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FISHERIES (AMENDMENT) ACT 2003

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FISHERIES (AMENDMENT) ACT 2003

AN ACT TO ENABLE EFFECT TO BE GIVEN TO THE UNITED NATIONS AGREEMENT ON THE IMPLEMENTATION OF THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982 RELATING TO THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS, TO PROVIDE FOR AN INDEPENDENT APPEALS SYSTEM IN RELATION TO THE LICENSING OF SEA-FISHING BOATS, TO AMEND AND EXTEND THE FORESHORE ACT 1933, THE FISHERIES ACTS 1959 TO 2001 AND THE MERCHANT SHIPPING (CERTIFICATION OF SEAMEN) ACT 1979, AND TO PROVIDE FOR RELATED MATTERS. [1st July, 2003.]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Fisheries (Amendment) Act 2003. Short title, collective citation and construction.

(2) The Fisheries Acts 1959 to 2001 and this Act (other than *section 32* and *section 2* in so far as it relates to *section 32*) may be cited together as the Fisheries Acts 1959 to 2003 and shall be construed together as one.

(3) The Foreshore Acts 1933 to 1998, *section 32* and *section 2* in so far as it relates to *section 32*, may be cited together as the Foreshore Acts 1933 to 2003 and shall be construed together as one.

2.—(1) In this Act, unless the context otherwise requires— Interpretation.

“Act of 1983” means Fisheries (Amendment) Act 1983;

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

“appeal” means an appeal under *section 7*;

“Appeals Officer” means a person appointed under *section 6* as an Appeals Officer for the purposes of *Part 3* of this Act;

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“licence” in *Parts 2 and 3* of this Act, means a sea-fishing boat licence granted under section 222B(3) of the Principal Act;

“licensing authority” has the meaning assigned to it by *section 3*;

“local authority” has the meaning assigned to it by the Local Government Act 2001;

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

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

(2) In this Act—

- (a) a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended by or under any subsequent enactment including this Act when enacted,
- (b) a reference to a section or Schedule is a reference to a section of, or Schedule to, this Act unless it is indicated that reference to some other enactment is intended,
- (c) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

PART 2

LICENSING OF SEA-FISHING BOATS AND CERTAIN SEA-FISHING

Licensing authority. **3.—(1)** The licensing authority in relation to sea-fishing boats shall be—

- (a) the Registrar General of Fishing Boats, or
- (b) acting under the superintendence of the Registrar General of Fishing Boats, the Deputy Registrar General of Fishing Boats.

(2) The licensing authority shall be independent in the exercise of his or her functions under this Part subject to—

- (a) the law for the time being in force in relation to sea-fishing boat licensing, including, in particular, the legal obligations of the State arising under any law of an institution of the European Communities or other international agreement which is binding on the State, and
- (b) such policy directives in relation to sea-fishing boat licensing as the Minister may give in writing from time to time.

(3) A policy directive given under *subsection (2)(b)* may require certain prohibitions or conditions to be imposed in relation to sea-fishing for the purposes of protecting, conserving or allowing the sustainable exploitation of living marine aquatic species.

(4) Where the Minister gives a policy directive under *subsection (2)(b)*, a notice of such directive and details of it (including reasons for giving the directive) shall, as soon as practicable after the directive is given, be laid before each House of the Oireachtas and published in *Iris Oifigiúil*.

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(5) *Subsection (2)(b)* shall not be construed as enabling the Minister to exercise any power or control in relation to any particular case or group of cases with which the licensing authority is or may be concerned. Pr.2 S.3

(6) (a) The licensing authority shall—

- (i) maintain a register of licences (which shall be known as the Register of Sea-fishing Boat Licences) in electronic form capable of being read in legible form and satisfying the requirements from time to time of any law of an institution of the European Communities, and
- (ii) give to the Minister such information relating to the performance of the functions of the licensing authority as the Minister may from time to time request.

(b) The licensing authority may, on his or her own initiative, or at the request of the Minister, make submissions or recommendations to the Minister on any matter relating to the functions of the licensing authority or to licensing under section 222B of the Principal Act.

(7) The licensing authority shall, as soon as practicable but not later than 6 months after the end of each financial year, report to the Minister on the performance of the functions of the licensing authority in that year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas.

(8) The licensing authority shall cause to be published by electronic means capable of being read in legible form details of—

- (a) all applications for licences received after 1 January 2003,
 - (b) all decisions made after 1 January 2003 on any such application or to amend or revoke a licence.
- (9) (a) Anything commenced before the passing of this Act by or under the authority of the Minister under section 222B(3) of the Principal Act may be carried on or completed on or after such passing by the licensing authority.
- (b) Every licence granted by or under the authority of the Minister which is in force immediately before the passing of this Act shall be deemed to have been granted by the licensing authority under section 222B(3) (inserted by section 4) and references to the Minister in any such licence shall after the passing of this Act be construed as a reference to the licensing authority.

