisions for malicious damage were superseded by comprehensive Criminal Damage Act 1991 (No. 31).
Fisheries (Ireland) Act 1846	Whole Act	<i>Obsolete</i> — needed provisions were superseded by Planning and Development and Local Government Acts.

Provisions		Reason for Repeal
Merchant Shipping Act 1894	Sections 371 to 374	Provisions for registration of sea-fishing boats updated in <i>sections 74 to 80</i> of Bill.
Trawling in Prohibited Areas Prevention Act 1909	Whole Act	<i>Obsolete</i> — needed provisions were superseded by section 223 of 1959 Act (No. 14) (prohibition of certain trawling) and are included in Bill ( <i>sections 11 to 15</i> ) in updated terms.
Fisheries (Revision of Loans) Act 1931	Whole Act	Act has long ceased to be operated.
Freshwater Fisheries (Prohibition of Netting) Act 1951	Whole Act	<i>Spent.</i>
Fishing Licences (Moville District) Act 1951	Whole Act	<i>Spent.</i>
Fisheries (Consolidation) Act 1959	Part XIII	Part 2 of Bill updates provisions dealing with the regulation of sea-fishing, etc. Section 222B (dealing with sea-fishing boat licensing), which was amended and restated by section 4 of the 2003 Act, is being retained as section 4 of the 2003 Act and is being further amended by <i>section 97</i> of Bill. Provision updated and incorporated in <i>section 23</i> of Bill. Obsolete.
	Section 309(2)	
	Section 314(4)	
Maritime Jurisdiction Act 1959	Whole Act	<i>Part 3</i> of Bill (with <i>Schedule 2</i> ) updates and replaces the Maritime Jurisdiction Acts 1959 to 1988.
Fisheries (Amendment) Act 1962	Section 19	Provisions incorporated (with amendments) in <i>section 6</i> (definitions for <i>Part 2</i> ) of Bill. Not required; prosecutions for summary offences should be taken within 6-month period provided for in Petty Sessions (Ireland) Act 1851. Provisions of sections 228, 229 and 231 of 1959 Act updated and incorporated in <i>sections 14, 15 and 17</i> of Bill. <i>Spent</i> ; 1978 Act replaced the sections of the 1959 Act affected. Repeal consequential to repeal of 1959 Act sections referred to, and comprehensive penalties <i>section 28</i> of Bill.  Repeal consequential to repeal of section 8 (and rest) of Maritime Jurisdiction Act 1959.
	Section 20	
	Sections 21 to 23	
	Section 32(3)(4)(5)	
	In the Table to section 32 — at Ref. No.1 “237, 238, 239, 240, 241, 242, 243”; at Ref. No. 10 “233, 236”. Section 34	
Maritime Jurisdiction (Amendment) Act 1964	Whole Act	<i>Part 3</i> of Bill (with <i>Schedule 2</i> ) updates and replaces the Maritime Jurisdiction Acts 1959 to 1988.
Fisheries (Amendment) Act 1974	Whole Act	Superseded by Fisheries (Amendment) Act 1976 (No. 23).
Fisheries (Amendment) Act 1978	Whole Act	Provisions of Act (which amended 1959 Act and 1962 Act) updated (e.g. penalties, etc.) and included in Bill, as required.

Provisions		Reason for Repeal
Fisheries Act 1980	Section 48	Repeal consequential to updating and restatement by <i>section 33</i> of Bill.
	Section 49	Repeal consequential to updated provisions incorporated in <i>section 95</i> of Bill.
	In the Table to Section 50 — at Ref No. 2 “240, 241, 242, 243”; at Ref No. 3 “237, 238, 239”. Section 72	Repeal consequential to repeal of 1959 Act sections referred to, and comprehensive penalties <i>section 28</i> of Bill.  Section 312 of 1959 Act (which it amends) was repealed by section 5(8) of the Fisheries (Amendment) Act 1997 (No. 23).
	Section 73	Provisions amending section 19 of 1962 Act incorporated with amendments in <i>section 6</i> (definitions for Part 2) of Bill.
	Section 75	Repeal consequential to repeal of 1978 Act, provisions of which it amended.
Fisheries (Amendment) Act 1983	Section 1	Definitions not needed on repeal of rest of Act.
	Section 2	<i>Spent</i> ; Section 4 of 2003 Act (No. 21) amended and restated section 222B of 1959 Act (originally inserted by section 2 of 1983 Act).
	Section 3	Provisions (section 222C of 1959 Act) updated and incorporated in <i>sections 11 to 15 and 28</i> (penalties) of Bill, as required.
	Section 4	<i>Spent</i> ; <i>section 15</i> of Bill updates and replaces section 223A of 1959 Act (originally inserted by section 9 of 1978 Act and amended by section 4 of 1983 Act).
	Section 5	<i>Spent</i> ; <i>section 14</i> of Bill updates and replaces section 224B of 1959 Act (originally inserted by section 5 of 1983 Act).
	Section 6	Penalty provisions incorporated (with amendments) in <i>section 28</i> (penalties) of Bill.
	Section 7	Provisions (replaced by section 14 of 1994 Act) updated and incorporated in <i>section 28</i> of Bill.
	Section 8	Provisions incorporated in <i>section 75</i> of Bill.
	Section 9	Provisions incorporated in <i>section 100</i> of Bill.
	Sections 10 to 12	Technical provisions not needed on repeal of Act.
Maritime Jurisdiction (Amendment) Act 1988	Whole Act	<i>Part 3</i> of Bill (with <i>Schedule 2</i> ) updates and replaces the Maritime Jurisdiction Acts 1959 to 1988.
Fisheries (Amendment) Act 1994	Section 1(4)(5)	Technical provisions not needed on repeal of sections 3 and 4 of Act.
	Section 3	Provisions restated in <i>section 100</i> of Bill.
	Section 4	Provision updated and included in <i>section 76</i> of Bill.
	Sections 5, 6 and 7	<i>Spent</i> ; Section 4 of 2003 Act amended and restated those amendments to section 222B of 1959 Act.
	Sections 8 and 9	Provisions updated and incorporated in <i>section 17</i> of Bill.
	Sections 10, 11 and 12	Provisions updated and incorporated in <i>sections 19 to 21</i> of Bill.

Provisions		Reason for Repeal
	Section 13	Repeal consequential to repeal of Part XIII of 1959 Act.
	Section 14	Provision updated and incorporated in <i>section 28</i> of Bill.
	Section 16	Penalty provisions incorporated (with amendment) in <i>section 28</i> of Bill.
Fisheries (Amendment) Act 2003	Section 26(1)	Provision replaced by <i>section 16</i> of Bill.
	Section 26(9)	Provision replaced by provisions of <i>sections 20 to 23</i> of Bill, in consequence of repeal of Part XIII of 1959 Act.
	Section 28	Repeal consequential to <i>section 28</i> of Bill.
	Section 30	Penalty provisions incorporated (with amendments) in <i>section 28</i> of Bill.
Maritime Safety Act 2005	Section 53	Provisions included in <i>section 97</i> of Bill.

