

บรรณานุกรม

ภาษาไทย

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LAWS OF MALAYSIA

Act 311

EXCLUSIVE ECONOMIC ZONE ACT 1984

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LAWS OF MALAYSIA

Act 311

EXCLUSIVE ECONOMIC ZONE ACT 1984

An Act pertaining to the exclusive economic zone and certain aspects of the continental shelf of Malaysia and to provide for the regulation of activities in the zone and on the continental shelf and for matters connected therewith.

()

BE IT ENACTED by the Duli Yang Maha Mulia 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

1. (1) This Act may be cited as the Exclusive Economic Zone Act 1984 and shall apply to the exclusive economic zone and continental shelf of Malaysia.

Short title,
application
and commence-
ment.

(2) The provisions of this Act pertaining to the continental shelf

shall be in addition to, and not in derogation of, the provisions of the Continental Shelf Act 1966.

Act 83.

(3) In the event of any conflict or inconsistency between the provisions of this Act and of any applicable written law, the provisions of this Act shall supersede the conflicting or inconsistent provisions of that applicable written law and the latter shall be construed as so superseded.

(4) The provisions of any applicable written law which are not in conflict or inconsistent with the provisions of this Act shall otherwise continue to apply.

(5) This Act shall come into force on such date as the Yang di-Pertuan Agong may appoint by notification in the Gazette and he may appoint different dates for the coming into forces of different provisions of this Act in different areas of the exclusive economic zone and continental shelf.

Interpretation 2. In this Act, unless the context

otherwise requires - "applicable written law" means any written law -

(a) provided to be applicable in respect of the exclusive economic zone, continental shelf or both, as the case may be, by an order made under section 42 or otherwise specifically provided to be so applicable; or

(b) applicable in respect of the continental shelf under the provisions of the Continental Shelf Act 1966,

and includes the Continental Shelf Act 1966;

Act 210. "authorized officer" means any fishery officer as defined in section 2 of the Fisheries Act 1963, any port officer as Ord. 70/52 defined in section 2 of the Merchant Shipping Ordinance 1952, any police Act 41/67 officer not below the rank of sergeant as defined in section 2 of the Police Act 1967, any customs officer as defined Act 235 in section 2 of the Customs Act 1967,

Act 77.

any officer of the armed forces as defined in section 2 of the Armed Forces Act 1972, any public officer, irrespective of rank, in command of a vessel belonging to the Government or any other person or class of persons appointed to be an authorized officer or authorized officers under section 39;

"continental shelf" means the continental shelf of Malaysia as defined in Section 2 of the Continental Shelf Act 1966';

Act 127.

"Director-General" means the Director-General of Environmental Quality as defined in section 2 of the Environmental Quality Act 1974;

"dumping" means-

- (a) any deliberate disposal of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea; or
- (b) any deliberate disposal of vessels, aircraft or other man-made structures at sea,

but "dumping" does not include-

- (i) the disposal of wastes or other matter incidental to, or derived from, the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or structures; or
- (ii) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Act, any applicable written law or international law;

"exclusive economic zone" or "zone" means the exclusive economic zone of Malaysia determined in accordance with section 3;

"Government" means the Government of Malaysia and includes any Minister charged with responsibility by an order made under the Ministerial Functions Act 1969 for the matter in relation to which the reference to the Government is made under this Act, and any other Minister exercising temporarily the functions of such Minister;

"Malaysian fisheries waters" means all waters comprising the internal waters, the territorial sea and the exclusive economic zone of Malaysia in which Malaysia exercises sovereign and exclusive rights over fisheries;

"maritime casualty" means a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo;

"master", in relation to a 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;

"mixture containing oil" means-

- (a) a mixture with an oil content of one hundred parts or more in one million parts of the mixture; or
- (b) a mixture with such oil content as is prescribed by the Minister charged with responsibility for the environment by order in the Gazette to be a mixture containing oil for the purposes of this Act;

"oil" means-

- (a) crude oil, diesel oil, fuel oil or lubricating oil; or
- (b) any other description of oil which is prescribed by the Minister charged with responsibility for the environment by order in the Gazette to be oil for the purposes of this Act;

"owner", in relation to a vessel, means any person or body of persons, whether incorporated or not, by whom the vessel is owned and includes any charterer, sub-

charterer, lessee or sub lessee of the vessel;

"pollutant" means any substance which, if introduced into the sea, is liable to create hazards to human health to harm living resources in the sea or other marine life, or to damage amenities or interfere with other legitimate uses of the sea and, without limiting the generality of the foregoing, includes any substance that is prescribed by the Minister charged with responsibility for the environment by order in the Gazette to be a pollutant for the purposes of this Act;

"State" shall have the meaning assigned to that expression under international law;

"territorial sea" means the territorial waters of Malaysia determined in accordance with the Emergency (Essential Powers) Ordinance, No. 7/1969;

"this Act" includes regulations and other subsidiary legislation made under this Act and anything done under this Act or under such regulations or other subsidiary legislation;

"vessel" includes every description of ship or floating or submarine craft or structure;

"waste" includes-

- (a) any matter, whether liquid, solid, gaseous or radioactive, which is discharged, emitted, deposited or dumped in the marine environment in such volume, composition or manner as to cause an alteration of the environment; or
- (b) any matter which is prescribed by the Minister charged with responsibility for the environment by order in the Gazette to be waste for the purposes of this Act.

