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Act 317

FISHERIES ACT 1985

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LAWS OF MALAYSIA**Act 317****FISHERIES ACT 1985**

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LAWS OF MALAYSIA**Act 317****FISHERIES ACT 1985**

An Act relating to fisheries, including the conservation, management and development of maritime and estuarine fishing and fisheries, in Malaysian fisheries waters, to turtles and riverine fishing in Malaysia and to matters connected therewith or incidental thereto.

[Except for Part IX in its application to the State of Sabah—1 January 1986, P.U. (B) 627/1985]

WHEREAS it is expedient to consolidate and amend the written law relating to fisheries, including the conservation, management and development of maritime and estuarine fishing and fisheries, in Malaysian fisheries waters and to turtles and riverine fishing in Malaysia;

AND WHEREAS by Clause (1) of Article 74 of the Federal Constitution Parliament may make laws with respect to any of the matters enumerated in the Federal List or the Concurrent List, and whereas fisheries, including maritime and estuarine fishing and fisheries (excluding turtles), is a matter enumerated in the Federal List under item 9 of List I of the Ninth Schedule to the Federal Constitution and maritime and estuarine fishing and fisheries are also matters enumerated in the Concurrent List under item 12 of List IIIA of the said Ninth Schedule in respect of the States of Sabah and Sarawak;

AND WHEREAS by Clause (1)(b) of Article 76 of the Federal Constitution Parliament may make laws with respect to any matter enumerated in the State List for the purpose of promoting uniformity of the laws of two or more States, and whereas turtles and riverine fishing are matters enumerated in the State List under item 12 of List II of the Ninth Schedule of the Federal Constitution:

NOW, THEREFORE, pursuant to the relevant provisions of the Federal Constitution **BE IT ENACTED** by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

Short title, application and commencement

1. (1) This Act may be cited as the Fisheries Act 1985 and shall apply in Malaysian fisheries waters and, subject to subsection (2), in riverine waters within the jurisdiction of each of the States in Malaysia and of the Federation in respect of the Federal Territories of Kuala Lumpur and Labuan.

(2) This Act shall come into operation on such date as the Minister may appoint by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act in different areas:

Provided that the provisions of this Act insofar as they relate to turtles and riverine fishing in any State in Malaysia shall not come into operation in that State until they have been adopted by a law made by the Legislature of that State.

Interpretation

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

“aquaculture” means the propagation of fish seed or the raising of fish through husbandry during the whole or part of its life cycle;

“authorized officer” means the Director General, a Deputy Director General of Fisheries, a fisheries officer, a port officer as defined in section 2 of the Merchant Shipping Ordinance 1952 [*Ord. 70 of 1952*], the commanding officer of any Government naval vessel or Government aircraft, the commanding officer of any Government marine police vessel or any other person or class of persons appointed to be an authorized officer or authorized officers under section 36;

“culture system” means any establishment, structure or facility employed in aquaculture and includes on-bottom culture, cage culture, hanging-net culture, pen culture, pond culture, pole or stick culture, raceway culture, raft culture, rope culture and hatchery;

“Director General” means the Director General of Fisheries appointed under this Act;

“estuarine waters” means the waters of a river extending from the mouth of the river—

- (a) up to the point upstream penetrated by sea water at neap tides; and
- (b) in the case of the State of Sarawak, up to the limits set by the Minister, with the concurrence of the State Authority, in regulations made under this Act;

“exclusive economic zone” means the exclusive economic zone of Malaysia as determined in accordance with the Exclusive Economic Zone Act 1984 [*Act 311*];

“fish” means any aquatic animal or plant life, sedentary or not, and includes all species of finfish, crustacea, mollusca, aquatic mammals, or their eggs or spawn, fry, fingerling, spat or young, but does not include any species of otters, turtles or their eggs;

“fish-aggregation device” means any structure or device of a permanent or semi-permanent nature made from any material and used to lure or aggregate fish for the purposes of fishing;

“fish seed” means fish egg or larva or post-larva of fish or the spawn, fry or fingerling of fish;

“fisheries officer” means a fisheries officer or deputy fisheries officer appointed under section 4;

“fisheries plan” means any of the plans related to fisheries prepared by the Director General under Part III;

“fishery” means any one or more stocks of fish which can be treated as a unit for the purposes of their conservation, management and development and includes fishing for any such stocks, and aquaculture;

“fishing” means—

- (a) the catching, taking or killing of fish by any method;
- (b) the attempted catching, taking or killing of fish;
- (c) engaging in any activity which can reasonably be expected to result in the catching, taking or killing of fish; or
- (d) any operation in support of, or in preparation for, any activity described in paragraph (a), (b) or (c) of this definition;

“fishing appliance” includes a fishing net, a fishing trap, and any gear, with or without floats, buoys or sinkers, designed for capturing fish but does not include—

- (a) any such gear of the hook-and-line type having not more than two hooks; and
- (b) a cast net of the type known as “jala”;

“fishing stakes” means any device used for fishing which is made up of poles or other supports fixed into the ground and enclosed by ramie, rattan, wire or other screening material and so designed as to lead fish into such device;

“fishing vessel” means any boat, craft, ship or other vessel which is used for, equipped to be used for, or of a type used for—

- (a) fishing;
- (aa) aquaculture; or
- b) aiding or assisting any other boat, craft, ship or other vessel in the performance of any activity related to fishing, including any of the activities of preparation, processing, refrigeration, storage, supply or transportation of fish;

“foreign fishing vessel” means any fishing vessel other than a local fishing vessel;

“inland fisheries” means fisheries in riverine waters;

“inland fisheries officer” means an inland fisheries officer or a deputy inland fisheries officer appointed under section 5;

“internal waters of Malaysia” means any areas of the sea that are on the landward side of the baselines from which the breadth of the territorial sea of Malaysia is measured;

“international fishery agreement” means any bilateral or multilateral treaty or agreement, which relates to fishing or fisheries, between the Government of Malaysia and the government of any other country or between the Government of Malaysia and any competent international organization;

“local fishing vessel” means any fishing vessel—

(a) which is not registered outside Malaysia and which is wholly owned by—

- (i) a natural person who is a citizen or natural persons who are citizens of Malaysia;
- (ii) a statutory corporation established under any of the laws of Malaysia;
- (iii) the Government of Malaysia or the Government of a State in Malaysia; or
- (iv) a body corporate or unincorporate established in Malaysia, and wholly owned by any of the persons described in subparagraph (i), (ii) or (iii) or this definition; or

(b) which is chartered, subchartered, leased or subleased by any person, statutory corporation, Government or body corporate described under subparagraph (a)(i), (a)(ii), (a)(iii) or (a)(iv) of this definition;

“Malaysian fisheries waters” means maritime waters under the jurisdiction of Malaysia over which exclusive fishing rights or fisheries management rights are claimed by law and includes the internal waters of Malaysia, the territorial sea of Malaysia and the maritime waters comprised in the exclusive economic zone of Malaysia;

“marine park” or “marine reserve” means any area or part of an area in Malaysian fisheries waters established as a marine park or marine reserve under Part IX for the purposes specified in that Part;

“maritime waters” means areas of the sea adjacent to Malaysia, both within and outside Malaysian fisheries waters and includes estuarine waters, and any reference to marine culture system, fishing or fisheries shall be construed as referring to the conduct of any of these activities in maritime waters;

“master”, in relation to a fishing vessel, includes every person (except a pilot or port officer as defined in section 2 of the Merchant Shipping Ordinance 1952) having for the time being command or charge of the vessel, or lawfully acting as the master thereof;

“Minister” means the Minister of the Federal Government who is for the time being charged with the responsibility for fisheries;

“owner”, in relation to a fishing vessel, means any person or body of persons, whether corporate or unincorporate, by whom the vessel is owned and includes any charterer, sub-charterer, lessee or sub-lessee of the vessel;

“person” includes any individual (whether or not a citizen of Malaysia), any body corporate, partnership, association, or other entity, established within or out-side Malaysia, the Federal or any State Government, a local authority or foreign government, or any entity belonging thereto;

“pollutant” means any substance which, if introduced into the maritime or any riverine waters, is liable to create hazards to human health or to harm aquatic living resources, or to damage amenities or interfere with other legitimate use of the maritime or riverine waters and, without limiting the generality of the foregoing, includes any substance that is prescribed by the Minister by order in the *Gazette* to be a pollutant for the purposes of this Act;

“processing”, in relation to fish, includes cleaning, filleting, icing, freezing, canning, salting, smoking, cooking, pickling, drying or otherwise preserving or preparing fish by any method;

“riverine fishing” means fishing in riverine waters;

“riverine waters” means the waters of any rivers, lakes, streams, ponds and such other waters in Malaysia other than maritime waters, whether natural or man-made, privately owned or otherwise;

“sedentary species” means organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil;

“State Authority” means the authority in any State in Malaysia responsible for inland fisheries;

“territorial sea of Malaysia” means the territorial waters of Malaysia determined in accordance with the Emergency (Essential Powers) Ordinance No. 7 1969 [*P.U. (A) 307A/1969*];

“this Act” includes regulations and other subsidiary legislation made under this Act and anything else done under this Act or under such regulations or other subsidiary legislation, and any reference to a provision of this Act shall be construed accordingly.