*Section 5* is a standard provision for the Exchequer to bear the cost of administering the Bill when enacted.

## **PART 2 — SEA-FISHERIES (SECTIONS 6 TO 80)**

### ***Chapter 1 — Sections 6 and 7***

*Section 6* is a technical provision which defines references to certain Acts and Regulations and terms and expressions used in Part 2 of the Bill, so as to avoid unnecessary verbiage.

*Section 7* simply updates and restates provisions of section 30 of the Fisheries (Amendment) Act 1962 (No. 31) so as to ensure that sea-fisheries law as updated by this Bill applies to the Merville Area (as defined by the Foyle Fisheries Act 1952 (No. 5)) and to confirm, for avoidance of doubt, that this Bill also applies to the Louth Area (i.e. that part of Carlingford Lough within the State) as defined by section 31 of the British-Irish Agreement Act 1999 (No. 1).

### ***Chapter 2 — Sections 8 to 15***

*Section 8* updates and replaces section 221 of the 1959 Act restricting the entry of foreign sea-fishing boats in the exclusive fishery limits of the State (as defined by *section 88* of the Bill).

*Section 9* updates and replaces section 222 of the 1959 Act providing for the regulation of foreign sea-fishing boats while inside the exclusive fishery limits of the State and for them to exit from those limits.

*Section 10* updates and replaces section 222A of the 1959 Act (as inserted by section 7 of the Fisheries (Amendment) Act 1978 (No. 18)) which makes it an offence to fish without lawful authority on board a foreign sea-fishing boat within the exclusive fishery limits of the State. *Section 28* of the Bill prescribes the penalties for such offences.

*Section 11* makes it an offence (subject to the penalties in *section 28* of the Bill) to contravene certain EC Regulations relating to the Common Fisheries Policy which are directly applicable.

*Section 12* greatly simplifies and expedites arrangements for allocating and managing the State's annual sea-fishing quotas as decided by the EU Council.

*Section 13* sets out clear provisions for the grant of authorisations for limited fishing for certain specified stocks of fish which are under pressure.

*Section 14* updates and replaces section 224B of the Fisheries (Consolidation) Act 1959 for the purpose of applying, by Ministerial Regulations, detailed requirements of the Common Fisheries Policy of the European Communities in relation to matters for which the State has no discretion as regards principles or policy, both beyond as well as within the exclusive 200 nautical-miles exclusive fishery limits of the State. Section 224B at present (see text in *Appendix 1*) only applies to within the exclusive fishery limits of the State and to illegal fishing or attempts to fish illegally, and requires to be amended as proposed in light of the Supreme Court Judgments of 16 July 2003 in the Vincent Browne sea-fisheries case (Updated penalties for offences under the section are being provided for in *section 28* of the Bill).

*Section 15* updates and replaces section 223A (see text in *Appendix 2*) of the 1959 Act to empower the Minister for Communications, Marine and Natural Resources by Regulations to supplement the Common Fisheries Policy of the European Communities by prescribing national regulatory measures (Updated penalties for offences under the section are being provided for in *section 28* of the Bill.)

### ***Chapter 3 — Sections 16 to 26***

*Section 16* updates and replaces section 220 of the 1959 Act providing for the appointment of sea-fisheries protection officers (including continuance of appointment of sea-fisheries protection officers serving at the time the Bill is enacted).

*Section 17* updates and replaces section 231 of the 1959 Act and sets out the detailed powers of sea-fisheries protection officers. Those powers are supplemented by *section 18* of the Bill in relation to sea-fishing boats.

*Section 18* updates and replaces section 233 of the 1959 Act setting out powers of sea-fisheries protection officers relating to sea-fishing boats.

*Sections 19 to 21* update and replace sections 233A, 234 and 235 of the 1959 Act dealing with the detention of sea-fishing boats alleged to have been involved in sea-fisheries offences, pending charge or prosecution or determination of Court proceedings for the offence.

*Section 22* updates and replaces section 236 of the 1959 Act making detailed provisions for the recovery of fines and forfeitures imposed by the Courts for sea-fisheries offences.

*Section 23* makes it clear that an alleged offender against sea-fisheries law can be brought before the District Court Judge assigned to the District Court presiding over the area in which the port where the alleged offender was detained is located. Thus, for convenience



and ease of reference, the section re-enacts provisions of section 309 of the 1959 Act.

*Section 24* updates and replaces provisions of section 15 of the Fisheries (Amendment) Act 1994 (No. 23) which outlaws and penalises obstruction, etc, of sea-fisheries protection officers.

*Section 25* updates and replaces provisions of section 15 of the Fisheries (Amendment) Act 1994 (No. 23) which outlaws and penalises assault on sea-fisheries protection officers.

*Section 26* provides on standard lines, for law enforcement officers, immunity from legal action for *bona fide* reasonable actions of sea-fisheries protection officers under this Part of the Bill.

#### **Chapter 4 — Sections 27 to 39**

*Section 27* is designed to overcome procedural problems for prosecution of indictable fisheries offences caused by the general abolition of provision for preliminary examination in the Criminal Procedure Act 1967 (No. 12) by the Criminal Justice Act 1999 (No. 10) (effective from 1 October 2001 pursuant to Criminal Justice Act, 1999 (Part 3) (Commencement) Order 2001 (S.I. No. 193 of 2001)). That abolition, in effect, requires the Book of Evidence to be served in the District Court within 48 hours of the arrest of the alleged offender and requires the presence of that person in the State. *Section 27* is designed to restore the pre-2001 position by entitling the accused person (with the consent of the Prosecutor) to opt to plead “Not Guilty” and have the case sent forward for due course trial in the Circuit Court without unnecessary District Court proceedings.

*Section 28* updates and comprehensively restates penalty provisions for indictable sea-fisheries offences (which may be dealt with summarily by the District Court if minor and the Prosecutor agrees), which were originally enacted in the Fisheries (Amendment) Act 1978 (No. 18) and subsequently amended. **Appendix 3 compares penalties as now provided for with those proposed in the Bill as initiated and with current penalties.** Consequential repeals are provided for in *section 4* of, and in Schedule 1 to, the Bill. In addition to any fine and forfeiture (if any) which it may impose on conviction for such an offence, the Court may suspend or revoke the sea-fishing boat licence for the boat concerned (*new power*).

*Section 29* is a technical provision to make it clear that it is not necessary for the Court to formally pronounce a record of forfeitures which arise as a statutory consequence of conviction by the Court of a person for any of the offences in question. Thus, for convenience and ease of reference, the section re-enacts provisions of section 316 of the 1959 Act.

*Section 30* ensures that the Exchequer will benefit from the sale or other disposal of anything forfeited under *section 28* or *29* of the Bill.