PART II

EXCLUSIVE ECONOMIC ZONE

3. (1) The exclusive economic zone of Malaysia, as proclaimed by the Yang di-Pertuan Agong vide P.U. (A) 115/80, is an area beyond and adjacent to the territorial sea of Malaysia and, subject to subsections (2) and (4), extends to
- The exclusive economic zone of Malaysia.

a distance of two hundred nautical miles from the baselines from which the breadth of the territorial sea is measured.

(2) Where there is an agreement in force on the matter between Malaysia and a State with an opposite or adjacent coast, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement.

(3) The Yang di-Pertuan Agong may cause the limits of the exclusive economic zone to be published in maps or charts from time to time.

(4) Where, having regard to international law, State practice or an agreement referred to in subsection (2), the Yang di-Pertuan Agong considers it necessary so to do, he may by order published in the Gazette alter the limits of the exclusive economic zone determined in accordance with subsection (1).

4. In the exclusive economic zone Malaysia has- Sovereign rights in, and jurisdiction over, the exclusive economic zone,

(a) sovereign rights for the purpose of exploring and exploiting,

conserving and managing the natural resources, whether living or non-living, of the sea-bed and subsoil and the superjacent waters, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

- (b) jurisdiction with regard to
 - (i) the establishment and use of artificial islands, installations and structures;
 - (ii) marine scientific research;
 - (iii) the protection and preservation of the marine environment; and
- (c) such other rights and duties as are provided for by international law.

Prohibition 5. Except where authorized in accordance of activities in the exclu- with the provisions of this Act or any sive economic zone or on applicable written law, no person shall the continen- tal shelf in the exclusive economic zone or on the except where authorized. continental shelf-

- (a) explore or exploit any natural resources, whether living or non-living;
- (b) carry out any search, excavation or drilling operations;
- (c) conduct any marine scientific research; or
- (d) construct or authorize and regulate the construction, operation and use of-
 - (i) any artificial island;
 - (ii) any installation or structure for any of the purposes provided for in section 4 or for any other economic purpose; or
 - (iii) any installation or structure which may interfere with the exercise of the rights of Malaysia in the zone or on the continental shelf.

PART III

FISHERIES

Sens in the zone to be part of Malaysian fisheries waters.

6. The seas comprised in the exclusive economic zone shall be part of Malaysian fisheries waters.

7. The Minister charged with responsibility for fisheries shall also be responsible for fisheries in the exclusive economic zone. Minister responsible for fisheries in the zone.
8. Except as otherwise provided in this Act, any written law relating to fisheries shall be applicable in the exclusive economic zone and on the continental shelf with such necessary modifications or exceptions as may be provided in an order made under section 42. Written law relating to fisheries to be applicable in the zone and on the continental shelf.

PART IV

PROTECTION AND PRESERVATION OF THE MARINE

ENVIRONMENT

9. Malaysia has the sovereign right to exploit her natural resources in the exclusive economic zone pursuant to her environmental policies and in accordance with her duty to protect and preserve the marine environment in the zone. Sovereign right of Malaysia to exploit her natural resources.
10. (1) If any oil, mixture containing oil or pollutant is discharged or escapes into the exclusive economic zone from any vessel, land-based source, Offence in respect of the discharge or escape of certain substances.

installation, device or aircraft, from or through the atmosphere or by dumping-

- (a) the owner or master of the vessel, if the discharge or escape is from a vessel;
- (b) the owner or occupier of the place on land, if the discharge or escape is from land;
- (c) the owner or person in charge of the installation or device, if the discharge or escape is from an installation or a device; or
- (d) the owner or pilot of the aircraft, if the discharge or escape is from an aircraft,

shall each be guilty of an offence and shall be liable to a fine not exceeding one million ringgit.

(2) Where the act or omission of a person other than any of the persons mentioned in subsection (1) caused the discharge or escape mentioned in that subsection, then such other person shall also be guilty of an offence and shall be liable to a fine not exceeding one million ringgit.

(3) Subsection (2) shall not operate to absolve or relieve the persons mentioned in subsection (1) from liability for an offence under subsection (1).

(4) Notwithstanding the provisions of this section, dumping of wastes or other matter may be carried out under a licence issued by the Director-General and subject to such conditions as he may impose.

Defence to a charge under section 10.

11. Where a person is charged with an offence under section 10, it shall be a defence to prove that the discharge or escape of the substance mentioned in subsection (1) of that section was caused for the purpose of securing the safety of the vessel, the place on land, the installation, device or aircraft concerned, or for the purpose of saving life but a defence under this section shall not operate if the court is satisfied that the discharge or escape was not necessary for the alleged purpose or was not a reasonable step to take in the circumstances.

Requirement for discharge or escape of certain substances to be reported. 12. (1) If any oil, mixture containing oil or pollutant is discharged or escaped into the exclusive economic zone from any vessel, land-based source, installation, device or aircraft, the owner or master of the vessel, the owner or occupier of the place on land, the owner or person in charge of the installation or device or the owner or pilot of the aircraft, as the case may be, shall immediately report the occurrence of such discharge or escape to the Director-General.

(2) Any person who fails to comply with this section shall be guilty of an offence and shall be liable to a fine not exceeding ten thousand ringgit.

Measures relating to a maritime casualty.

13. (1) The Government may specify measures in relation to the exclusive economic zone which are necessary to protect Malaysia's coastline or any segment or element of the environment or related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such casualty, which may reasonably be expected to result in major harmful consequences.

(2) The measures referred to in subsection (1) shall be proportionate to the actual or threatened damage to the coastline or segment or element of the environment or related interests, including fishing.