(10) In this section, “the Registrar General of Fishing Boats” and “the Deputy Registrar General of Fishing Boats” mean, respectively, the Registrar General of Fishing Boats and the Deputy Registrar General of Fishing Boats appointed under Regulation 5 of the Merchant Shipping (Registry, Lettering and Numbering of Fishing Boats) Regulations 1997 (S.I. No. 294 of 1997).

4.—The Principal Act is amended by the substitution for section 222B (inserted by section 2 of the Act of 1983 and amended by sections 5, 6 and 7 of the Act of 1994) of the following: Sea-fishing boat licences.

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“Sea-fishing boat licences.

222B.—(1) This section applies to any sea-fishing boat which is—

(a) a fishing boat within the meaning of Part IV of the Merchant Shipping Act 1894 and which—

(i) is entered in the Register of Fishing Boats,

(ii) is required by section 373 (as amended by the Act of 1983) of the Merchant Shipping Act 1894 to be so entered, or

(iii) but for the passing of the Act of 1983 would, by the said section 373, be required to be so entered,

or

(b) a ship which—

(i) is registered under the Mercantile Marine Act 1955,

(ii) is required by section 18 (as amended by the Act of 1983) of the Mercantile Marine Act 1955 to be so registered,

(iii) but for section 8(1) of the Act of 1983 would be required to be or might be so registered, or

(iv) may be so registered.

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

(3) (a) The licensing authority may grant sea-fishing boat licences.

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

(i) made to the licensing authority,

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

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

(c) Where an application is made for a sea-fishing boat licence, the licensing authority may, subject to subsection (5) of this section, allow or refuse the application. Pt.2 S.4

(d) In deciding on the grant or refusal of a sea-fishing boat licence or the attachment of conditions to licences the licensing authority may take account of economic and social benefits which the operation of a boat would be likely to contribute to the coastal communities and regions which the quotas within the meaning of Council Regulation No. 2371/2002 of 20 December 2002¹ are designed to benefit, including—

- (i) the projected annual number of landings at ports in the State,
- (ii) the projected annual tonnage and value of fish landed in the State,
- (iii) the projected annual level of expenditure in the State on wages, fuel, supplies, equipment and services, and
- (iv) the projected annual level of social security and tax payments in the State in respect of employees and the operation of the boat,

and the protection, conservation and sustainable exploitation of living marine aquatic species and requirements of the Common Fisheries Policy of the European Community.

(4) The licensing authority shall not grant a sea-fishing boat licence in respect of a sea-fishing boat unless an independent survey of the boat conducted by a competent person approved of by the licensing authority has confirmed to the satisfaction of the authority that the boat is in a safe and sea-worthy condition.

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

(6) Where a sea-fishing boat is owned by a body corporate, the name, address and nationality of the beneficial owner or owners of the shares in, or of the person or persons who otherwise

¹OJ No. L358, 31.12.2002, p.59.

controls or control, the body corporate, shall be given to the licensing authority—

- (a) on application for a sea-fishing boat licence in respect of the boat, or
 - (b) where a sea-fishing boat licence is in force in respect of the boat, if there is any change in such ownership or control.
- (7) (a) A body corporate which is applying for a sea-fishing boat licence or holds a sea-fishing boat licence must have an agent in the State and give the licensing authority the name and address of the agent and details of contacting the agent at any time by or on behalf of the licensing authority.
- (b) The licensing authority may, as the case may be, refuse to grant or suspend (for such period as he or she sees fit) or revoke a sea-fishing boat licence where he or she considers that a body corporate is not complying with paragraph (a) to the satisfaction of the authority.
- (8) (a) The licensing authority may attach to a sea-fishing boat licence granted such terms (including terms specifying the period during which the licence is to remain in force or an event or other circumstance on the occurrence of which the licence is to come into force) and conditions (including conditions precedent to the licence's becoming operative) as he or she shall think fit and he or she may also attach further conditions to or vary the conditions already attached to such a licence or remove any such condition.
- (b) Without prejudice to the generality of paragraph (a) of this subsection, a condition attached to a sea-fishing boat licence may—
- (i) restrict sea-fishing by the boat to which the licence relates in a manner specified in the condition,
 - (ii) require that for so long as the licence is in force the members of the crew of such boat, or of any proportion of such members specified in the condition, shall be of a nationality specified in the condition, or

(iii) specify an event or other circumstance on the occurrence of which the licence shall cease to be in force. Pr.2 S.4

(c) Where the licensing authority is satisfied that a person has fished in contravention of a condition attached to a sea-fishing boat licence or that a person has attempted so to fish, the licensing authority may, if he or she thinks fit, revoke or suspend (for such period as he or she sees fit) the licence.