*Section 31* aims to deprive owners of sea-fishing boats (if not the licence holders) which fish illegally of the economic benefit of so doing, as distinct from separately imposing a fine or other forfeitures, in relation to the offence of illegal fishing. It comprises six sub-sections:

*Subsection (1)* provides that where *on the balance of probability* it is shown that sea-fish were caught in contravention of any law of the State or of an institution of the EC, or in contravention of any



international agreement to which the State is a party, *the appropriate market value* (as distinct from the proceeds) referable to disposal of illegally-caught fish shall be forfeited to the State and may be recovered from the owner of the boat or the holder of the sea-fishing boat licence for the sea-fishing boat concerned.

*Subsection (2)* provides that forfeiture under *subsection (1)* 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 be for the benefit of the Exchequer (*paragraph (a)*) and may be imposed even where there were no proceedings for an offence in relation to the sea-fishing or boat concerned (*paragraph (b)*).

*Subsection (3)* provides that a sea-fisheries protection officer may adduce *prima facie* evidence that fish were caught illegally from the logbook, vessel tracking system or other record or documents concerned.

*Subsection (4)* provides that, in order to establish a valuation of the proceeds to be forfeited, the Court shall have regard to the greater of the following two amounts—

- (i) the amount of the proceeds of disposal according to any documentary evidence submitted by the owner of the sea-fishing boat concerned, or
- (ii) the appropriate market value of the sea-fish concerned involving a willing seller and a willing buyer operating at arms' length.

Where the sea-fish were first disposed of for storage but subsequently were disposed of otherwise at a different value, the appropriate market value shall be taken to be the disposal with the greater value.

*Subsection (5)* provides that any proceedings pursuant to *section 32* may be brought by or at the suit of the Minister (or the Sea-Fisheries Protection Authority when it is established under *section 40* of the Bill).

*Subsection (6)* defines “disposal” and “sea-fishing boat concerned” for the purposes of the section.

*Section 32* provides for appeal to the Circuit Court against dismissal of proceedings by the District Court for any offence under the Sea-Fisheries Acts 1959 to 2005. The Circuit Court can confirm or reverse that dismissal. No further appeal is to be permitted in the matter. Thus, for convenience and ease of reference, the section reenacts provisions of section 310 of the 1959 Act. The section does not affect the power of the Circuit Court to refer a point of law to the High Court by way of case stated.

*Section 33* updates and restates section 48 of the Fisheries Act 1980 (No. 1) which provides proof of whether a sea-fishing boat is foreign or not.

*Section 34* provides on standard lines for offences by bodies corporate and unincorporated and persons purporting to act on their behalf.

*Section 35* restates with amendments section 19 of the Fisheries (Amendment) Act 1978 (No. 18) to provide for the service of trial

documents to defendants who are non-resident in the State. Repeal of section 19 is provided for in *section 4* of, and in *Schedule 1* to, the Bill.

*Section 36* makes specific provision for the master, owner, charterer or hirer of a sea-fishing boat used in illegal operations to avoid conviction for the offence if they can prove that there was no consent, connivance, wilful default or lack of due diligence on their part in relation to those operations, **or that necessary action was taken to safeguard life or any vessel in peril on the sea.**

*Section 37* makes it clear that the Court can presume by reference to certain evidence, information, etc. (and in the absence of proof to the contrary), that a sea-fishing boat was used in illegal sea-fishing or other sea-fisheries operations.

*Section 38* enables the Minister for Communications, Marine and Natural Resources to take summary proceedings for minor offences under the Sea-Fisheries Acts 1959 to 2005, namely, offences which are not covered by *section 28* of the Bill if it is decided to do so rather than involve the Attorney General (or, after an Order is made under *section 39* of the Bill, the Director of Public Prosecutions).

*Section 39* provides that the Attorney General will continue to a conclusion any Court proceedings taken by him in relation to indictable sea-fisheries offences which have not been completed when the prosecution function is transferred to the Director of Public Prosecutions by Order made by the Government under this section. That Order should be laid before both Houses of the Oireachtas as soon as possible after it is made.

#### ***Chapter 5 — Sections 40 to 73 — Sea-Fisheries Protection Authority***

**This Chapter (along with Schedule 3) provides for the establishment and functions of an independent statutory Sea-Fisheries Protection Authority, to enforce sea-fisheries law and food safety law relating to fish or fishery products. It also provides for the establishment of a Sea-Fisheries Protection Consultative Committee representative of the sectors to be regulated by the Authority, for the purposes of allowing the Authority to be informed of the views and concerns of those sectors and allowing those sectors to be kept advised of the Authority's activities, on an ongoing structured basis (section 48).**

***Schedule 3* supplements section 44 of the Bill by listing the European Communities Regulations, made by the Minister for Communications, Marine and Natural Resources, the enforcement functions under which are to transfer to the Sea-Fisheries Protection Authority on the establishment day appointed by the Minister under section 40 of the Bill.**

***Section 40* provides, on standard lines, for the formal establishment day to be appointed by Order of the Minister for Communications, Marine and Natural Resources, for the Sea-Fisheries Protection Authority to begin its operations.**

***Section 41* provides, on standard lines, for the formal establishment, title and legal status of the Sea-Fisheries Protection Authority.**

***Section 42* makes it clear that the Sea-Fisheries Protection Authority will act independently but subject to the provisions of this Bill**

when enacted which impose certain obligations to be met by the Authority. The section is a standard one for statutory bodies.

*Section 43* highlights certain sea-fisheries and other law enforcement and related functions to be carried out by the Sea-Fisheries Protection Authority as efficiently and effectively as possible in deploying the resources available to it (subsection (1)). Subsection (2) empowers the Authority to make arrangements with Ministers or other persons for relevant functions to be carried out on behalf of each other if that is appropriate.

*Section 44* is necessary to formally transfer to the Sea-Fisheries Protection Authority, from the Minister for Communications, Marine and Natural Resources and the Department of Communications, Marine and Natural Resources, the day-to-day administration and statutory functions relating to the enforcement of sea-fisheries law and food safety law relating to fish or fishery products, including ongoing business not completed by the establishment day appointed under section 40 which the Authority will bring to completion in due course (*except* any not — completed Court proceedings against the Minister which the Minister will have to continue to deal with to conclusion).

*Section 45* provides, on standard lines, for the automatic transfer to the Sea-Fisheries Protection Authority, on its establishment, of all business property relating to the staff and functions being transferred from the Department of Communications, Marine and Natural Resources.

*Section 46* provides, on standard lines, for policy directions to be given by the Minister to the Sea-Fisheries Protection Authority if the need arises. A copy of any such directions, and a statement of the reasons therefor, will have to be laid before both Houses of the Oireachtas and published in the *Iris Oifigiúil*.

*Section 47* provides for membership (maximum of 3 persons) of the Sea-Fisheries Protection Authority, on standard lines, including provision for the first member of the Authority, that is the Seafood Control Manager being transferred from the Department of Communications, Marine and Natural Resources.