14. (1) Where Malaysia's coastline or any segment or element of the environment or related interests, including fishing, in the exclusive economic zone is damaged or threatened to be damaged as a result of any discharge or escape of any substance mentioned in section 10, the Director-General may issue such Directions as are, or take such action as is, necessary to remove, disperse, destroy or mitigate the damage or threat of damage.

Directions and
action to
remove, disperse,
destroy or
mitigate damage.

(2) Any person who fails to comply with any direction given by the Director-General under subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding ten thousand ringgit.

(3) The owner and the master of the vessel, the owner and the occupier of the place on land, the owner and the person

in charge of the installation or device, or the owner and the pilot of the aircraft, as the case may be, from which the substance mentioned in section 10 was discharged or escaped shall be liable jointly and severally for all costs and expenses incurred in carrying out all or any of the work required under subsection (1) to remove, disperse, destroy or mitigate the damage or threat of damage, and such costs and expenses shall be a first charge on any property or interest held by such person.

(4) Where the Act or omission of a person other than any of the persons mentioned in subsection (3) caused such discharge or escape, then such other person shall also be liable jointly and severally with the persons mentioned in that subsection for all costs and expenses incurred in carrying out all or any of the work required under subsection (1) to remove, disperse, destroy or mitigate the damage or threat of damage, and such costs and expenses shall be a first charge on any property or interest held by such other person.

Power to
detain and
sell vessel.

15. (1) The Director-General may detain any vessel from which the oil, mixture containing oil or pollutant escaped or was discharged in the circumstances mentioned in subsection (1) of section 14.

(2) The Director-General may release any vessel detained under subsection (1) upon the owner depositing with the Government such sum of money or furnishing such security as, in the opinion of the Director-General, would be adequate to meet all costs and expenses incurred in carrying out the work required to remove, disperse, destroy or mitigate the damage or threat of damage caused by such escape or discharge.

(3) If any vessel which has been detained proceeds to sea without being released under subsection (2), the owner or master of the vessel or any other person who causes the vessel to proceed to sea shall be guilty of an offence and shall be liable to a fine not exceeding one million ringgit.

(4) Where the owner or master of such vessel or any other person found guilty

of an offence under this section is unable to pay the fine or the costs and expenses incurred in carrying out the work required under subsection (1) of section 14, the court may, on the application of the Director-General, order the sale of such vessel and the application of the proceeds of the sale towards the payment of the fine and the costs and expenses incurred.

PART V

MARINE SCIENTIFIC RESEARCH

Government consent required for conduct of marine scientific research.

16. (1) No marine scientific research may be conducted in the exclusive economic zone or on the continental shelf without the express consent of and subject to conditions imposed by the Government.

(2) Subject to section 17, the Government shall give its consent where the marine scientific research would be carried out by any State or competent international organization for peaceful purposes and to increase scientific knowledge of the marine environment.

17. The Government may withhold its consent to the conduct of a marine scientific research project by any State or competent international organization in the exclusive economic zone or on the continental shelf if it has reason to believe that the project-

Right to
Withhold
consent.

- (a) is of direct significance to the exploration and exploitation of natural resources, whether living or non-living;
- (b) involves drilling into the continental shelf, the use of explosives or the introduction of pollutants into the marine environment;
- (c) involves the construction, operation or use of artificial islands, installations or structures;
- (d) contains information communicated pursuant to section 18 regarding the nature and objectives of the project which is inaccurate or if the researching State or competent international organization has outstanding obligations

to Malaysia from a prior research project; or

- (e) would interfere with activities undertaken by Malaysia in the exercise of its sovereign rights and jurisdiction provided for under this Act, any applicable written law or international law.

18. Any State or competent international organization which intends to undertake Duty to provide information.

marine scientific research in the exclusive economic zone or on the continental shelf shall, not less than six months in advance of the expected starting date of the marine scientific research project, provide the Government with a full description of-

- (a) the nature and objectives of the project;
- (b) the method and means to be used, including name, tonnage, type and class of vessels and a description of scientific equipment;
- (c) the precise geographical areas in which the project is to be conducted;
- (d) the expected date of first

- appearance and final departure of the research vessels, or deployment of the equipment and its removal, as appropriate
- (e) the name of the sponsoring institution, its director, and the person in charge of the project; and
 - (f) the extent to which it is considered that Malaysia should be able to participate or to be represented in the project.

How to comply 19. (1) Every State or competent inter-
with certain conditions. national organization undertaking marine
scientific research in the exclusive
economic zone or on the continental shelf
shall comply with the following conditions:

- (a) ensure the right of the Govern-
ment, if it so desires, to
participate or be represented in
the marine scientific research
project, especially on board
research vessels and other craft
or scientific research installa-
tions, when practicable, without
payment of any remuneration to
the scientists of Malaysia and

- without obligation to contribute towards the costs of the project;
- (b) provide the Government with preliminary reports, as soon as practicable, and with the final results and conclusions after the completion of the research;
 - (c) undertake to provide access for the Government, at its request, to all data and samples derived from the project and likewise to furnish it with data which may be copied and samples which may be divided without detriment to their scientific value;
 - (d) if requested, provide the Government with an assessment of such data, samples and research results or provide assistance in their assessment or interpretation;
 - (e) ensure, unless otherwise specified by the Government, that the research results are made internationally available through appropriate national or international channels, as soon as practicable;

(f) inform the Government immediately of any major change in the research programme;

(g) unless otherwise agreed, remove the scientific research installations or equipment once the research is completed.

(2) This section is without prejudice to the conditions established by the Government for the exercise of its discretion to give or withhold consent pursuant to section 16 or 17, as the case may be, including requiring prior agreement for making internationally available the research results of a project of direct significance for the exploration and exploitation of natural resources.