“traditional fishing appliance” means any fishing appliance enumerated hereunder operated with the use of a non-motorized fishing vessel or a motorized fishing vessel of not more than forty gross registered tonnage:

- (a) trap;
- (b) hook-and-line;
- (c) drift net or gill net;
- (d) seine net;
- (e) hand liftnet;
- (f) bagnet or stow net; and
- (g) barrier net.

PART II

ADMINISTRATION

Responsibility of Minister

3. (1) The Minister shall be responsible for all matters relating to fisheries, including the conservation, management and development of maritime and estuarine fishing and fisheries, in Malaysian fisheries water, to turtles and inland fisheries in the Federal Territories of Kuala Lumpur and Labuan and to turtles in waters outside the jurisdiction of any State in Malaysia.

(2) The Yang di-Pertuan Agong may appoint a Director General of Fisheries and the Minister may appoint such Deputy Directors General of Fisheries as may be necessary, for implementing the provisions of this Act except, subject to subsection (1), the provisions relating to turtles and inland fisheries in the States of Malaysia.

(3) The Director General shall be responsible for the general supervision of all matters relating to fisheries under this Act except, subject to subsection (1), matters relating to turtles and inland fisheries in the States of Malaysia.

(4) The Director General may, in writing, delegate the exercise of any or all of the powers and functions conferred upon him by this Act to such fisheries officers or deputy fisheries officers as he may think fit.

Fisheries officers and deputy fisheries officers

4. The Minister may appoint such fisheries officers and deputy fisheries officers as may be necessary for implementing the provisions of this Act except, subject to subsection 3(1), the provisions relating to turtles and inland fisheries in the States of Malaysia.

Inland fisheries officers and deputy inland fisheries officers

5. Subject to subsection 3(1), the State Authority may appoint such inland fisheries officers and deputy inland fisheries officers as may be necessary for implementing the provisions of this Act insofar as they relate to turtles and inland fisheries in the States of Malaysia.

PART III

FISHERIES PLANS

Preparation of fisheries plans

6. (1) The Director General shall prepare and keep under continual review fisheries plans based on the best scientific information available and designed to ensure optimum utilization of fishery resources, consistent with sound conservation and management principles and with the avoidance of overfishing, and in accordance with the overall national policies, development plans and programmes.

(2) Each plan and each modification or revision thereof shall be implemented after approval by the Minister.

(3) All development within the fisheries industry shall conform generally with the management and conservation policies described in the fisheries plans.

PART IV

GENERAL LICENSING PROVISIONS

Application of this Part

7. The provisions of this Part shall apply in respect of every licence issued under this Act but shall not, except as hereinafter provided, apply in respect of any permit issued under Part V.

Offence for fishing without licence or in contravention of condition or direction

8. Any person who undertakes any fishing activity, operates, or allows to be operated, in Malaysian fisheries waters any local fishing vessel for the purpose of fishing—

- (a) without a valid licence issued under this Part;
- (b) in contravention of any condition in the licence issued in respect of such vessel; or
- (c) in contravention of any direction in writing issued by the Director General under this Act,

shall be guilty of an offence.

Application for licence or permit in respect of new fishing vessel

9. (1) An application for a licence under this Part or for a permit under Part V in respect of any new fishing vessel shall be made to the Director General before construction of the vessel is commenced, and shall be accompanied by such plans, specifications or other information as the Director General may require or as may be prescribed in regulations made under this Act.

(2) The applicant may proceed with the construction of the new fishing vessel upon receiving written approval so to do from the Director General subject to such conditions, including conditions

in respect of the horsepower, size and tonnage of the vessel, or disposal of any existing fishing vessel, as may be specified in the approval.

(3) The Director General may refuse to issue a licence in respect of any new fishing vessel which was not constructed with approval, and in accordance with the conditions specified, under subsection (2).

(4) Where under a fisheries plan it is provided that no licence under this Part or permit under Part V shall be issued in respect of a new fishing vessel for a specific type of fisheries unless such new fishing vessel is in replacement of a fishing vessel already issued with such licence or permit for such type of fisheries, the Director General shall not issue a licence or permit in respect of the new fishing vessel until the existing fishing vessel is disposed of in accordance with his directions.

Conditions in licence and directions

10. (1) The Director General shall in issuing a licence under this Part impose such conditions as he thinks fit which shall include conditions relating to the following matters:

- (a) the permanent marking of the fishing vessel with such letters and numbers or other means of identification as may be assigned to it by the Director General in such manner as may be prescribed in regulations made under this Act;
- (b) the nationality and number of persons to be employed or carried on the fishing vessel; and
- (c) in addition to complying with the requirement of any other written law that may be applicable, the requirement that a person who is not a Malaysian citizen shall not engage in any fishing activity related to the fishing vessel without the written approval of the Director General.

(2) Where he is satisfied that it is necessary or expedient for the proper management of fisheries so to do, the Director General may from time to time vary the conditions of a licence issued under this Part but due notice of such intended variation shall be given to the licensee who shall, if he so desires, have the right to be heard within such period as the Director General may allow.

(3) A certificate by the Director General stating that any condition in a licence was imposed or any variation thereof was made for the proper management of fisheries shall be conclusive proof thereof in any legal proceedings.

(4) (a) The Director General may from time to time by notice in the *Gazette* issue directions in relation to the proper management of fisheries to be complied with by every person to whom they are applicable.

(b) Such directions shall also be displayed in such public places and for such period of time as the Director General may determine.

Licence in respect of local fishing vessel, fishing stakes, fishing appliance, fish-aggregation device or marine culture system

11. (1) The Director General may, upon application and upon payment of the prescribed fee and payment of any prescribed deposit, issue a licence in respect of any local fishing vessel, fishing stakes, fishing appliance, fish-aggregation device or marine culture system, subject to such conditions as he thinks fit to impose or which may be prescribed in regulations made under this Act.

(2) No licence shall be issued in respect of any fishing stakes, fishing appliance, fish-aggregation device or marine culture system which causes or is likely to cause any obstruction to navigation or any impediment to the natural flow of water in Malaysian fisheries waters.

(3) Any person who, in Malaysian fisheries waters—

- (a) operates, or allows to be operated, any fishing stakes, fishing appliance, fish-aggregation device or marine culture system without a licence in respect thereof;
- (b) has under his control or in his possession any fishing appliance without a licence in respect thereof;
- (c) sets up, or causes to be set up, any fishing stakes, fishing appliance or fish-aggregation device without written permission from the Director General prior to the issue of a licence in respect thereof; or

- (d) constructs or establishes any marine culture system without written permission from the Director General prior to the issue of a licence in respect thereof,

shall be guilty of an offence.

(4) For the purpose of subsection (3), any part of a fishing appliance shall be construed as a complete fishing appliance unless proven otherwise.

Non-commencement of fishing operations

12. (1) The Director General may cancel any licence or permit issued under this Act if after three months from the date of its issue fishing operations to which the licence or permit relates have not commenced, and the licensee or permit holder shall surrender his licence or permit immediately after being notified of such cancellation.