*Section 48* provides for the appointment by the Minister for Communications, Marine and Natural Resources of a 14-person Sea-Fisheries Protection Consultative Committee, representative of the sectors to be regulated by the Sea-Fisheries Protection Authority, for the purposes of allowing the Authority to be informed of the views and concerns of those sectors and allowing those sectors to be kept advised of the Authority's activities, on an ongoing structured basis.

*Section 49* provides a quick and readily-accessible procedure to address general complaints of unacceptable behaviours in the enforcement of sea-fisheries law or food safety law in so far as the Authority is concerned. The Authority shall have regard to the Complaints Officer's findings and advise the Complaints Officer and the complainant of its decision in the matter. The provision is specifically designed not to duplicate any of the existing available avenues of redress (for example, court proceedings) to which resort may have to be had by the aggrieved party.

*Section 50* is a standard provision to allow the Authority to engage staff for the performance of its functions subject to standard Ministerial controls on the terms and conditions to apply to such staff.

**Section 51** empowers the Sea-Fisheries Protection Authority to appoint sea-fisheries protection officers from within its own staff (subsection (1)), or by agreement with other statutory bodies with relevant expert staff who could assist the Authority at any time or location (subsection (2)).

**Section 52** provides for the transfer of staff from the Department of Communications, Marine and Natural Resources to the Sea-Fisheries Protection Authority, subject to standard safeguard provisions regarding the terms and conditions to apply to such persons after their transfer.

**Section 53** is a standard provision to empower the Sea-Fisheries Protection Authority to engage consultants and advisors as it may consider necessary from time to time.

**Section 54** is a standard provision for enforcement Authorities and their staff and other persons engaged by it. It only indemnifies against prosecution *bona fide* actions or failures to act.

**Section 55** is a standard provision to exclude members of Dáil or Seanad Éireann, the European Parliament or a local authority from being a Member of the Sea-Fisheries Protection Authority or a member of the staff of the Sea-Fisheries Protection Authority.

**Section 56** obliges the Sea-Fisheries Protection Authority, following consultation with the Ministers for Communications, Marine and Natural Resources and Finance, to put in place a Code of Conduct for all Members and members of staff of the Authority.

**Section 57** imposes standard requirements on Members of the Sea-Fisheries Protection Authority, members of the staff of the Authority, or any consultant or advisor engaged by the Authority to disclose to the Authority any financial interests of theirs or of a connected relative in any matter to be considered by the Authority, so as to avoid improper influence on such consideration. Non-compliance with those requirements could entail removal from office of termination of contract (subsections (8) and (9)).

**Section 58** prohibits and penalizes on standard lines the unauthorized disclosure of confidential information, so determined by the Sea-Fisheries Protection Authority, in order to safeguard the proper functioning of the Authority. Standard provision is made to recognize that prohibition for the purposes of the Freedom of Information Act 1997 as amended.

**Section 59** provides on standard lines for a formal superannuation benefits scheme for Members of the Sea-Fisheries Protection Authority. Section 47 provides that there may be not more than 3 Members of the Authority.

**Section 60** contains standard provisions for the superannuation of members of the staff of the Sea-Fisheries Protection Authority (including provisions safeguarding the entitlements of staff transferred to the Authority from the Department of Communications, Marine and Natural Resources).

**Section 61** allows the Minister for Communications, Marine and Natural Resources to make staff and other resources available to the Sea-Fisheries Protection Authority from time to time, on request, and after consultation with the Minister for Finance (subsection (1)), subject to refund by the Authority of the Minister's expenses, if requested (subsection (2)).

*Section 62* provides for annual Exchequer funding of the Sea-Fisheries Protection Authority by reference to a definite work programme for each year (subsection (1)). Subsection (2) highlights the obligations of the State under the EU Common Fisheries Policy, or other international agreements binding on the State, to provide the Authority with appropriate resources for enforcement operations.

*Section 63* empowers the Sea-Fisheries Protection Authority to charge inspection, certification and other fees, subject to Ministerial consent.

*Section 64* is a standard provision to enable the Sea-Fisheries Protection Authority to borrow money with Ministerial consent, if required from time to time.

*Section 65* specifies standard requirements regarding the financial accounts of the Sea-Fisheries Protection Authority and its annual reports. Certain tailor-made additional requirements are specified in subsection (4) so as to assist the Minister and the Houses of the Oireachtas in assessing the effectiveness and efficiency of the Authority.

*Section 66* requires the Sea-Fisheries Protection Authority, in line with public sector bodies generally, to prepare, and regularly update, a 3-year Statement of Strategy to be laid before both Houses of the Oireachtas.

*Section 67* enables the Sea-Fisheries Protection Authority to publish reports on matters related to its functions, subject to any particular requirements to be met under section 65 as to format or content.

*Section 68* ensures, on standard lines, that the Sea-Fisheries Protection Authority is accountable to Committees of the Oireachtas. It obliges the member of the Authority (or chairperson if there is more than one member) to attend and give evidence on request (subsections (1) and (2)), but not so as to question or give an opinion on Government or Ministerial Policy, or facilitate the commission of an offence, prejudice a criminal investigation or jeopardise the safety of any person, or account for any matter the subject of proceedings before a Court or Tribunal in the State (subsection (3)).

*Section 69* enables the Sea-Fisheries Protection Authority to acquire and equip premises subject to Ministerial consent.

*Section 70* is a standard provision requiring the Sea-Fisheries Protection Authority to have a seal with which to authenticate any instruments made by it in performing its functions.

*Section 71* is a standard requirement for statutory bodies. It obliges the Sea-Fisheries Protection Authority to keep itself au fait with all policy and other developments which may have relevance to its remit (e.g. particularly developments in Government or Ministerial or EU policy regarding sea-fisheries matters or food safety and hygiene relating to fish or fishery products).

*Section 72* provides flexibility in ensuring that the Sea-Fisheries Protection Authority may, in the event of any spare capacity, assist by way of providing services to the Minister or other person on agreed terms.

*Section 73* defines certain terms and expressions used in this Chapter of Part 2 of the Bill. Other terms and expressions of wider application are defined in section 6 (definitions for the purposes of Part

**2 of the Bill — dealing with sea-fisheries matters) and section 2 (definitions generally, for the purposes of the Bill as a whole).**

***Chapter 6 — Sections 74 to 80***

*Sections 74 to 80* deal with the registration of sea-fishing boats and replace in updated terms, to provide specifically for any applicable EC or other international obligations, and in convenient accessible format, sections 373 and 374 of the Merchant Shipping Act 1894 as amended by section 4 of the Fisheries (Amendment) Act 1994 (No. 23), and section 8 of the Fisheries (Amendment) Act 1983 (No. 27).