20. (1) The Government may order the suspension of any marine scientific research activities in progress within the exclusive economic zone or on the continental shelf if-

Suspension or cessation of marine scientific research activities.

(a) the research activities are not being conducted in accordance with the information provided under section 18 upon which the consent

of the Government was based; or

- (b) the State or competent international organization conducting the research activities fails to comply with the provisions of section 19.

(2) The Government may order the cessation of any marine scientific research activities-

- (a) which in deviating from the information provided under section 18 have amounted to a major change in the research project or the research activities; or

- (b) if any of the situations contemplated in subsection (1) are not rectified within a reasonable period of time, as determined by the Government.

(3) Following notification by the Government of the order of suspension or cessation, the State or competent international organization shall immediately terminate all or any of the marine scientific research activities that are the subject of such a notification.

(4) An order of suspension under subsection (1) may be lifted by the Government and the marine scientific research activities allowed to continue if the researching State or competent international organization complies with the conditions required under sections 18 and 19 within a reasonable period of time, as determined by the Government.

PART VI

ARTIFICIAL ISLANDS, INSTALLATIONS

AND STRUCTURES

Prohibition 21. (1) No person shall construct, operate of construction, operation or use of artificial or structure in the exclusive economic zone island, etc., or except with authorization.

authorization of the Government and subject to such conditions as it may impose.

(2) The Government shall have exclusive jurisdiction over artificial islands, installations and structure in the zone and on the continental shelf, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws.

(3) The Government may, where necessary, establish reasonable safety zones around such artificial islands, installations

and structures in which it may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures.

(4) The breadth of the safety zones shall be determined by the Government, taking into account applicable international standards. Due notice shall be given of the extent of the safety zones.

(5) All vessels must respect these safety zones and shall comply with any directions which the Government may give in accordance with generally accepted international standards regarding navigation in the vicinity of artificial islands, installations, structures and safety zones.

PART VII

SUBMARINE CABLES AND PIPELINES

Consent of Government necessary for delineation of course for laying of submarine cables and pipelines.	22. (1) No person shall lay submarine cables or pipelines in the exclusive economic zone or on the continental shelf without the consent of the Government as to the delineation of the course for the laying of such cables and pipelines.
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(2) Without prejudice to subsection (1), the Government may impose such conditions as it may consider necessary for the laying or maintenance of such cables and pipelines in the exercise of its right to take reasonable measures for the exploration of the continental shelf, the exploitation of natural resources and the prevention, reduction and control of pollution from such cables or pipelines.

23. The owner of any submarine cable or pipeline which has fallen into disuse or is beyond repair shall forthwith inform the Government thereof and shall, if so directed by the Government, remove such cable or pipeline within such period of time as the Government may direct.

Duty of owner of submarine cable or pipeline.

PART VIII

ENFORCEMENT

24. (1) For the purpose of ensuring compliance with the provisions of this Act or any applicable written law, any authorized officer may, where he has reason to believe that an offence has been committed under this Act or such written law, without a warrant-

Powers of authorized officer.

- (a) stop, board and search any vessel within the exclusive economic zone and inspect any licence, permit, record, certificate or any other document required to be carried on board such vessel under this Act, such written law or any generally accepted international rules and standards, and make copies of the same;
- (b) make such further enquiries and physical inspection of the vessel, its crew, equipment, gear, furniture, appurtenances, stores and cargo as may be necessary to ascertain whether or not a suspected violation of the provisions of this Act or such written law has been committed;
- (c) enter and search any place in which he has reason to believe that an offence under this Act or such

written law is about to be
or has been committed;

- (d) arrest any person who he
has reason to believe has
committed any offence under
this Act or such written
law;
- (e) detain any article which he
has reason to believe has
been used in the commission
of any offence under this
Act or such written law;
- (f) detain any vessel, including
its equipment, gear, furniture,
appurtenances, stores and
cargo, 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 or such written
law.

(2) A written acknowledgement shall
be given for any article, vessel or thing
detained under subsection (1).

Hot pursuit. 25. (1) Where any authorized officer has
reason to believe that a foreign vessel

has contravened any provision of this Act or any applicable written law, he may undertake the hot pursuit of such vessel with a view to stopping and arresting it and bringing it within the exclusive economic zone in accordance with international law.

(2) The powers conferred on an authorized officer under section 24 shall be exercisable pursuant to this section in respect of such vessel beyond the limits of the exclusive economic zone to the extent allowed by international law.

(3) Except as otherwise provided by any regional or bilateral agreement to which Malaysia is a party, the right of hot pursuit shall cease as soon as the vessel pursued enters the territorial sea or exclusive economic zone of its own State or any third State.

How person
arrested to
be dealt
with,

26. (1) An authorized officer making an arrest under this Act or any applicable written law shall without unnecessary delay produce the person arrested before a Magistrate.

(2) No authorized officer shall keep in custody a person arrested for a longer

period than under all the circumstances of the case is reasonable.

(3) Such period shall not in the absence or after the expiry of a special order of a Magistrate under section 117 of the Criminal Procedure Code exceed twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

P.M. 5.
Cap. 6.

27. Any vessel detained under this Part and the crew thereof shall be taken to the nearest or most convenient port and dealt with in accordance with the provisions of this Act or any applicable written law.

How detained vessel to be dealt with.

28. Any person who-

Obstruction of authorized officer, etc.