(2) Before the Director General makes a decision to cancel such licence or permit, the licensee or permit holder concerned shall be given the opportunity to show cause why his licence or permit should not be cancelled.

Refusal to license or suspension or cancellation of licence

13. (1) The Director General may refuse to issue or renew any licence under this Act or may cancel, or suspend for such period as he thinks fit, any licence issued under this Act where he is satisfied that it is necessary so to do for the proper management of any particular fishery in accordance with the fisheries plan applicable to that fishery and with any directions issued by the Director General in the implementation of that plan.

(2) The Director General shall refuse to issue a licence in respect of any local fishing vessel in any of the following cases:

- (a) where the vessel is required to be registered under the law relating to merchant shipping but has not been so registered;
- (b) where the vessel is required to have a valid certificate of inspection issued in respect of it under the law relating to merchant shipping but does not have such certificate;

(c) where the vessel is not seaworthy and not fit for the purpose of fishing or does not comply with such requirements as may be applicable to it in respect of navigation, manning standards or safety at sea under this Act or any other law or under any convention to which Malaysia is a party.

(3) The Director General may refuse to issue or to renew any licence under this Act or may cancel, or suspend for such period as he thinks fit, any licence issued under this Act where there has been a breach of any of the provisions of this Act or any of the conditions of the licence.

(4) Any person aggrieved by the refusal of the Director General to issue or renew any licence under this Act or by the suspension or cancellation of any licence issued under this Act may appeal to the Minister in the prescribed manner against such refusal, suspension or cancellation within a period of thirty days after the date of such refusal, suspension or cancellation.

(5) The Minister may, after hearing the appeal, make such order thereon as he deems fit and that order shall be final.

(6) Any order made under subsection (5) shall take into account any scheme for the limitation of fishing effort for which provision is made in any fisheries plan referred to in Part III.

Period of validity of licence and non-transferability

14. (1) Any licence issued under this Act shall, unless suspended or cancelled or unless otherwise specified in such licence, be valid for a period of not more than twelve calendar months from the date of issuance of such licence.

(1A) Subsection (1) shall not apply to any licence issued before the date of coming into force of that subsection, and any licence in force on such date shall continue to be in force for the remaining period of its validity.

(2) (a) Any person who modifies or changes, or permits to be modified or changed, the horsepower, size or tonnage of a licensed fishing vessel or the fishing appliance which it is licensed to operate without the written permission of the Director General shall be guilty of an offence.

(b) The Director General shall refuse permission for a licensed fishing vessel or fishing appliance to be modified or changed unless he is satisfied that it is necessary so to do for the proper management of any particular fishery.

(3) (a) Any licence issued under this Act in respect of a fishing vessel, fishing stakes, a fishing appliance, fish-aggregation device or marine culture system shall be valid for that or those particular fishing vessel, fishing stakes, fishing appliance, fish-aggregation device or marine culture system and shall not be used for any other fishing vessel, fishing stakes, fishing appliance, fish-aggregation device or marine culture system, and such licence shall at all times be visibly displayed on or visibly attached to the fishing vessel, fishing stakes, fishing appliance, fish-aggregation device or marine culture system.

(b) Where any fishing vessel uses the letters, numbers or other means of identification of another fishing vessel, the owner, master and every member of the crew of the fishing vessel using such letters, numbers or other means of identification shall each be guilty of an offence.

(4) (a) Subject to paragraph (aa), any licence or permit in respect of a fishing vessel, fishing stakes, a fishing appliance, fish-aggregation device or marine culture system shall be issued under this Act in the name of the applicant for such licence or permit and shall not be transferable.

(aa) Notwithstanding paragraph (a), the Director General may, upon an application, allow the transfer of any licence or permit referred to under that paragraph where he is satisfied that the applicant is a person who would otherwise qualify to hold such licence or permit under this Act.

(b) Any person who uses any licence or permit issued in the name of any other person under this Act shall be guilty of an offence.

(5) Where a fishing vessel which has been licensed as a local fishing vessel ceases to be a local fishing vessel, its licence shall lapse forthwith and shall be deemed to be cancelled.

Presumption in respect of person found on board any local fishing vessel

14A. For the purpose of this Part, where any person not being a Malaysian citizen is found on board any local fishing vessel in Malaysian fisheries waters, such person shall be presumed, unless the contrary is proven, to be a crew member of such fishing vessel.

PART V

FOREIGN FISHING VESSELS

Fishing, etc., by foreign fishing vessel in Malaysian fisheries waters

15. (1) Subject to subsection (2), no foreign fishing vessel shall do any of the following in Malaysian fisheries waters:

- (a) fish or attempt to fish; or
- (b) subject to subsection (1A) conduct any techno-economic research or survey of any fishery,

unless authorized so to do under an international fishery agreement in force between the Government of Malaysia and the government of the country, or between the Government of Malaysia and the international organization, to which such vessel belongs or in which such vessel is registered, as the case may be, and under a permit issued under section 19.

(1A) Notwithstanding paragraph (1)(b), a foreign fishing vessel may conduct any techno-economic research or survey of any fishery in the Malaysian fisheries waters subject to the general directions of the Director General and the following conditions, that is:

- (a) there is in respect of the conduct of such research or survey an agreement between a Malaysian citizen and such person to whom such foreign fishing vessel belongs;
- (b) the conduct of such research or survey shall be under the general directive of the Director General; and
- (c) any data and findings of such research or survey shall be made available to the Director General in such manner and at such frequency as he may prescribe.

(2) No foreign fishing vessel shall load or unload any fish, fuel or supplies or tranship any fish in Malaysian fisheries waters without the written approval of the Director General.

Passage of foreign fishing vessel through Malaysian fisheries waters

16. (1) Subject to subsections (2) and (3) a foreign fishing vessel may enter Malaysian fisheries waters, for the purpose of passage through such waters in the course of a voyage to a destination outside such waters.

(2) Such passage, which shall be exercised in accordance with rules of international law of the sea relating to the relevant maritime regime applicable to such Malaysian fisheries waters, includes stopping and anchoring only—

- (a) if the vessel is in distress;
- (b) for the purpose of obtaining emergency medical assistance for a member of its crew; or
- (c) to render assistance to persons, ships or aircraft in danger or distress.

(3) The master of a foreign fishing vessel entering Malaysian fisheries waters for the purpose mentioned in subsection (1) shall notify by radio, telex or facsimile in the English or Malay Language an authorized officer of the name, the flag State, location, route and destination of the vessel, the types and amount of fish it is carrying and of the circumstances under which it is entering Malaysian fisheries waters.

(4) Every foreign fishing vessel entering Malaysian fisheries waters for the purpose mentioned in subsection (1) shall—

- (a) without prejudice to the requirement to observe any other law of Malaysia which may be applicable, observe such regulations as may be made under section 61, including regulations regarding the stowage of fishing appliances; and
- (b) return to a position outside such waters as soon as the purpose for which it entered such waters has been fulfilled.

Undertaking to be included in international fishery agreement

17. Every international fishery agreement referred to in section 15 shall include an undertaking by the government of the country, or by the international organization, which is a party to the agreement with the Government of Malaysia to comply or ensure compliance by its fishing vessels with the provisions of this Act.

Director General to take account of certain matters in considering application for permit

18. (1) The Director General shall in considering an application for a permit under section 19 in respect of a foreign fishing vessel take into account the following matters:

- (a) the needs of Malaysian fishermen and the provisions of the fisheries plans referred to in Part III;
- (b) the extent of co-operation given and contributions made by the relevant country or relevant international organization towards fishery research, identification of fish stocks, the conservation, management and development of fishery resources within Malaysian fisheries waters, and compliance with the laws of Malaysia relating to such resources by the country or international organization;
- (c) the assistance given by the applicant, relevant country or international organization in the development of the fishing industry of Malaysia, in the training of Malaysian personnel and the transfer of technology to the fishing industry of Malaysia;
- (d) the terms of any relevant international fishery agreement in force; and
- (e) the reciprocity of treatment given to local fishing vessels by the relevant country or relevant international organization.