*Section 74* provides for the continuance of the national Register of Fishing Boats, to be maintained and updated by the Registrar General of Fishing Boats (or the Deputy Registrar General), confirmed in office or newly appointed under this section, and for the appointment of local registrars for certain ports.

*Section 75* requires the registration, lettering and numbering of sea-fishing boats, in accordance with regulations under *section 76* of the Bill or EC or other international obligations. A breach of those requirements is an offence subject to a fine not exceeding €5,000 on summary conviction (*subsection (6)*).

*Subsection (2)* specifically provides for the Registrar General to enter Irish sea-fishing boats in the Register of Fishing Boats or to remove them from that Register, so as to manage properly the capacity of the Irish sea-fishing fleet in accordance with EC or other obligations.

*Subsection (3)* maintains the requirement, imposed by section 8 of the Fisheries (Amendment) Act 1983, for a sea-fishing boat licence to be in place as a prerequisite for the registration of the sea-fishing boat concerned in the Register of Fishing Boats or as a ship under the Mercantile Marine Act 1955 (No. 29).

*Subsection (4)* provides for the issue of a certificate of registration for each sea-fishing boat entered in the Register of Fishing Boats and ensures that certificate (or a certificate signed by the Registrar General that a sea-fishing boat is or is not entered in the Register of Fishing Boats) is sufficient evidence in any Court proceedings.

*Subsection (5)* ensures that boat ownership details entered in the Register of Fishing Boats are evidence (unless otherwise proven) for the purposes of Court proceedings but do not affect the rights or obligations of the actual owners.

*Subsections (7) and (8)* ensure that the non-registration of a sea-fishing boat which should be registered does not affect any obligations, etc., attaching to that boat.

*Section 76* provides for the making of Regulations by the Minister for Communications, Marine and Natural Resources for the registration, lettering and numbering of sea-fishing boats. Specific new provision is made for giving effect to EC or other international obligations and for the charging of fees on registration of sea-fishing boats or their removal for the Register of Fishing Boats. The current Regulations — Merchant Shipping (Registry, Lettering and Numbering of Fishing Boats) Regulations 2005 (S.I. No. 261 of 2005) — if in force on the enactment of the Bill continue in force as if made under this section and may be amended or revoked or replaced, accordingly. The Public Offices Fees Act 1879 will not apply to such fees.



*Section 77* ensures that the Exchequer benefits from any fees charged under Regulations made under *section 76* of the Bill for the registration or de-registration of sea-fishing boats.

*Section 78* continues in force, as if made under *section 76* of the Bill, the Merchant Shipping (Registry, Lettering and Numbering of Fishing Boats) Regulations 2005 (S.I. No. 261 of 2005) if those Regulations are in force on the enactment of the Bill.

*Section 79* updates and replaces provisions of section 224 of the 1959 Act (as amended by section 3 of the Fisheries (Amendment) Act 1978 (No. 18)) relating to official documents to be on board foreign sea-fishing boats within the exclusive fishery limits of the State, and the lights, etc., to be carried on all sea-fishing boats within those limits so as to prevent collisions.

*Section 80* defines a number of terms used in the preceding sections of this Chapter, so as to avoid unnecessary verbiage.

### **PART 3 — MARITIME JURISDICTION (INCLUDING EXCLUSIVE ECONOMIC ZONE AND EXCLUSIVE FISHERY LIMITS) OF STATE (SECTIONS 81 TO 94)**

*Part 3* updates and replaces the Maritime Jurisdiction Act 1959 (No. 22) as amended by the Maritime Jurisdiction (Amendment) Acts 1964 (No. 32) and 1988 (No. 9) and gives effect to Part V — Exclusive Economic Zone of United Nations Convention on the Law of the Sea 1982 (which entered into force in respect of the State on 28 July 1996).

Section 81 is a technical provision which defines certain terms used in *Part 3* of the Bill, so as to avoid unnecessary verbiage.

Section 82 defines the territorial seas of the State as heretofore (restating section 2 of the 1959 Act).

Section 83 sets the outer limit of the territorial seas of the State (i.e. 12 nautical miles from the baseline), restating section 3 of the 1959 Act as last amended by section 2 of the 1988 Act.

***Section 84* provides for the first time in Irish law a definition of “contiguous zone“, that is the area between 12 and 24 nautical miles from baselines, as per Article 33 of the United Nations Convention on the Law of the Sea 1982 (UNCLOS). Article 33 of UNCLOS provides that a State may exercise control in the contiguous zone to prevent infringements of customs, fiscal, immigration and sanitary laws within the territory or territorial seas or to punish infringements within its territory or territorial seas. Article 302(2) of UNCLOS provides that the removal of archaeological objects from the sea bed in the “contiguous zone” can be regarded by States as covered by the provisions in Article 33.**

*Section 85* defines the baseline from which the territorial seas and internal waters of the State are to be reckoned and empowers the Government to prescribe straight baselines (restating section 4 of the 1959 Act).

*Section 86* defines the internal waters of the State (restating section 5 of the 1959 Act).

Section 87 (with *Schedule 2* to the Bill) is a new provision to give effect to Part V — Exclusive Economic Zone of the United Nations Convention on the Law of the Sea 1982, so as to define the exclusive



economic zone of the State (essentially extending outwards 200 nautical miles from baselines, except where an equitable equidistant limit has to be between the State and mainland U.K.).

*Section 88* (which replaces section 6 of the 1959 Act as amended) is corollary to *section 87*, by providing that the exclusive fishery limits of the State are coterminous with the exclusive economic zone of the State. The exclusive fishery limits of the State are currently specified in the Maritime Jurisdiction (Exclusive Fishery Limits) Order 1976 (S.I. No. 320 of 1976) made under section 6 of the 1959 Act (as amended by section 2 of the 1964 Act) with effect from 1 January 1977, pursuant to a European Council decision that all EEC Member States with Atlantic and North Sea Coasts should declare 200 nautical miles exclusive fishery zones.

*Section 89* simply restates section 10 of the 1959 Act, to define jurisdiction of Courts in relation to offences committed within the territorial seas or internal waters of the State.

*Section 90* updates (in consequence of *Part 2* of the Bill) section 11 of the 1959 Act, to provide for prosecution of non-nationals for offences on non-Irish ships in the territorial seas of the State, if the Minister for Foreign Affairs consents. Prosecutions for sea-fisheries offences are not subject to such restrictions and will not be under the Bill when enacted.

*Section 91* is a technical provision to make it clear that *Part 3* of the Bill does affect the jurisdiction of the State under EC or other international law, restating section 12 of the 1959 Act.

*Section 92* is a technical provision for evidential purposes, restating section 13 of the 1959 Act.

*Section 93* restates section 14 of the 1959 Act for the purposes of clarifying certain references in legislation and to consequentially amend certain Acts in light of the provisions of this *Part* of the Bill and the repeal of the Maritime Jurisdiction Acts by *section 4* of, and *Schedule 1* to, the Bill.