(a) wilfully obstructs any authorized officer in the exercise of any of the powers conferred on him by this Act or any applicable written law;

(b) fails to comply with any lawful order or requirement under this Act or such written law; or

(c) fails to comply with any of the provisions of this Act or such written law for which no punishment is provided for failure to comply therewith,

shall be guilty of an offence.

PART IX

OFFENCES, PENALTIES, LEGAL PROCEEDINGS
AND COMPENSATIONS

29. Any person who is guilty of an offence under this Act for which no punishment is provided shall be liable to a fine not exceeding one million ringgit.

General
penalty.

30. Where any offence under this Act or any applicable written law 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 and shall be liable to the punishment provided in section 29.

Offences by
companies,
partner
ships, etc.

31. Where an offence under this Act or any applicable written law has been committed by any person on board a vessel, the master of such vessel shall also be guilty of that offence and shall be liable to the punishment provided in section 29.

Master
liable for
offence
committed
on his
vessel.

Detention and forfeiture of vessel, etc. 32. (1) Any article, vessel or thing detained under the provisions of this Act or any applicable written law shall, unless otherwise provided under this Act, be held pending the outcome of any proceedings under this Act or such written law:

Provided, however, that an authorized officer or the court may release the article, vessel or thing so detained upon the furnishing of a bond or other security to the satisfaction of the authorized officer or the court by any person claiming ownership, or acting on behalf of the owner, of the article, vessel or thing to produce the same when required so to do.

(2) Where an article, vessel, or thing is detained under the provisions of this Act or any applicable written law, the authorized officer who detains the article, vessel or thing shall, as soon as may be, cause notice thereof to be given in writing to the owner; and where the owner cannot be found, a notice to that effect shall be published in the Gazette and, if the article, vessel or thing is foreign-owned, the authorized officer shall cause the diplomatic representative in

Malaysia of the flag State of the vessel concerned or of the country of which the owner of the article or thing is a national to be informed of such fact through the Ministry responsible for foreign affairs.

(3) If the owner of the article, vessel or thing cannot be found in spite of all courses of action taken under subsection (2) and by reason of the owner not being found proceedings under this Act or any applicable written law cannot be instituted, the article, vessel or thing detained shall be held for a period of one month from the date of the last course of action taken under subsection (2) at the end of which period the article, vessel or thing shall be forfeited to the Government unless a claim is received in respect thereof within the aforesaid period, in which event an enquiry shall be held by a court of competent jurisdiction to determine the validity of the claim and the article, vessel or thing shall be disposed of in such manner as the court may direct.

Power of court to order forfeiture.

33. Where any person is found guilty of an offence under this Act or any applicable written law, the court shall, in addition

to any other penalty that may be imposed, order that any article, vessel or thing which was the subject-matter of, or was used in the commission of, the offence be forfeited and that any licence or permit issued or consent given under this Act or such written law be suspended for such period of time as the court may think fit or be cancelled or withdrawn, as the case may be.

34. Any article, vessel or thing ordered to be forfeited under section 33 shall be disposed of in such manner as the court may direct.

Disposal of article, vessel or thing ordered to be forfeited.

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

Court may order forfeiture in certain circumstances.

36. (1) Notwithstanding any written law Sessions Court and Court of Magistrate of First Class to have full jurisdiction and powers under Act or applicable written law. to the contrary, any offence committed under this Act or any applicable written law 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 or such written law.

(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 in respect of an offence under this Act or any applicable written law 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 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 provisions of the Criminal Procedure Code relating to the transfer of cases.

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

37. For the purposes of this Act or any applicable written law, 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 and approved by the Federal Government or the Government of any State in Malaysia for use,

were so made and are accurate.

Prosecution of offence.

38. (1) A prosecution for an offence under this Act or any applicable written law shall not be instituted except by or with the consent of the Public Prosecutor:

Provided that a person who is to be charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any person so arrested may be remanded in custody or released on bail, notwithstanding that the

consent of the Public Prosecutor to the institution of a prosecution for the offence has not been obtained, but the case shall not be further prosecuted until that consent has been obtained.

(2) When a person is brought before a court under this section before the Public Prosecutor has consented to the prosecution, the charge shall be read and explained to him but he shall not be called upon to plead thereto, and the provisions of the Criminal Procedure Code shall be modified accordingly.

Yang di-
Pertuan
Agong may
appoint
other
persons to
be autho-
rized
officers.

39. Without prejudice to the definition of "authorized officer" in section 2, the Yang di-Pertuan Agong 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 officer for the purposes of this Act or any applicable written law.

Damage
caused to
any person
or property
or to envi-
ronment in
exclusive

40. (1) Where, by reason of any act or omission in contravention of this Act or any applicable written law, damage is caused to any person or property in or on,

economic zone or to any segment or element of the or continen- tal shelf. environment or related interests within, the exclusive economic zone or continental shelf, the owner and the master of the vessel, the owner and the occupier of the place on land, the owner and the person in charge of the installation or device, or the owner and the pilot of the aircraft, as the case may be, causing the damage, or the owner and the master of the vessel, the owner and the occupier of the place on land, the owner and the person in charge of the installation or device, or the owner and the pilot of the aircraft from which any oil, mixture containing oil or pollutant was discharged or escaped resulting in the damage, shall be liable jointly and severally for such damage unless otherwise provided under this Act or such written law.

(2) Where the act or omission of a person other than any of the persons mentioned in subsection (1) caused such damage, discharge or escape, then such other person shall also be liable jointly and severally with the persons mentioned in that subsection for such damage, unless

otherwise provided under this Act or such written law.