(2) In this section, “relevant country” means the country or territory in which the foreign fishing vessel is registered or to which it belongs, and “relevant international organization” means the international organization to which the foreign fishing vessel belongs.

Permit in respect of foreign fishing vessel

19. (1) (a) Any application to the Director General for a permit to be issued in respect of a foreign fishing vessel to fish in Malaysian fisheries waters shall be made through a Malaysian agent who shall undertake legal and financial responsibility for the activities to be carried out by such vessel.

(b) Notwithstanding paragraph (1)(a), the Director General may require the payment of such sum of money as he may specify by way of security for the activities to be carried out by such vessel.

(2) Subject to section 21, any permit issued under this section shall be valid for a maximum period of one year and shall be subject to such conditions, and the payment of such sum of money, as the Director General may specify, in addition to the payment of such sum of money as may be required under paragraph (1)(b) and such fees as may be prescribed in regulations made under this Act.

(3) Without prejudice to paragraph (1)(a), any sum of money paid as security under paragraph (1)(b) may be utilized to pay or defray any fine or claim which may be imposed or arise as a result of or through the activities of the foreign fishing vessel and the balance of such sum of money, if any, shall be refunded on the expiry or cancellation of the permit.

(4) The conditions which may be imposed by the Director General under subsection (2) may include, and in the case of paragraph (t) shall include, but shall not be limited to, conditions concerning all or any of the following matters:

- (a) the areas within which fishing is authorized;
- (b) the period during which fishing is authorized;
- (c) the species, age, length, weight and quantity of fish that may be retained on board the foreign fishing vessel, landed in Malaysia or transhipped;
- (d) the methods by which fish may be taken;
- (e) the types, sizes and numbers of fishing appliances that may be used or carried by a foreign fishing vessel and the mode of storage of the appliances when not in use;

- (f) the transfer, transshipment, landing and processing of fish taken;
- (g) entry by the foreign fishing vessel into Malaysian ports, whether for the inspection of its catch or for any other purpose;
- (h) statistical and other information required to be given by the foreign fishing vessel to the Government of Malaysia, including statistics relating to its catch and fishing effort and regular reports as to the position of the vessel;
- (i) the conduct by the foreign fishing vessel of a specified programme of fisheries research in Malaysian fisheries waters and the regulation of such research, including the compiling of data as to catches, the disposition of samples and the reporting of associated scientific data;
- (j) the training of Malaysians in the methods of fishing employed by the foreign fishing vessel and in other related fields, the employment of Malaysians on the foreign fishing vessel and the transfer to Malaysia of appropriate technology relating to fisheries;
- (k) the keeping and displaying on board the permit issued in respect of the foreign fishing vessel;
- (l) the permanent marking of the foreign fishing vessel with such letters, numbers or other means of identification as may be specified by the Director General;
- (m) compliance by the foreign fishing vessel with directions, instructions and other requirements given or made by ships, other vessels or air craft belonging to the Government of Malaysia;
- (n) the placing of observers on the foreign fishing vessel and the reimbursement to the Government of Malaysia by the permit holder of the costs of doing so;
- (o) the installation on the foreign fishing vessel and maintenance in working order of a transponder or other equipment for the identification and ascertainment of the location of the vessel and of adequate navigational equipment to enable the position of the vessel to be fixed;

- (p) construction of shore-based facilities related to fisheries;
 - (q) the carriage on board the foreign fishing vessel of such communication equipment, nautical charts, nautical publications and nautical instruments as may be specified;
 - (r) adequate protection of local and traditional fisheries and the compensation payable to Malaysian citizens, the Government of Malaysia or the Government of a State in Malaysia for any loss or damage caused by the foreign fishing vessel to fishing vessels, fishing appliances or catch belonging to Malaysian citizens or any such Government or to fish stocks;
 - (s) the landing of all or any part of their catch by foreign fishing vessels in Malaysia;
 - (t) the composition and nationality of members of the crew of a foreign fishing vessel and the requirement for compliance with paragraph 10(1)(c);
 - (u) inspection of the foreign fishing vessel as to class and seaworthiness and manning requirements;
 - (v) fees, royalties, charges or any other payments by the foreign fishing vessel;
 - (w) the maintenance of a log and sales records of fish taken by the foreign fishing vessel; and
 - (x) such other matters as the Director General may consider necessary or expedient for the implementation of this Part.
- (5) Where there is a breach of any condition of the permit issued in respect of a foreign fishing vessel—
- (a) its owner and master shall each be guilty of an offence and liable to a fine not exceeding one hundred thousand ringgit each; and
 - (b) every member of the crew of that vessel shall also be guilty of an offence and liable to a fine not exceeding five thousand ringgit each.
- (6) No permit issued under this section shall relieve the owner, master or member of the crew of any foreign fishing vessel from any obligation or requirement to comply with any law that may be applicable.

Bringing into or having in Malaysian fisheries waters fish taken or received from foreign fishing vessel

20. Any person who brings into or has in his possession, custody or control in Malaysian fisheries waters fish taken or received from a foreign fishing vessel shall, unless he is authorized in writing so to do by the Director General, be guilty of an offence.

Cancellation or suspension of permit

21. (1) The Director General may cancel or suspend any permit—

- (a) where there has been any contravention of any provision of this Act or any condition in the permit; or
- (b) where he is satisfied that such action is necessary or expedient for the proper management of fisheries.

(2) Where any permit has been cancelled or suspended under paragraph (1)(b), the proportion of any fees paid for the permit representing the unexpired period of the permit shall be reimbursed to the permit holder but there shall be no such reimbursement whatsoever where the permit has been otherwise cancelled or suspended.

Variation of conditions in permit

22. Where he is satisfied that it is necessary or expedient for the proper management of fisheries so to do, the Director General may from time to time vary the conditions of a permit issued under this Part but due notice of such intended variation shall be given to the permit holder who shall, if he so desires, have the right to be heard within such period as the Director General may allow.

Director General's decision not reviewable

23. The decision of the Director General under section 21 or 22 shall not be reviewable or called into question in any court on the ground that such decision was not necessary or expedient for the proper management of fisheries.

Liability of persons in respect of foreign fishing vessel

24. (1) Where there has been a contravention of any provision of this Part or subsidiary legislation made for the purposes of this Part, the owner, master and every member of the crew of the foreign fishing vessel concerned shall each be guilty of an offence.

(2) In this Part and in such subsidiary legislation, “member of the crew” does not include any personnel or observer who is a citizen of Malaysia and who is on the foreign fishing vessel pursuant to a condition of the permit issued in respect of such vessel.

(3) For the purpose of any offence under this Part the onus of proving that a fishing vessel is not a foreign fishing vessel shall lie with the person charged with the offence in relation to which the issue arises.

PART VI**OFFENCES****Offences under Act**

25. Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence and where no special penalty is provided in relation thereto, such person shall be liable—

- (a) where the vessel concerned is a foreign fishing vessel or the person concerned is a foreign national, to a fine not exceeding one million ringgit each in the case of the owner or master, and one hundred thousand ringgit in the case of every member of the crew;
- (b) in all other cases, to a fine not exceeding *twenty thousand ringgit or a term of imprisonment not exceeding two years or both.

Fishing with explosives, poisons, etc.

26. (1) Any person who—

- (a) uses or attempts to use any explosive, poison or pollutant, or any apparatus utilizing an electric current, or any prohibited gear, for the purpose of killing, stunning,

*NOTE—Previously “fifty thousand ringgit”—see the Fisheries (Amendment) Act 1993 [Act A854].

disabling or catching fish, or in any other way rendering such fish more easily caught;

- (b) carries or has in his possession or under his control any explosive, poison or pollutant, or any apparatus utilizing an electric current, or any prohibited gear, with the intention of using such explosive, poison or pollutant, or apparatus, or prohibited gear, for any of the purposes referred to in paragraph (a); or
- (c) knowing or having reasonable cause to believe that any fish is a prohibited species or has been taken in contravention of the provisions of this Act, receives or is found in possession of such fish,

shall be guilty of an offence.