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

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

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

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

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

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

he or she may refuse the application.

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

- (i) ceases to be the owner of the sea-fishing boat to which the licence relates, or
- (ii) is a body corporate which ceases to be under the control of or beneficially owned by or under the control of and beneficially owned by a person or persons who, or, as may be appropriate, each of whom, is either a qualified individual or a qualified body,

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

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

(12) (a) A person who uses or attempts to use a sea-fishing boat in contravention of subsection (2) of this section is guilty of an offence.

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

(13) In this section—

‘Act of 1983’ means Fisheries (Amendment) Act 1983;

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

‘qualified individual’ means an individual person who is a national of a Member State;

‘licensing authority’ has the meaning assigned to it by section 3 of the Fisheries (Amendment) Act 2003;

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

Licence application, licence and other fees.

5.—(1) An application for—

- (a) a sea-fishing boat licence,
- (b) a licence, authorisation or permit under any instrument made by the Minister under section 222C (inserted by section 3 of the Act of 1983) or 223A (inserted by section

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9 of the Act of 1978 and amended by section 4 of the Act Pr.2 S.5
of 1983) of the Principal Act or *section 25*, or

(c) amendment of any such licence, authorisation or permit,

shall be subject to such fee as the Minister may, with the consent of the Minister for Finance, prescribe by regulations.

(2) The grant of—

(a) a sea-fishing boat licence or a licence under *section 16* by an Appeals Officer, or

(b) a licence, authorisation or permit under any instrument made by the Minister under section 222C or 223A of the Principal Act or *section 25*,

shall be subject to such fee, as the Minister may, with the consent of the Minister for Finance, prescribe by regulations.

(3) Regulations under this section may provide for fees of different amounts in respect of applications referred to in *subsection (1)* or the grant of a licence, authorisation or permit referred to in *subsection (2)* of different categories and in different circumstances.

(4) Where under regulations made under this section a fee is payable in respect of any application referred to in *subsection (1)* or the grant of a sea-fishing boat licence or other licence, authorisation or permit referred to in *subsection (2)(b)*, the application shall not be considered or the licence, authorisation or permit granted by the licensing authority or the Minister, as the case may be, unless the Department of Communications, Marine and Natural Resources is in receipt of the fee.

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

(6) Every fee received by the Department of Communications, Marine and Natural Resources under this section shall be disposed of for the benefit of the Exchequer in such manner as the Minister for Finance directs.

PART 3

INDEPENDENT APPEALS SYSTEM

6.—(1) The Minister may appoint one or more persons with not less than 5 years' experience as a practising barrister or practising solicitor before his or her appointment as an Appeals Officer Appeals Officer. ("Appeals Officer") for the purposes of this Part. The Minister may, for stated reasons, remove such person from office.

(2) It shall be the duty of an Appeals Officer to duly consider and make a decision on appeals under this Act in good time.

(3) An Appeals Officer shall be independent in the exercise of his or her functions under this Act subject to—

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(a) the law for the time being in force in relation to sea-fishing boat licensing, including, in particular, the legal obligations of the State arising under any law of an institution of the European Communities or other international agreement which is binding on the State, and

(b) such policy directives in relation to sea-fishing boat licensing as the Minister may give in writing from time to time.

(4) A policy directive given under *subsection 3(b)* may require certain prohibitions or conditions to be imposed in relation to sea-fishing for the purposes of protecting, conserving or allowing the sustainable exploitation of living marine aquatic species.

(5) *Subsection (3)(b)* shall not be construed as enabling the Minister to exercise any power or control in relation to any particular case or group of cases with which an Appeals Officer is or may be concerned.

(6) Where the Minister gives a policy directive under *subsection (3)(b)*, a notice of such directive and details of it (including reasons for giving the directive) shall, as soon as practicable after the directive is given, be laid before each House of the Oireachtas and published in *Iris Oifigiúil*.

(7) The provisions of *Schedule 1* shall have effect in relation to an Appeals Officer.

Right of appeal.

7.—(1) (a) Subject to *paragraph (b)*, a person aggrieved by a decision of a licensing authority on an application for a licence or by the revocation or amendment of a licence may, before the expiration of a period of one month beginning on the date of that decision, revocation or amendment, appeal to an Appeals Officer against that decision, revocation or amendment by serving on the Appeals Officer a notice of appeal which may be withdrawn by serving a notice to that effect.