(3) Without prejudice to the generality of subsections (1) and (2) such liability shall extend to the payment of compensation for any damage caused to a person, vessel, gear, facility or structure used in any activity, including fishing and related activities, connected with the exercise of the rights of the Government and Malaysian nationals, and of other persons where such rights are exercised with the consent of the Government, in the exclusive economic zone or on the continental shelf, and compensation shall also be paid for policing and surveillance activities and activities for the protection of the environment and shipping necessitated by the damage referred to in subsection (1).

(4) Any claim for compensation under this section may be brought before any High Court, Sessions Court or Court of a Magistrate of the First Class in Malaysia, as the case may be, according to the value or amount of the claim; and where a claim is so brought, the court concerned shall

have full jurisdiction and powers to adjudicate thereon.

PART X

MISCELLANEOUS

41. (1) The Yang di-Pertuan Agong may make regulations for carrying out the provisions of this Act. Power to make regulations.

(2) Without prejudice to the generality of subsection (1), such regulations may provide for any of the following matters:

- (a) regulating the conduct of marine scientific research within the exclusive economic zone and on the continental shelf;
- (b) prescribing measures for the protection and preservation of the marine environment of the exclusive economic zone, including conditions to be complied with by foreign vessels before entering any port or the internal waters of Malaysia or calling at any offshore terminal;

- (c) regulating the construction, operation and use of artificial islands and of other installations and structures within the exclusive economic zone or on the continental shelf, including the establishment of safety zones around such islands installations and structures;
- (d) regulating the exploration and exploitation of the exclusive economic zone for the production of energy from the water, currents and winds and for other economic purposes;
- (e) providing for such other matters as are necessary or expedient for giving full effect to Malaysia's rights in and jurisdiction over the exclusive economic zone and the continental shelf.

Written laws 42. (1) The Yang di-Pertuan Agong may by to be appli- cable in order in the Gazette, provide for any exclusive economic zone written law to be applicable in the exclusive or on continental economic zone, on the continental shelf or shelf or both by order.both.

(2) Any order made by the Yang di-Pertuan Agong under this section may provide for such written law to be applicable with such modifications or exceptions thereto as he considers necessary and where he so does, such written law shall be construed accordingly in its application in the exclusive economic zone, on the continental shelf or both.

(3) The modifications mentioned in subsection (2) may include amendments to such written law which the Yang di-Pertuan Agong may consider necessary-

- (a) to make such written law effective in its application in the exclusive economic zone, on the continental shelf or both;
- (b) to avoid any conflict or inconsistency between the provisions of such written law and this Act or any other applicable written law; or
- (c) to bring the provisions of such written law into accord with the provisions of this

Act or any other applicable
written law.

(4) Any order made under this section shall be laid before the House of Representatives as soon as may be after it is made, and if a motion is moved and carried by that House, within three months of the date on which the order is laid before it, disallowing the order, the order shall thereafter be void but without prejudice to the validity of anything done under the order or to the making of any new order.

ภาคผนวก ข

LAWS OF MALAYSIA

ACT 317

FISHERIES ACT 1985

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FISHERIES

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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.

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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 Duli Yang Maha Mulia 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;

Ord. 70/52 "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, 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 fish, 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;

"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 remie, 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; 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 which is not registered outside Malaysia and which is wholly owned by-

- (a) a natural person who is a citizen,
or natural persons who are citizens,

of Malaysia;

- (b) a statutory corporation established under any of the laws of Malaysia;
 - (c) the Government of Malaysia or the Government of a State in Malaysia;
- or
- (d) a body corporate or unincorporate established in Malaysia and wholly owned by any of the persons described in paragraph (a), (b) or (c) of this definition, or another body corporate or unincorporate wholly owned by any of the persons described in paragraph (a), (b) or (c) 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 outside Malaysia, the Federal or any State Government, a local authority or foreign government, or any entity belonging thereto;

"pollutant" shall have the meaning assigned to that expression under section 2 of the Exclusive Economic Zone Act 1984;

"processing", in relation to fish, includes cleaning, filleting, icing, freezing, canning, salting, smoking, cooking, picking, 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 manmade, 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;

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"territorial sea of Malaysia" means the territorial waters of Malaysia determined in accordance with the Emergency (Essential Powers) Ordinance, No. 7 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.

PART II

ADMINISTRATION

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.

Responsibility
of Minister.

(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.

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 (1) of section 3, the provisions relating to turtles and inland fisheries

Fisheries
Officers
and deputy
fisheries
officers.

in the States of Malaysia.

5. Subject to subsection (1) of section 3, 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.

Inland
fisheries
officers
and deputy
inland
fisheries
officers.

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 herein-
after 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 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, speci-

fications 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.

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:

Conditions
in licence
and directions.

- (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 direction 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 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.

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

Non commencement of fishing operations.

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.

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.

Refusal to
license or
suspension
or cancelation
of licence.

(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 fourteen 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-trans-
ferability.

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 one year and shall expire on the 31st December of the year in which it is issued.

(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 of 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 iden-

tification 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) 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.

(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.

PART V

FOREIGN FISHING VESSELS

15. (1) Subject to subsection (2), no foreign fishing vessel shall do any of following in Malaysian fisheries waters:	Fishing, etc. by foreign fishing vessel in Malaysian fisheries waters.
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(a) fish or attempt to fish; or

- (b) 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 or organization, to which such vessel belongs or in which such vessel is registered 1, as the case may be, and under a permit issued under section 19

(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.

Innocent 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 exercising its right of innocent passage through such waters in the course of a voyage to a destination outside such waters.

(2) Such passage 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 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.

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:

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

- (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.

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.

Permit
in respect
foreign
fishing
vessel.