(2) Any explosive, poison, pollutant, apparatus or gear referred to in subsection (1) found in the possession or under the control of any person shall be presumed to be intended to be used for any of the purposes referred to in paragraph (1)(a) unless the contrary is proved.

Aquatic mammals or turtles in Malaysian fisheries waters

27. (1) No person shall fish for, disturb, harass, catch or take any aquatic mammal or turtle which is found beyond the jurisdiction of any State in Malaysia.

(2) The provisions of the relevant State law shall apply in respect of aquatic mammals and turtles which are found within such jurisdiction.

(3) Where any aquatic mammal or turtle which is found beyond such jurisdiction is caught or taken unavoidably during fishing, such aquatic mammal or turtle shall, if it is alive, be released immediately or, if it is dead, the catching or taking thereof shall be reported to a fisheries officer and the aquatic mammal or turtle shall be disposed of in accordance with his directions.

(4) Any person who contravenes subsection (1) or subsection (3) shall be guilty of an offence and shall be liable to a fine not exceeding five thousand ringgit.

Wilful damage to fishing vessel, etc.

28. Any person who wilfully damages or destroys any fishing vessel, fishing stakes, fishing appliance, fish-aggregation device or marine culture system shall be guilty of an offence.

Destroying incriminating evidence

29. Any person who destroys or abandons any fish, aquatic mammal, turtle, fishing appliance, explosives, poison, pollutant, apparatus, prohibited gear or any other thing, with intent to avoid its seizure or the detection of any offence under this Act shall be guilty of an offence.

Master and employer liable

30. (1) Where an offence under this Act has been committed by any person on board a fishing vessel, the master and owner of such vessel shall each also be deemed to be guilty of that offence.

(2) Where an offence under this Act has been committed by a company, partnership, firm or business, every director and every officer of that company directly connected with the activity resulting in the commission of the offence, every member of that partnership and every person concerned with the management of that firm or business shall each be guilty of that offence.

Compounding of offences

31. (1) Subject to the following subsections, any fisheries officer may compound any offence under this Act for a sum not below five hundred ringgit and not exceeding the maximum fine for that offence, provided that it is a first, second or third offence only:

Provided further that for any offence under subsection 43(1) the compound shall not be less than one hundred ringgit.

(2) Any offence committed in contravention of paragraph 8(a), subsections 11(3), 15(1) or section 16 read with section 25 or 26 is not compoundable.

(3) Notwithstanding subsections (1) and (2), any fisheries officer may compound any offence under subsection 11(3) where the fishing appliance in relation to which such offence is committed is a traditional fishing appliance, for a sum not below five hundred ringgit and not exceeding the maximum fine for that offence.

(4) Where a fishing appliance is the subject matter of any offence compounded under subsection (1), such fishing appliance may be confiscated and disposed of as directed by the Director General.

(5) Where any offence committed under this Act has been compounded in accordance with this section, the Director General shall direct that any article of a perishable nature which is the subject matter of any offence be sold and the proceeds of the sale forfeited.

Sessions Court and Court of Magistrate of First Class to have full jurisdiction and powers under Act

32. (1) Notwithstanding any written law to the contrary, any offence committed under this Act shall be deemed to have been committed in Malaysia for the purpose of conferring jurisdiction on a court to try that offence, and a Sessions Court or a Court of a Magistrate of the First Class shall each have full jurisdiction and powers for all purposes under this Act.

(2) Subsection (1) shall not be construed as derogating in any way from the jurisdiction and powers of the High Court to try any offence under any written law.

(3) Any proceedings under this Act shall be brought before the Sessions Court or the Court of a Magistrate of the First Class which is nearest the place where the offence under this Act was committed or which is located in the most convenient place for trial in the circumstances of the case, as determined by the Public Prosecutor.

(4) This section shall be without prejudice to the Criminal Procedure Code [*Act 593*] relating to the transfer of cases.

Power of court to order cancellation of licence or permit

33. (1) Where any person is charged with and found guilty of an offence under this Act the court shall, in addition to any other penalty that may be imposed, order that any licence or permit issued under this Act in relation to which the offence has been committed be cancelled.

(2) Where any person to whom a licence or permit has been issued under this Act is charged with and found guilty of a second or subsequent offence under this Act, the court shall, in addition to any other penalty that may be imposed, direct that such person be disqualified from holding a licence or permit under this Act for a period not exceeding five years, and such person shall be guilty of an offence if he obtains or attempts to obtain any licence or permit under this Act while he is so disqualified.

Court may order forfeiture of seized vessel, etc., in certain circumstances

34. Where it is proved to the satisfaction of a court that any vessel, vehicle, article or thing seized under this Act was the subject matter of, or was used in the commission of, an offence under this Act, the court may order the forfeiture of such vessel, vehicle, article or thing notwithstanding that no person may have been found guilty of such offence.

Presumption as to maps, plans or charts made by authority of Governments

35. (1) For the purposes of this Act, the court shall presume that maps, plans or charts purporting to be made by the authority of—

- (a) the Federal Government;
- (b) the Government of any State in Malaysia; or
- (c) the Government of a “State” as defined in section 2 of the Exclusive Economic Zone Act 1984 and approved by the Federal Government or the Government of any State in Malaysia for use,

were so made and are accurate.

(2) For the purpose of paragraph (1)(c), a certificate issued by the Minister responsible for survey and mapping or the Minister responsible for defence stating that a map, plan or chart has been approved by the Federal Government or the Government of any State, as the case may be, shall, in any legal proceeding, be conclusive proof of the fact so stated.

Minister may appoint other persons to be authorized officers

36. Without prejudice to the definition of “authorized officer” in section 2, the Minister may, by order in the *Gazette*, appoint such other person or class of persons as he may consider necessary to be an authorized officer or authorized officers for the purposes of this Act.

PART VII

TURTLES AND INLAND FISHERIES

Promotion of development and management of inland fisheries

37. The Director General may, in consultation with the State Authority concerned, promote the development and rational management of inland fisheries through—

- (a) the conduct or co-ordination of research;
- (b) the provision and maintenance of experimental and demonstration aquaculture stations, fish-breeding stations and training centres;
- (c) the provision of advice and technical assistance to the appropriate authorities of the State;
- (d) the provision of publicity and demonstration facilities and other connected services; and
- (e) the provision of advice on measures for the prevention of fish diseases.

Power of State Authority and Minister to make rules concerning turtles and inland fisheries

38. (1) The State Authority or, in respect of the Federal Territories of Kuala Lumpur and Labuan, the Minister may make rules

specifically or generally for the proper conservation, development, management and regulation of turtles and inland fisheries in any State in Malaysia or in the Federal Territories of Kuala Lumpur and Labuan, as the case may be, and may, in particular, make rules for all or any of the following purposes:

- (a) to promote and regulate aquaculture in riverine waters and, in particular, provide for the leasing and licensing of lakes, swamps, mining pools and other pools and land and other areas for the cultivation of fish, prescribe standards for the construction and operation of aquaculture establishments (including the size and depth of ponds), measures for the prevention of fish diseases and controls over particular species of fish which may be produced by cultivation;
- (b) to provide for the licensing, regulation and management of any particular inland fishery and for the management of turtles;
- (c) to provide for the licensing of fishing vessels and fishing appliances operating or in use in riverine waters;
- (d) to regulate or prohibit any method of fishing in riverine waters or the use or possession of certain types of traps or nets, and to prescribe minimum mesh sizes for fishing nets;
- (e) to regulate or prohibit the erection, maintenance, marking and operation of fishing stakes in riverine waters;
- (f) to prescribe the minimum weights and sizes of fish which may be caught in riverine waters for the purpose of sale, processing, consumption or sport, or to prohibit fishing for any prescribed species of fish;
- (g) to prescribe closed seasons for fishing in any designated area, fishing for certain species of fish or fishing using certain methods of fishing in riverine waters;
- (h) to designate prohibited areas for fishing for all or certain species of fish or fishing using certain methods of fishing in riverine waters;
- (i) to designate persons by name or office to be licensing officers under this Part and to prescribe the powers to be exercised by such officers and by fisheries officers or

inland fisheries officers, as the case may be, with respect to turtles and inland fisheries;

- (j) to prescribe condition and procedures for application for any permit, licence, certificate or other document required under rules made under this Part relating to turtles and inland fisheries the form thereof and the amount of fees and deposits payable therefor;
 - (k) for the purpose of the conservation of fish in riverine waters, to regulate and control the construction of any slides, dams or other obstruction, or the removal of sand or gravel or other alteration to the natural environment or habitat of fish;
 - (l) to prescribe penalties for offences; and
 - (m) to designate, prescribe, promote, provide or regulate any other matter for the proper conservation, development, management and regulation of turtles and inland fisheries.
- (2) In this section, “turtles” includes the eggs of turtles.