*Section 94* is a standard provision to require the laying of Government Orders under *Part 3* before Dáil and Seanad Éireann, restating provisions of the 1959 Act.

#### **PART 4 — AMENDMENTS TO FISHERIES ACTS 1959 TO 2003, FISHERY HARBOUR CENTRES ACT 1968, DUMPING AT SEA ACT 1996 AND MARITIME SAFETY ACT 2005 (SECTIONS 95 TO 104)**

##### ***Chapter 1 — Sections 95 and 96***

*Section 95* is simply a technical drafting restatement of section 309(1) of the 1959 Act, relating to District Court proceedings, so as to take account of this Bill (particularly *section 28* which relates to certain indictable sea-fisheries offences, the proceedings in relation to which can only be taken in the Circuit Court (unless it is agreed that the offence is of a minor nature which may be tried summarily in the District Court)).

*Section 96* simply makes it clear that prosecutions for summary offences — under the Fisheries Acts apart from those relating to seafisheries which are specified in the Tables to *section 28* of the Bill — may be taken by the Minister for Communications, Marine and

Natural Resources (if it is decided to do so rather than involve the Attorney General (or the Director of Public Prosecutions, from the date of the Government Order under *section 39* of the Bill).

## **Chapter 2 — Sections 97 to 99**

*Section 97* restates *section 4* (sea-fishing boat licensing) of the Fisheries (Amendment) Act 2003 (No. 21) with amendments made by *section 53* of the Maritime Safety Act 2005 (No. 11), for ease of reference and administration.

*Section 98* imposes tax clearance requirements for the grant of a sea-fishing boat licence, from such date as the Minister specifies by Order under the section. The grant of a sea-fishing boat licence is of significant economic benefit to the grantee, allowing access to a valuable public resource, and should be matched by confirmation — via a tax clearance certificate — that the grantee's tax affairs are in order.

*Section 99* amends the Fisheries (Amendment) Act 2003 (No. 21) governing sea-fishing boat licensing, as follows:

*Paragraphs (a), (b)(ii), (iii) and (iv), (f) and (k)* reflect the replacement of *section 4* of the Act by *section 97* of the Bill.

*Paragraphs (b)(i) and (d)* clarify the scope of Ministerial policy directives to the Sea-fishing Boat Licensing Authority or the Appeals Officers to include a specific reference to measures to control and regulate the capacity, etc., of the sea-fishing fleet and the rational management of fisheries.

*Paragraph (b)(v)* provides an indemnity, on standard lines, for the Sea-fishing Boat Licensing Authority in relation to licensing or registration of sea-fishing boats.

*Paragraph (b)(vi)* reflects *section 74* of the Bill providing for the Register of Fishing Boats.

*Paragraph (c)* is consequential to *sections 15* and *14*, respectively, of the Bill providing for the updating and replacing of *sections 223A* and *224B* of the Principal Act (Fisheries (Consolidation) Act 1959 (No. 14)), so as to allow for charging of fees for applications for and grant of licences, authorisations or permits under Ministerial Regulations under those sections; it also removes doubt that a fee could be imposed in respect of sea-fishing boat licences granted by an Appeals Officer. The Public Offices Fees Act 1879 will not apply to such fees.

*Paragraph (e)* is designed to copperfasten in law the one-month time scale allowed for third parties to make representations on licence applications: if they do not avail of this, they cannot appeal under the Fisheries (Amendment) Act 2003 (No. 21) against the decision on that application.

*Paragraphs (g), (h) and (i)* are consequential to *section 28* of the Bill which comprehensively provides for penalties for seafisheries offences.

*Paragraph (j)* ensures that the Public Offices Fees Act 1879 will not apply to fees chargeable under *section 32* of the 2003 Act in relation to foreshore application and other fees.

### **Chapter 3 — Section 100**

*Section 100* amends the Mercantile Marine Act 1955 (No. 29) as follows:

*Paragraph (a)* inserts a new section 16A to restate, for convenience of reference, the provisions of section 3 of the Fisheries (Amendment) Act 1994 (No. 23) as to the persons who are qualified to own an Irish registered sea-fishing ship.

*Paragraph (b)* amends section 18 to exempt from compulsory registration as a ship under that Act a sea-fishing boat of less than 15 metres in length overall which is registered in the Register of Fishing Boats maintained under *section 74* of the Bill (or exempt from such registration by Regulations under *section 76* of the Bill).

*Paragraph (c)*, for convenience of reference, restates as a specific amendment to section 19 (*new subsection 2(A)*) the amendment made by section 9 of the Fisheries (Amendment) Act 1983 (No. 27) regarding rights of nationals, etc., of reciprocating States to own an Irish registered ship or a share in it. This restatement allows for the repeal of the 1983 Act in full by *section 4* of, and *Schedule 1* to, the Bill.

### **Chapter 4 — Section 101**

*Section 101* amends the Fisheries (Amendment) Act 1997 (No. 23) governing aquaculture licensing, as follows:

*Paragraph (a)* updates *per diem* penalties for continuing offences of unlicensed aquaculture after conviction by the Court.

*Paragraph (b)* amends section 19 of the 1997 Act to make it clear that the power to renew a licence includes the power to renew a licence that has already expired. It also provides that any expired licence that has been renewed is valid *subject* to standard Constitutional safeguards, modelled on section 3(5) of the Fisheries and Foreshore (Amendment) Act 1998 (No. 54), section 3(3) of the Minerals Development Act 1995 (No. 15) and section 60 of the Maritime Safety Act 2005 (No. 11).

*Paragraph (c)* simply restates (for the purpose of consolidating the Acts relating to aquaculture) section 10(4) of the 1997 Act as inserted by the European Communities (Environmental Impact Assessment) (Amendment) Regulations 1999 (S.I. No. 93 of 1999).

*Paragraph (d)* provides for the removal from office or other appropriate action (*in lieu of prosecution for an offence*) against a member of the Aquaculture Licences Appeals Board or a person employed or engaged by it for acting despite having a conflict of interests or for non-disclosure of full interests.

*Paragraph (e)* updates to €600 the fine for refusal to attend or give evidence at an oral hearing of an appeal or to wilfully alter, etc., any document needed therefor.

*Paragraph (f)* updates fines and abolishes terms of imprisonment as additional or alternative penalty, and also amends section 65 of the 1997 Act so that the period for taking summary prosecutions is extended to 12 months rather than 6 months, after the date of the offence in the case of unlicensed aquaculture or breach of a licence.

*Paragraph (g)* makes standard provision for offences by bodies corporate and unincorporated and persons purported to act on their behalf (new section 65A being inserted in 1997 Act) and provides (parallel with *section 32* of the Bill for sea-fisheries offences) for appeal to the Circuit Court against dismissal of proceedings in the District Court (new section 65B being inserted in 1997 Act).