(b) Notwithstanding subsection (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 subsection (1) (b) and such fees as may be prescribed in regulations made under this Act.

(3) Without prejudice to subsection (1) (a), any sum of money paid as security under subsection (1) (b) may be utilized to pay or defray any fine of 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 (1) 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, transhipment,
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 infor-
mation 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 aircraft 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 subsection (1) (c) section
10,

- (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.

in respect thereof; or

<p>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.</p>	<p>Bringing into or having in Malaysian fisheries waters fish taken or received from foreign fishing vessel.</p>
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<p>21. (1) The Director-General may cancel or suspend any permit-</p>	<p>Cancellation or suspension of permit.</p>
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- (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 subsection (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.

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.

Variation
of conditions
in permit.

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.

Director-
General's
decision
not
reviewable.

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.

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 fifty 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, 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 subsection 1 (a) unless the contrary is proved.

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. Aquatic mammals or turtles in Malaysian fisheries waters.

(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.

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. Wilful damage to fishing vessel, etc.

29. Any person who destroys or abandons any fish, aquatic mammal, turtle, fishing evidence. Destroying incriminating evidence.

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) Any fisheries officer may compound any offence under this Act (except an offence under section 8 (a), 11 (3), 15, 16 read with section 25, or 26) for a sum of money not below five hundred ringgit and not exceeding the maximum fine for that offence, provided that it is a first or second offence only.

(2) 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

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 and 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 provisions of the Criminal Procedure Code relating to the transfer of cases.

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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.

Power of
court to
order
cancellation
of licence
or permit.

(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.

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.

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

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

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

- (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.

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 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
concerning
furtles 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 fisheires 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 aquacul-
ture.

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 imports into or exports out of Malaysia or transports from West Malaysia into the Federal Territory of Labuan or the State of Sabah or Sarawak, or transports from the Federal Territory of Labuan or the State of Sabah or Sarawak into West Malaysia, 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

41. (1) The Minister may by order in the Establishment of marine park or marine reserve.
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.

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.

Powers and Responsibility 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-

Offence to do certain acts without written permission of Director-General.

- (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 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

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-

Powers of
authorized
officer.

- (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.

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

Powers of entry, seizure and arrest, etc.

- (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).

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.

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.

Seizure and forfeiture of vessel, etc.

(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.

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.

Temporary
return of
vessel, etc.,
seized.

(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, the expenses incurred in the seizure of the vessel, vehicle, article or thing and in any repatriation of the crew of the vessel, and the maximum fine which would be imposable in respect of the offence.

(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 an offence under this Act, the court

concerned shall, in addition to any other penalty that may be imposed-

(a) 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

(b) 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.

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 fifty thousand ringgit.

Obstruction of authorized officer.

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.

Authorized officer to declare office.

55. (1) No action shall be brought against any authorized officer in respect of anything

Bar to actions.

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.

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

- (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 right of
innocent 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.

58. The Director-General may, by order in writing, for the purpose of research or training, 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.

Exemption
for certain
purposes.

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.

Registers of
licences and
permits.

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

Exemptions.
F.M.S.
Cap.207.
F.M.S.
Cap.220.

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:

Power of
Minister to
make
regulations.

- (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 permits, licences, certifi-

cates 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 licences or permits to execute bonds, make deposits or give other forms of security for the fulfilment of any obligation under their 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 right of innocent passage of such vessels;
- (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 prescribe or regulate any
other matter required to be
prescribed or regulated under
this Act.

Repeal.
Act 210.

62. The Fisheries Act 1963 is repealed.

ח חנאחרת

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE KINGDOM OF THAILAND AND MALAYSIA
ON
THE ESTABLISHMENT OF A JOINT AUTHORITY FOR
THE EXPLOITATION OF THE RESOURCES OF THE SEA-BED
IN A DEFINED AREA OF THE CONTINENTAL SHELF
OF THE TWO COUNTRIES IN THE GULF OF THAILAND

The Kingdom of Thailand and Malaysia,

DESIRING to strengthen further the existing bonds of traditional friendship between the two countries;

RECOGNIZING that, as a result of overlapping claims made by the two countries regarding the boundary line of their continental shelves in the Gulf of Thailand, there exists an overlapping area of their adjacent continental shelves;

NOTING that the existing negotiations between the two countries on the delimitation of the boundary of the continental shelf in the Gulf of Thailand may continue for some time;

CONSIDERING that it is in the best interests of the two countries to exploit the resources of the sea-bed in the overlapping area as soon as possible; and

CONVINCED that such activities can be carried out jointly through mutual co-operation.

HAVE AGREED AS FOLLOWS:

ARTICLE I

Both Parties agree that as a result of overlapping claims made by the two countries regarding the boundary line of their continental shelves in the Gulf of Thailand, there exists an overlapping area, which is defined as that area bounded by straight lines joining the following co-ordinated points:-

(A)	N 6° 50' .0	E 102° 21' .2
(B)	N 7° 10' .25	E 102° 29' .0
(C)	N 7° 49' .0	E 103° 02' .5
(D)	N 7° 22' .0	E 103° 42' .5
(E)	N 7° 20' .0	E 103° 39' .0
(F)	N 7° 03' .0	E 103° 06' .0
(G)	N 6° 53' .0	E 102° 34' .0

and shown in the relevant part of the British Admiralty Chart No. 2414, Edition 1967, annexed hereto.