PART VIII

AQUACULTURE

Development of aquaculture

39. The Director General may, and in consultation with the State Authority concerned where it relates to inland fisheries in the States of Malaysia, promote the development of aquaculture in Malaysia.

Control of live fish

- 40.** (1) Any person who—
- (a) imports into or exports out of Malaysia;
 - (b) transports from Peninsular Malaysia into the Federal Territory of Labuan or the State of Sabah or Sarawak;
 - (c) transports from the Federal Territory of Labuan or the State of Sabah or Sarawak into Peninsular Malaysia;

- (d) transports from the Federal Territory of Labuan into the State of Sabah or Sarawak;
- (e) transports from the State of Sabah into the Federal Territory of Labuan or the State of Sarawak; or
- (f) transports from the State of Sarawak into the Federal Territory of Labuan or the State of Sabah,

live fish without a permit or in breach of any condition in a permit issued by the Director General under this section shall be guilty of an offence.

(2) The Director General may impose such conditions as he thinks fit in the permit, including conditions concerning the state of cleanliness of the fish to be exported, imported or transported and measures to avoid the spread of communicable fish diseases, or to avoid or control the release into the natural environment of non-indigenous species of fish.

PART IX

MARINE PARKS AND MARINE RESERVES

Establishment of marine park or marine reserve

- 41.** (1) The Minister may be order in the *Gazette* establish any area or part of an area in Malaysian fisheries waters as a marine park or marine reserve in order to—
- (a) afford special protection to the aquatic flora and fauna of such area or part thereof and to protect, preserve and manage the natural breeding grounds and habitat of aquatic life, with particular regard to species of rare or endangered flora and fauna;
 - (b) allow for the natural regeneration of aquatic life in such area or part thereof where such life has been depleted;
 - (c) promote scientific study and research in respect of such area or part thereof;
 - (d) preserve and enhance the pristine state and productivity of such area or part thereof; and

- (e) regulate recreational and other activities in such area or part thereof to avoid irreversible damage to its environment.

(2) The limits of any area or part of an area established as a marine park or marine reserve under subsection (1) may be altered by the Minister by order in the *Gazette* and such order may also provide for the area or part of the area to cease to be a marine park or marine reserve.

Establishment of the National Advisory Council for Marine Park and Marine Reserve and membership

41A. (1) The Minister may establish the National Advisory Council for Marine Park and Marine Reserve.

(2) The National Advisory Council for Marine Park and Marine Reserve shall consist of the following members to be appointed by the Minister:

- (a) the Secretary General of the Ministry of Agriculture;
- (b) a representative of the State Government concerned;
- (c) a representative of the Ministry charged with the responsibility for finance;
- (d) a representative of the Ministry charged with the responsibility for science, technology and environment;
- (e) a representative of the Fisheries Department;
- (f) a representative of the Department of Wildlife and National Park;
- (g) a representative of the Implementation and Coordination Unit of the Prime Minister's Department;
- (h) a representative of the Malaysia Tourism Promotion Board;
- (i) a representative of the Malaysian Society of Marine Sciences;
- (j) a representative of the World Wide Fund for Nature Malaysia;
- (k) a representative of the Malaysian Nature Society; and
- (l) any other member to be appointed from time to time.

Functions of the National Advisory Council for Marine Park and Marine Reserve

41B. The National Advisory Council for Marine Park and Marine Reserve shall advise the Minister on any matter relating to a marine park or marine reserve area in particular—

- (a) to determine the guideline for the implementation at the national level with respect to protection, conservation, utilization, control, management and progress of the marine park and marine reserve areas;
- (b) to coordinate the development of any area of a marine park or marine reserve with the Federal Government and any body corporate; and
- (c) to give technical advice to the State Government with respect to any development project on any island which is situated in a marine park or marine reserve area.

Powers and responsibility of Director General

42. The Director General shall have the powers of general supervision and direction and the responsibility of co-ordination in respect of all matters relating to marine parks and marine reserves in Malaysian fisheries waters.

Offence to do certain acts without written permission of Director General

43. (1) Any person who in any marine park or marine reserve in Malaysian fisheries waters without the permission of the Director General in writing—

- (a) fishes or attempts to fish;
- (b) takes, removes or is in possession of any aquatic animal or aquatic plant or part thereof, whether dead or alive;
- (c) collects or is in possession of any coral, dredges or extracts any sand or gravel, discharges or deposits any pollutant, alters or destroys the natural breeding grounds or habitat of aquatic life, or destroys any aquatic life;
- (d) constructs or erects any building or other structure on or over any land or waters within a marine park or marine reserve;

- (e) anchors any vessel by dropping any kind of weight on, or by attaching any kind of rope or chain to, any coral, rock or other submerged object; or
- (f) destroys, defaces or removes any object, whether animate or inanimate, in a marine park or marine reserve,

shall be guilty of an offence.

(2) Permission to do any of the things referred to in subsection (1) may be granted by the Director General in writing where it is necessary for the proper management of the marine park or marine reserve or pursuant to any of the purposes referred to in section 41.

Absolute prohibition of certain weapons

44. (1) No person shall carry, use or possess within a marine park or marine reserve in Malaysian fisheries waters—

- (a) any spring-gun, spear gun, spearfishing equipment, harpoon or suction gun; or
- (b) any other kind of weapon potentially harmful to any aquatic plant life, aquatic animal life or to the coral reef structure.

(2) The use of any weapon referred to in subsection (1) from beyond the limits of the marine park or marine reserve and aimed at or directed into the marine park or marine reserve is also prohibited.

Power to make regulations

45. (1) The Minister may make regulations specifically or generally for the zoning, management, development, control and protection of marine parks and marine reserves in Malaysian fisheries waters and for the purposes of this Part.

(2) The Minister may make different regulations under subsection (1) in respect of different marine parks and marine reserves and such regulations may provide for the division of the parks and reserves into zones and may set out the conditions under which each zone shall be established and maintained.

PART X

ENFORCEMENT

Powers of authorized officer

46. For the purpose of ensuring compliance with the provisions of this Act, any authorized officer may where he has reason to believe that an offence has been committed under this Act, without a warrant—

- (a) stop, board and search any vessel within Malaysian fisheries waters and make any enquiry, examination and inspection concerning the voyage and seaworthiness of that vessel, its crew, equipment or fishing appliance, or fish carried on board that vessel;
- (b) stop, board and search, and inspect any vessel or vehicle transporting fish, whether within Malaysian fisheries waters or on land;
- (c) require to be produced and examine any fishing appliance whether within Malaysian fisheries waters or on land;
- (d) examine any fishing stakes, fish-aggregation device or marine culture system within Malaysian fisheries waters;
- (e) inspect any licence, permit, record, certificate or any other document required under this Act or under any generally accepted international rules and standards, and make copies of the same.

Powers of entry, seizure and arrest, etc.

47. (1) Any authorized officer may, where he has reason to believe that an offence has been committed under this Act, without a warrant—

- (a) enter and search any place in which he has reason to believe that an offence under this Act is about to be or has been committed;
- (b) take samples of any fish found in any vessel or vehicle inspected under section 46 or any place searched under paragraph (a);

- (c) arrest any person who he has reason to believe has committed an offence under this Act;
- (d) seize any vessel, including its equipment, gear, furniture, appurtenances, stores and cargo, or any vehicle which he has reason to believe has been used in the commission of any offence or in relation to which any offence has been committed under this Act;
- (e) seize any fish which he has reason to believe has been caught in the commission of an offence under this Act;
- (f) seize any explosive, poison, pollutant, apparatus or prohibited gear which he has reason to believe has been used, or was in the possession of someone, in contravention of section 26; or
- (g) seize any unlicensed fishing stakes, fishing appliance, fish-aggregation device or marine culture system.