*Paragraph (h)* enables the Minister at the request of the licensee to reduce the licensed area or aquaculture licensed or both, or to permit use of novel or experimental equipment inside the licensed area, without requiring the grant of a new licence or amending the licence (which would needlessly involve public consultation and possible appeal and excessive costs for operators).

*Paragraph (i)* is a consequential repeal to take account of *paragraph (j)*.

*Paragraph (j)* amends and restates section 69 of the 1997 Act which provides that an aquaculture licence ceases to have effect if the permitted aquaculture does not start up within two years of the grant of the licence and that the Minister shall revoke a licence where aquaculture has ceased for a continuous period of two years. It is proposed to modify these provisions, with effect from 30 June 1998 when the 1997 Act's provisions came into force, by inserting a further provision that the cesser/revocation requirements shall not apply where the Minister is satisfied that there were *bona fide* reasons (e.g. fish health, environmental conditions, etc.) why the licensed operation did not start up or ceased, as the case may be.

## **Chapter 5 — Section 102**

*Section 102* amends section 4 of the Fishery Harbour Centres Act 1968 (No. 18) to ensure that no vessel (including the capacity thereof) in respect of which there are arrears of Fishery Harbour Centre rates or charges due can be disposed of without the consent of the Minister for Communications, Marine and Natural Resources, and that the Minister's power to dispose of such a vessel covers the capacity thereof. The specific reference to "capacity" is intended to avoid being left with the mere hull of the vessel concerned, which may be of little value of itself. The opportunity is being taken to delete subsection (8) of section 4 of the 1968 Act because the same Minister now has responsibility also in relation to commercial shipping and so could not consult himself or herself before making a byelaw or order under the section.

## **Chapter 6 — Section 103**

*Section 103* amends the Dumping at Sea Act 1996 (No. 14) to take account of *Part 3* of the Bill which updates and replaces the Maritime Jurisdiction Act 1959 as amended (*paragraph (a)*), to update references to members of the Permanent Defence Forces acting as authorised officers under that Act (*paragraph (b)*), and to allow the Director of Public Prosecutions to prosecute offences under that Act\*\* (*paragraphs (c) and (d)*).

## **Chapter 7 — Section 104**

*Section 104* amends the Maritime Safety Act 2005 (No. 11) to take account of *Part 3* of the Bill which updates and replaces the Maritime Jurisdiction Act 1959 as amended (*paragraph (a)*), correct typographical errors (*paragraphs (b) and (c)*), **to expressly provide for**

\*\*The Attorney General already has this power under the 1996 Act.

**search and rescue and search and recovery operations to be conducted safely, by the establishment of temporary exclusion zones around an area of a marine casualty (paragraph d),** and to make it clear that the prohibition on unlawfully interfering with access to or from ports and harbours in the State and the power to direct vessels to move in the interests of safety of life at sea, etc., apply also to vessels which are not registered in the State but are transiting Irish waters (*paragraph (e)*).

### **Exchequer and Financial Implications**

The proposed clarification and strengthening of the Fisheries Acts 1959 to 2003 against illegal fishing should deter offenders and safeguard fisheries, and, **with the proposed establishment of an independent statutory Sea-Fisheries Protection Authority (as provided for in Chapter 5 of Part 2 of the Bill),** should lead to more cost-effective enforcement activity which is funded by the Exchequer. The Bill should also secure taxes and fees payable by sea-fishing boat licensees, as well as timely payment of rates and charges in respect of any vessel availing of services at any Fishery Harbour Centre.

The Bill also clarifies and improves aquaculture and sea-fishing boat licensing law for the benefit of the sectors concerned.

*Part 3* of the Bill gives effect to *Part V* — Exclusive Economic Zone of the United Nations Convention of the Sea 1982 and updates and replaces the Maritime Jurisdiction Act 1959 (as amended), in the interests of regulatory reform.

It is not expected that the transfer from the Attorney General to the Director of Public Prosecutions of the function of prosecuting seafisheries offences and offences under the Dumping at Sea Act 1996 will give rise to additional Exchequer expenditure of any significance overall or additional staffing.

An Roinn Cumarsáide, Mara agus Acmhainní Nádurtha  
22 Feabhra 2006

## **APPENDICES:**

- APPENDIX 1 — Section 224B of Fisheries (Consolidation) Act 1959 (No. 14) as inserted by section 5 of the Fisheries (Amendment) Act 1983 (No. 27)**
- APPENDIX 2 — Section 223A of Fisheries (Consolidation) Act, 1959 (No. 14) as inserted by section 9 of the Fisheries (Amendment) Act 1978 (No. 18) and as amended by section 4 of the Fisheries (Amendment) Act 1983 (No. 27)**
- APPENDIX 3 — Comparison between penalties for sea-fisheries offences proposed in section 28 of Bill and existing penalties**
- APPENDIX 4 — Correlation table relating to Part XIII of the Fisheries (Consolidation) Act 1959 (No. 14) as amended**

Section 224B of Fisheries (Consolidation) Act 1959 (No. 14) as  
inserted by section 5 of the Fisheries (Amendment) Act 1983  
(No. 27)

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Minister may make  
regulations to give  
effect to certain  
matters relating to  
European  
Communities.

224B. (1) Without prejudice to the generality of section 3 (1) of the Act of 1972, the Minister may by regulations make provision to give effect within the exclusive fishery limits of the State to any provision either of the treaties or of any act adopted by an institution of the European Communities which authorises any or all of the Member States of the European Communities to restrict, or otherwise regulate in a manner specified in the provision, fishing in waters, or in part of waters, under its or their sovereignty or jurisdiction.

(2) Regulations under this section may 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) A person who fishes or attempts to fish in contravention of regulations under this section shall be guilty of an offence and shall be liable on conviction on indictment to a fine not exceeding £100,000\*, and, as a statutory consequence of the conviction, to forfeiture of all or any of the following found on the boat to which the offence relates:

(a) any fish,

(b) any fishing gear.

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\*now = €126,974



Section 223A of Fisheries (Consolidation) Act, 1959 (No. 14)\* as inserted by section 9 of the Fisheries (Amendment) Act 1978 (No. 18) and as amended by section 4 of the Fisheries (Amendment) Act 1983 (No. 27)

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Conservation of fish stocks and rational exploitation of fisheries.

223A. (1) The Minister may, as he shall think proper, by order prescribe and adopt either or both of the following measures, namely, measures of conservation of fish stocks and measures of rational exploitation of fisheries.