ARTICLE II

Both Parties agree to continue to resolve the problem of the delimitation of the boundary of the continental shelf in the Gulf of Thailand between the two countries by negotiations or such other peaceful means as agreed to by both Parties, in accordance with the principles of international law and practice especially those agreed to in the Agreed Minutes of the Malaysia-Thailand Officials' Meeting on Delimitation of the Continental Shelf Boundary Between Malaysia and Thailand in the Gulf of Thailand and in the South China Sea, 27 February-1 March 1978, and in the spirit of friendship and in the interest of mutual security.

ARTICLE III

(1) There shall be established a Joint Authority to be known as 'Malaysia-Thailand Joint Authority' (hereinafter referred to as 'the Joint Authority') for the purpose of the exploration and exploitation of the non-living natural resources of the sea-bed and subsoil in the overlapping area for a period of fifty years commencing from the date this Memorandum comes into force.

(2) The Joint Authority shall assume all rights and responsibilities on behalf of both Parties for the exploration and exploitation of the non-living natural resources of the sea-bed and subsoil in the overlapping area (hereinafter referred to as the joint development area) and also for the development, control and administration of the joint development area. The assumption of such rights and responsibilities by the Joint Authority shall in no way affect or curtail the validity of concessions or licences hitherto issued or agreements or arrangements hitherto made by either Party.

(3) The Joint Authority shall consist of:-

- (a) two joint-chairmen, one from each country, and
- (b) an equal number of members from each country.

(4) Subject to the provisions of this Memorandum, the Joint Authority shall exercise on behalf of both Parties all the powers necessary for, incidental to or connected with the discharge of its functions relating to the exploration and exploitation of the non-living natural resources of the sea-bed and subsoil in the joint development area.

(5) All costs incurred and benefits derived by the Joint Authority from activities carried out in the joint development area shall be equally borne and shared by both Parties.

(6) If any single geological petroleum or natural gas structure or field, or other mineral deposit of whatever character, extends beyond the limit of the joint development area defined in Article I, the joint Authority and the Party or Parties concerned shall communicate to each other all information in this regard and shall seek to reach agreement as to the manner in which the structure, field or deposit will be most effectively exploited; and all expenses incurred and benefits derived therefrom shall be equitably shared.

ARTICLE IV

(1) The rights conferred or exercised by the national authority of either Party in matters of fishing, navigation, hydrographic and oceanographic surveys, the prevention and control of marine pollution and other similar matters (including all powers of enforcement in relation thereto) shall extend to the joint development area and such rights shall be recognized and respected by the Joint Authority.

(2) Both Parties shall have a combined and co-ordinated security arrangement in the joint development area.

ARTICLE V

The criminal jurisdiction of Malaysia in the joint development area shall extend over that area bounded by straight lines joining the following co-ordinated points:-

A	N 6° 50' .0	E 102° 21' .2
X	N 7° 35' .0	E 103° 23' .0
D	N 7° 22' .0	E 103° 42' .5
E	N 7° 20' .0	E 103° 39' .0
F	N 7° 03' .0	E 103° 06' .0
G	N 6° 53' .0	E 102° 34' .0

The criminal jurisdiction of the Kingdom of Thailand in the joint development area shall extend over that area bounded by straight lines joining the following co-ordinated points:-

A	N 6° 50' .0	E 102° 21' .2
B	N 7° 10' .25	E 102° 29' .0
C	N 7° 49' .0	E 103° 02' .5
X	N 7° 35' .0	E 103° 23' .0

The areas of criminal jurisdiction of both Parties defined under this Article shall not in any way be construed as indicating the boundary line of the continental shelf between the two countries in the joint development area, which boundary is to be determined as provided for by Article II, nor shall such definition in any way prejudice the sovereign rights of either Party in the joint development area.

ARTICLE VI

(1) Notwithstanding Article III, if both Parties arrive at a satisfactory solution on the problem of the delimitation of the boundary of the continental shelf before the expiry of the said fifty-year period, the Joint Authority shall be wound up and all assets administered and liabilities incurred by it shall be equally shared

and borne by both Parties. A new arrangement may, however, be concluded if both Parties so decide.

(2) If no satisfactory solution is found on the problem of the delimitation of the boundary of the Continental Shelf within the said fifty-year period, the existing arrangement shall continue after the expiry of the said period.

ARTICLE VII

Any difference or dispute arising out of the interpretation or implementation of the provisions of this Memorandum shall be settled peacefully by consultation or negotiation between the Parties.

ARTICLE VIII

This Memorandum shall come into force on the date of exchange of instruments of ratification.

DONE in duplicate at Chiang Mai, the Twenty-first day of February in the year One thousand Nine hundred and Seventy-nine, in the Thai, Malay and English Languages.

In the event of any conflict among the texts, the English text shall prevail.

FOR THE KINGDOM OF THAILAND

FOR MALAYSIA

(Signed)

(Signed)

(General Kriangsak Chomanan)

(Datuk Hussein Onn)

Prime Minister

Prime Minister

ประวัติผู้เขียน

- นางสาว กันทิมา เกตุมนินทร์ เกิดเมื่อวันที่ 30 มีนาคม พ.ศ. 2507 ที่กรุงเทพมหานคร สำเร็จการศึกษาระดับปริญญาตรี รัฐศาสตรบัณฑิต (ความสัมพันธ์ระหว่างประเทศ) เกียรตินิยมอันดับ 2 จากคณะรัฐศาสตร์ มหาวิทยาลัยธรรมศาสตร์ เมื่อปีการศึกษา 2527 เข้าศึกษาต่อในภาควิชาความสัมพันธ์ระหว่างประเทศ บัณฑิตวิทยาลัย จุฬาลงกรณ์มหาวิทยาลัย เมื่อปีการศึกษา 2528.