(2) In effecting any seizure under subsection (1), an authorized officer may use such force as may be reasonably necessary.

(3) A written acknowledgment shall be given in respect of anything seized under subsection (1).

Fisheries officer's power of investigation

47A. (1) Any fisheries officer shall have the power to investigate the commission of any offence under this Act.

(2) Every person required by a fisheries officer to give information or produce any document or other article relating to the commission of such offence which is in the person's power to give shall be legally bound to give the information or to produce the document or other article.

Fisheries officer's power to require attendance of witnesses

47B. (1) A fisheries officer making an investigation for any offence under this Act may by order in writing require the attendance before himself of any person who appears to the officer to be acquainted with the circumstances of the case, and such person shall attend as so required.

(2) If any such person refuses to attend as so required, such officer may report such refusal to a Magistrate who may thereupon in his discretion issue a warrant to secure the attendance of such person as required by such order aforesaid.

(3) A person attending as required under subsection (1) shall be entitled to be paid reasonable travelling and subsistence expenses incurred by him and it shall be lawful for the Director General to pay such expenses.

Examination of witnesses by fisheries officer

47c. (1) A fisheries officer making an investigation under this Act, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer all questions relating to such case put to him by such officer:

Provided that such person may refuse to answer any question which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to questions.

(4) A fisheries officer examining a person under subsection (1) shall first inform that person of the provisions of subsections (2) and (3).

(5) A statement made by any person under this section shall whenever possible be reduced into writing and signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any corrections he may wish.

Procedure where investigation cannot be completed within twenty-four hours by a fisheries officer

47d. (1) Whenever any person is arrested and detained in custody by a fisheries officer for an offence under this Act, and it appears that the investigation cannot be completed within the period of

twenty-four hours from the time the person is arrested, any fisheries officer may produce such person before a Magistrate for the purpose of subsection (2).

(2) The Magistrate before whom such person is produced under subsection (1) may, whether he has or has no jurisdiction to try the case, from time to time authorize the detention of such person in such custody as such Magistrate thinks fit for a term not exceeding fifteen days on the whole.

Sale of fish or other article of a perishable nature

48. (1) Any fish or other article of a perishable nature seized under this Act may, on the direction of the Director General, be sold and the proceeds of the sale shall be held and dealt with in accordance with the provisions of this Act.

(2) The Government of Malaysia shall not be liable to any person for any deterioration, howsoever caused, in the quality of any fish or other article seized under this Act.

Seizure and forfeiture of vessel, etc.

49. (1) Where any vessel, vehicle, article or thing is seized under this Act and there is no prosecution in respect thereof, such vessel, vehicle, article or thing shall be held for a period of one calendar month from the date of seizure at the end of which period it shall be deemed to be forfeited, unless a written claim thereto is received within the aforesaid period.

(2) Where any written claim is received under subsection (1), it shall be referred by the Director General to the Sessions Court or to a Court of a Magistrate of the First Class for its decision as to the disposal of the vessel, vehicle, article or thing, which may, subject to section 50, be held pending the conclusion of such proceedings.

(3) The Court concerned shall issue a summons requiring the claimant and the person, if any, from whom the vessel, vehicle, article or thing was seized to appear before the Court and upon the appearance of such claimant or person, or upon his failure so to do after reasonable notice, the Court shall proceed to examine the matter and make an order upon the facts proved.

Temporary return of vessel, etc., seized

50. (1) Where any vessel, vehicle, article or thing is seized under this Act, the Director General may temporarily return the vessel, vehicle, article or thing to the owner thereof or to the person from whose possession, custody or control it was seized, subject to such terms and conditions (including the suspension of a licence or permit issued under this Act) as the Director General may impose and subject, in any case, to sufficient security being furnished to the satisfaction of the Director General that the vessel, vehicle, article or thing shall be surrendered to him on demand and that the said terms and conditions, if any, shall be complied with.

(2) Notwithstanding subsection (1), the security to be furnished thereunder shall not be less than the aggregate value of the vessel (including its equipment, furniture, appurtenances, stores, cargo and fishing appliance), vehicle, article or thing.

(3) Any person who—

- (a) fails to surrender on demand to the Director General the vessel, vehicle, article or thing temporarily returned to him under subsection (1); or
- (b) fails to comply with or contravenes any of the terms or conditions imposed under subsection (1),

shall be guilty of an offence.

Costs of holding vessel, etc., in custody

51. Where any vessel, vehicle, article or thing is held in the custody of the Government of Malaysia pending completion of any proceedings in respect of an offence under this Act, the costs of holding the vessel, vehicle, article or thing in custody shall, in the event of any person being found guilty of the offence, be a debt due to the Government of Malaysia jointly and severally by the licensee, the permit holder, the owner, and the master of the vessel, and shall be recoverable accordingly.

Forfeiture and disposal of vessel, etc.

52. (1) Where any person is found guilty of any offence—

- (a) under paragraph 8(a), subsections 11(3), 15(1) or section 26; and

- (b) for the contravention of any condition of licence relating to permitted fishing areas under the licence,

the court shall, in addition to any other penalty that may be imposed—

- (i) order that the vessel (including its equipment, furniture, appurtenances, stores, cargo and fishing appliance), vehicle, article or thing used in the commission of such offence or in relation to which such offence has been committed be forfeited; and
- (ii) order that any fish caught in the commission of such offence or the proceeds of the sale of any fish or other article of a perishable nature referred to in section 48, and any explosive, poison, pollutant, apparatus or prohibited gear used or intended to be used in the commission of such offence be forfeited.

(2) Any vessel (including its equipment, furniture, appurtenances stores, cargo and fishing appliance), vehicle, article, thing, explosive, poison, pollutant, apparatus, prohibited gear or fish ordered to be forfeited under subsection (1) or deemed or ordered to be forfeited under section 49 shall be disposed of in such manner as the Director General may think fit and consistent with any scheme for the limitation of fishing effort.

Obstruction of authorized officer

53. Any person who resists or wilfully obstructs any authorized officer or fails to comply with any requirement made by any authorized officer in the exercise of his powers and duties under this Act shall be guilty of an offence and liable to a fine not exceeding twenty thousand ringgit.

Authorized officer to declare office

54. Any authorized officer when discharging his functions or duties or exercising his powers under this Act shall, on demand, produce to any person against whom he is taking action, such identification or written authority to show that he is an authorized officer for the purposes of this Act.

*NOTE—Previously “fifty thousand ringgit”—see the Fisheries (Amendment) Act 1993 [Act A854].

Bar to actions

55. (1) No action shall be brought against any authorized officer in respect of anything done or omitted to be done by him in good faith in the execution or purported execution of his functions, powers and duties under this Act.

(2) No action shall lie against the Government of Malaysia or any authorized officer for any damage caused to any vessel (including its equipment, furniture, appurtenances, stores, cargo and fishing appliance), vehicle, article or thing seized under this Act unless there is *prima facie* evidence of gross negligence.

Presumption

56. (1) Subject to subsection (2), where—

(a) any fish; or

(b) fishing appliance or other equipment for fishing,

is found on board a foreign fishing vessel in Malaysian fisheries waters, such fish, fishing appliance or equipment, as the case may be, shall be presumed, unless the contrary is proved—

(i) to have been caught in Malaysian fisheries waters; or

(ii) to have been used for fishing in Malaysian fisheries waters,

respectively without a permit issued under this Act.