(1A) Without prejudice to the generality of *subsection* (1) of this section, an order under this section may—

(a) relate—

- (i) generally to sea-fishing or to sea-fishing which is of a specified class or description,
- (ii) generally to fishing other than sea-fishing or to such fishing which is of such a class or description,
- (iii) generally to fisheries other than sea-fisheries or to such fisheries which are of such a class or description,
- (iv) generally to fishing boats (including sea-fishing boats) or to fishing boats which are of such a class or description,
- (v) to boats, other than fishing boats, which are of such a class or description,

(b) for the purpose of enabling the order to have full effect, extend any or all of—

- (i) the powers conferred by this Act\* on a sea fisheries protection officer for the purposes of this Act,\*
- (ii) the powers so conferred on an authorised person within the meaning of Part XVIII of this Act,\*
- (iii) the powers so conferred on authorised officers within the meaning of section 301 of this Act,\*

(c) include such incidental, supplementary and consequential provisions as the Minister considers appropriate,

and in case provisions are included in such an order by virtue of paragraph (b) of this subsection, this Act\* shall be construed and have effect in accordance with the terms of the order.

(2) A person who contravenes or attempts to contravene an order under this section shall be guilty of an offence.

(3) The Minister may by order revoke or amend an order under this section including an order under this subsection.

**Comparison between maximum fines for sea-fisheries offences  
proposed in section 28 of Bill and existing maxima**

Indictable Offence	Maximum Fine on conviction on indictment not exceeding amount specified below now proposed (22.02.06)			Maximum fine proposed in bill as initiated (29.09.05)	Existing maximum fine [Date Increases set]
	Category 1 — sea-fishing boat of less than 12 metres in length overall	Category 2 — sea-fishing boat of 12 metres or more but not exceeding 18 metres in length overall	Category 3 — sea-fishing boat of more than 18 metres in length overall		
Sections 11, 14 or 15 of Bill in so far as relates to — Contravention relating to fish storage capacity of sea-fishing boat	€20,000	€50,000	€100,000	€200,000	€500,000 [2003]
— Illegal nets or other equipment	€20,000	€40,000	€80,000	€100,000	€63,487 [1994]
— Any other contravention or failure of compliance	€10,000	€20,000	€35,000	€35,000	€25,395 [1994]
Foreign sea-fishing boat unlawfully in or unlawfully fishing inside exclusive fishery limits of the State, or failure to leave those limits or to observe regulations for good order among such fishing boats inside those limits (sections 8(2), 9(3) and 10(2) of Bill)	€20,000	€50,000	€75,000	€100,000	€126,974 [1978] (unlawful fishing) or €12,697 [1978] (other offences)
Contravention of sea-fishing quota notices or authorisations (sections 12 and 13 of Bill)	€10,000	€20,000	€35,000	€35,000	€25,395 [1994]
Fishing without or in contravention of a sea-fishing boat licence (section 4 of 2003 Act)	€20,000	€50,000	€75,000	€100,000	€12,697 [1983]
Fishing in contravention of regulations for the conservation of straddling or highly migratory fish stocks or failure to return to port on order of sea-fisheries protection officer (section 25(3) and 27(5) of 2003 Act)	€20,000	€50,000	€100,000	€200,000	€500,000 [2003 — NEW OFFENCES]

## **INDICTABLE OFFENCES — FOREFEITURES**

Section 28(5) of the Bill in effect maintains the *status quo* by providing for a standard forfeiture, as a statutory consequence of the conviction on indictment, of any fish and any fishing gear on board the sea-fishing boat concerned (except in the case of conviction on indictment under section 8 or 9 of the Bill, involving foreign sea-fishing boats where the Court has discretion (as heretofore) whether or not to order forfeiture of any fish and fishing gear concerned).

**[Note: Section 29 of the Bill as initiated on 29 September 2005 has been deleted. It restated the provision dating from 1994 allowing the Court discretion to order the forfeiture of boats used in commission of serious sea-fisheries offences, that is in addition to any fine or other forfeiture imposed on conviction on indictment.]**

## **SUMMARY OFFENCES — FINES AND FORFEITURES**

The maximum fine on summary conviction is being increased to €5,000 in all cases, from €635 or €1,270, as the case may be, including cases where it is agreed to proceed summarily as regards any of the indictable offences mentioned above.

**Section 28 (6) of the Bill as it now stands changes the law in relation to forfeitures in the case of persons convicted summarily for the first time of an offence (other than an offence to which section 8 or 9 of the Bill relates): the Court has discretion as to whether or not to order the forfeiture of unlawfully caught fish and any fishing gear used in the commission of the offence or to which the offence relates; hitherto, forfeiture arose as a statutory consequence of conviction. (In the case of summary conviction for an offence under section 8 or 9 of the Bill, involving foreign fishing boats, the Court continues to have discretion (as heretofore) whether or not to order forfeiture of any fish and fishing gear concerned). Where the Court decides not to order forfeiture, it must say why in all cases.**

**Where a person is convicted summarily a second or subsequent time for an offence (other than an offence under section 8 or 9 of the Bill), forfeiture of unlawfully caught fish and any fishing gear used in the commission of the offence or to which the offence relates will arise as a statutory consequence of conviction, as heretofore.**

#### APPENDIX 4

Correlation table relating to Part XIII of the Fisheries  
(Consolidation) Act 1959 (No. 14) as amended.

Section of PART XIII	Affecting provision	Provision of Bill
219	Amended by section 19 of 1962 Act (No. 31) and section 17 of 1978 Act (No. 18)	Sections 2 (Definitions) and 6 (Definitions for Part 2 of Bill)
220	Amended by section 20(1) of 2003 Act (No. 21)	Section 16
221	Replaced by section 5 of 1978 Act (No. 18)	Section 8
222	Replaced by section 6 of 1978 Act (No. 18)	Section 9
222A	Inserted by section 7 of 1978 Act (No. 18)	Section 10
222B	Amended and restated by section 4 of 2003 Act (No. 21)	Section 97 (amendment of section 4 of 2003 Act)
222C	Inserted by section 3 of 1983 Act (No. 27) and amended by section 30(2) of 2003 Act (No. 21)	Sections 11 to 15 incorporate required provisions in updated terms
223	Replaced by section 8 of 1978 Act (No. 18)	Ditto
223A	Inserted by section 9 of 1978 Act (No. 18) and amended by section 4 of 1983 Act (No. 27)	Section 15
224	Amended by section 3 of the 1978 Act (No. 18)	Sections 75 and 79
224A	Inserted by section 10 of the 1978 Act (No. 18)	Section 14
224B	Inserted by section 5 of 1983 Act (No. 27)	Section 14
225		Sections 14 and 15
226	Amended by section 22 of and Schedule to 1978 Act (No. 18)	Sections 11 to 15 incorporate required provisions in updated terms
227	Amended by section 22 of and Schedule to 1978 Act (No. 18)	Ditto
228	Amended by section 21 of 1962 Act (No. 31) and section 3 of 1978 Act (No.18)	Sections 14 and 15
229	Amended by section 22 of 1962 Act (No. 31)	Ditto

Section of PART XIII	Affecting provision	Provision of Bill
230	Amended by section 37 of 1962 Act (No. 31)	Section 3 (provisions regarding regulations)
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 36 (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

Act No. and Year	ACTS REFERRED TO	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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