(2) A radio call made by a foreign fishing vessel to an authorized officer before entering Malaysian fisheries waters—

(a) notifying that the vessel is exercising its passage through Malaysian fisheries waters; and

(b) notifying its proposed route and the quantity of fish on board,

and showing proof, where such vessel is stopped, boarded and searched under section 46, that—

(i) the fish on board is held in a sealed hold;

(ii) the fishing appliance or other equipment for catching fish are properly stowed and secured on the vessel so that they are not easily available for fishing; and

- (iii) the vessel is travelling through Malaysian fisheries waters from a point outside such waters to another point outside such waters by the shortest practicable route,

shall be sufficient to constitute a defence to a prosecution for an offence under this Act.

PART XI

GENERAL PROVISIONS

Service of documents

57. (1) Where any document is to be served under this Act on any person, that document may be served—

- (a) in any case by delivering a copy thereof personally to the person to be served;
- (b) if the document is to be served on the master of a vessel or on a person employed on a vessel, by leaving the same for him on board that vessel with the person who is, or appears to be, in command or charge of the vessel;
- (c) by affixing a copy of the document to any conspicuous part of his house or of the vessel or vehicle; or
- (d) by registered letter addressed to his last place of abode.

(2) A document which is to be served on the master of a vessel registered in Malaysia or licensed or permitted to fish under this Act may, if the master cannot be found, be served on the owner or the manager of the vessel or, if there is no manager, on some agent of the owner residing in Malaysia or, where no such agent is known or can be found, by affixing a copy thereof to the mast of the vessel.

Exemption for certain purposes

58. The Director General may, by order in writing, for the purpose of research or training or survey on economic feasibility of any fishing activity, or the proper conservation and management of fisheries, exempt, subject to such conditions as he may impose, any vessel or person from all or any of the provisions of this Act.

Registers of licences and permits

59. Registers showing particulars of the licences and permits issued under this Act shall be maintained and kept at such place or places as the Director General shall specify.

Exemptions

60. Nothing in this Act shall apply to the areas defined in the Schedules to the River Rights Enactment [*Cap. 207*], or to the area known as Karang Ayer Leleh and defined in the Schedule to the Karang Ayer Leleh Enactment [*Cap. 220*], or shall affect the exclusive rights of a Ruler to fish within and over the said areas.

Power of Minister to make regulations

61. The Minister may make regulations specifically or generally for the proper conservation, development and management of maritime and estuarine fishing and fisheries in Malaysian fisheries waters and in respect of related industries, for the proper conservation, development, management and regulation of turtles beyond the jurisdiction of any State in Malaysia, and for the implementation of the provisions of this Act, including but not restricted to regulations for all or any of the following purposes:

- (a) to prescribe the rules and procedures in respect of foreign capital investment and joint venture proposals in fisheries, including the procedures for effective transfer of technology and training of Malaysian personnel;
- (b) to prescribe the number, nationality and composition of persons permitted to be employed or carried on fishing vessels;
- (c) to prescribe manning standards for fishing vessels and to establish boards of examiners to examine candidates in their proficiency in such standards for certification, in consultation with the Director General of the Marine Department;
- (d) to establish the conditions to be observed by local and foreign fishing vessels within Malaysian fisheries waters, including conditions relating to the stowage of their fishing appliance when not in use, and to regulate the conduct of their fishing operations generally;

- (e) to provide for the licensing, regulation and management of any particular fishery;
- (f) to establish closed seasons in respect of specified fishery areas or in respect of specified species of fish, or specified methods of fishing;
- (g) to prescribe limitations on the quantity, size and weight of fish caught and retained or traded;
- (h) to prescribe minimum mesh sizes of nets;
- (i) to specify prohibited fishing areas for all fish or certain species of fish or methods of fishing;
- (j) without prejudice to section 45, to regulate activities in marine parks and marine reserves established under Part IX;
- (k) to proscribe methods of fishing or fishing appliances;
- (l) to proscribe any species of fish;
- (m) to provide for the licensing of fishing vessels, fishing stakes, fishing appliances, fish-aggregation devices and marine culture systems;
- (n) to regulate or prohibit the erection, maintenance, working, repair and lighting of fishing stakes, fish-aggregation devices and marine culture systems;
- (o) to regulate the landing of fish, to provide for the management and control of fishing ports and fish-landing areas, and to appoint such agencies as may be required to effect such management and control;
- (p) to prescribe standards for fish feeds;
- (q) to prohibit or control the importation and exportation of live fish, including freshwater fish, and in particular, to prohibit or control the importation into, or the sale, cultivation or keeping of live fish or any particular species of live fish which is not indigenous to any part of Malaysia or to Malaysian fisheries waters;
- (r) to promote and regulate aquaculture in maritime waters;

- (s) to prescribe the conditions and procedures of application for any authorizations, permits, licences, certificates or other documents required under this Act, their form and the amount of fees, deposits and securities payable therefor;
- (t) to provide for and improve the collection of statistics and to require any person engaged in fishing, marketing, processing or aquaculture to supply such information as may be required;
- (u) to organize and regulate fishing as a sport;
- (v) to provide for the powers of authorized officers, fisheries officers and deputy fisheries officers;
- (w) to prescribe penalties for offences;
- (x) to provide for the conservation and management of turtles beyond the jurisdiction of any State in Malaysia;
- (y) to prescribe for matters relating to the control and seizure of local and foreign fishing vessels;
- (z) to provide for such other measures as are necessary or expedient to ensure that foreign fishing vessels are used for fishing within the exclusive economic zone or for fishing for sedentary species on the continental shelf only in accordance with the conditions of their permits;
- (aa) to require applicants for authorizations, licences or permits to execute bonds, make deposits or give other forms of security for the fulfilment of any obligation under their authorizations, licences or permits;
- (ab) to provide for compensation payable to Malaysian citizens, the Government of Malaysia or the Government of a State in Malaysia in the event of any loss or damage caused by foreign fishing vessels to local fishing vessels, their fishing appliances or catches, or to cables, pipelines or other property belonging to Malaysian citizens, the Government of Malaysia or the Government of a State in Malaysia;
- (ac) to promote, regulate and carry out scientific research;
- (ad) to prescribe areas of Malaysian fisheries waters in which fishing shall be reserved to local fishing vessels and Malaysian fishermen;

- (ae) to prescribe areas in Malaysian fisheries waters through which unlicensed foreign fishing vessels may pass to facilitate enforcement of the provisions of this Act and in such manner as not to deny or impair the passage of such vessels in accordance with rules of international law of the sea relating to the relevant maritime regime applicable to such fisheries waters;
- (af) to prescribe regulations for the control of endangered species of fish;
- (ag) to prescribe regulations for the control of movement of fish within Malaysia;
- (ah) to prescribe standards for the quality control of fish or fish products and methods to effect such standards and control;
- (ai) to prescribe measures for the control of fish diseases;
- (aj) to provide for the registration of and issue of appropriate identification documents to any person, carried or employed on board any licensed fishing vessel and to prescribe the fees payable therefor;
- (ak) to regulate the registration of local fishing vessels and the issue of appropriate documentation in respect thereof;
- (al) to prescribe or regulate any other matter required to be prescribed or regulated under this Act.

Repeal

62. The Fisheries Act 1963 [*Act 210*] is repealed.

LAWS OF MALAYSIA**Act 317****FISHERIES ACT 1985**

LIST OF AMENDMENTS

Amending law	Short title	In force from
Act A854	Fisheries (Amendment) Act 1993	01-09-1993

LAWS OF MALAYSIA**Act 317****FISHERIES ACT 1985**

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
2	Act A854	01-09-1993
8	Act A854	01-09-1993
11	Act A854	01-09-1993
13	Act A854	01-09-1993
14	Act A854	01-09-1993
14A	Act A854	01-09-1993
15	Act A854	01-09-1993
16	Act A854	01-09-1993
24	Act A854	01-09-1993
25	Act A854	01-09-1993
31	Act A854	01-09-1993
35	Act A854	01-09-1993
40	Act A854	01-09-1993
41A-41B	Act A854	01-09-1993
47	Act A854	01-09-1993
47A-47D	Act A854	01-09-1993
50	Act A854	01-09-1993
52	Act A854	01-09-1993
53	Act A854	01-09-1993

Section	Amending authority	In force from
56	Act A854	01-09-1993
58	Act A854	01-09-1993
61	Act A854	01-09-1993