(b) A person other than the applicant for or holder of the licence concerned may only appeal under *paragraph (a)* if he or she made representations in writing to the licensing authority before the decision in question was made.

(2) The applicant for or holder of a licence to which an appeal relates shall be a party to the appeal.

(3) The notice of appeal shall—

(a) be in writing and served by registered post or by leaving it at the office of the Appeals Officer, during normal office hours, with a person who is apparently employed by or on behalf of the Appeals Officer,

(b) state the name and address of the appellant,

(c) state the subject matter of the appeal,

(d) if the appellant is not the applicant for or holder of a licence, state the appellant's particular interest in the outcome of the appeal,

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- (e) state in full the grounds of the appeal and the reasons, con- Pr.3 S.7
siderations and arguments on which they are based,
- (f) state whether or not an oral hearing of the appeal is
requested, and
- (g) be accompanied by such fee, if any, as may be payable in
respect of such an appeal (including an oral hearing of
such appeal) in accordance with regulations under *section*
20,

and shall be accompanied by such documents, particulars or other
information relating to the appeal as the appellant considers neces-
sary or appropriate.

(4) Without prejudice to *section 12(1)*, an appellant shall not be
entitled to elaborate in writing on, or make further submissions in
writing in relation to, the grounds of appeal stated in the notice of
appeal or to submit further grounds of appeal, and any such elaboration,
submissions or further grounds of appeal received by the
Appeals Officer shall not be considered by him or her.

(5) Without prejudice to *section 14(1)*, an Appeals Officer shall
not consider any documents, particulars or other information submitted
by an appellant other than the documents, particulars or other
information which accompanied the notice of appeal.

(6) An Appeals Officer may, in his or her discretion, treat 2 or
more appeals as, and the appellants as parties to, a single appeal and
may at any time separate such appeals.

(7) This section applies to an appeal made under this section
against a decision, made after one month after the passing of this
Act, of a licensing authority on an application for a licence or to
revoke or amend a licence.

(8) A decision of a licensing authority on an application for a
licence or to revoke or amend a licence stands suspended where an
appeal against the decision is made under this section until the
appeal is determined or withdrawn.

8.—(1) Subject to *subsections (2) and (3)*, an Appeals Officer of Oral hearings.
his or her own motion or at the request of a party shall have
a discretion to hold an oral hearing of an appeal under *section 7*.

(2) A request by a party for an oral hearing of an appeal—

- (a) shall be made in writing to the Appeals Officer and shall be
accompanied by such fee, if any, as may be payable in
respect of such request in accordance with regulations
under *section 20*,
- (b) if not accompanied by that fee, if any, shall not be con-
sidered by the Appeals Officer,
- (c) subject to *paragraph (d)*, shall be made within the period of
one month referred to in *section 7(1)(a)*, or
- (d) in the case where the party is not the appellant, shall be
made within the period referred to in *section 10(2)*.

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(3) An Appeals Officer shall not consider a request for an oral hearing of an appeal received later than the time referred to in *subsection (2)(c)* or *(d)* for making a request.

(4) Where an Appeals Officer is requested to hold an oral hearing of an appeal and decides to determine the appeal without an oral hearing, he or she shall serve notice of his or her decision on the person who requested the hearing, on each other party to the appeal and on each person who, in accordance with *section 11*, made submissions or observations to the Appeals Officer in relation to the appeal.

(5) (a) In conducting an oral hearing of an appeal, an Appeals Officer may require the licensing authority to give to the Appeals Officer such information in relation to the appeal as the Appeals Officer may reasonably require, and the licensing authority shall comply with the requirement.

(b) An Appeals Officer, in conducting an oral hearing of an appeal, may take evidence on oath and for that purpose may administer oaths, and a person giving evidence at an oral hearing shall be entitled to the same immunities and privileges as if he or she were a witness before the High Court.

(c) Subject to *paragraph (d)*, an Appeals Officer in conducting an oral hearing of an appeal may, by notice in writing to any person, require the person to attend at such time and place as is specified in the notice to give evidence in relation to any matter in question at the hearing or to produce any books, deeds, contracts, accounts, vouchers, maps, plans or other documents in his or her possession, custody or control which relate to the matter.

(d) The following provisions shall have effect for the purposes of *paragraph (c)*:

(i) it shall not be necessary for a person to attend in compliance with a notice at a place more than 10 miles from his or her ordinary place of residence unless an amount of money sufficient to cover the reasonable and necessary expenses of the attendance has been paid or tendered to the person;

(ii) an Appeals Officer shall pay or tender to any person whose attendance is required such amount of money as he or she considers will cover the reasonable and necessary expenses of the attendance;

(iii) an Appeals Officer shall pay to any person who in compliance with a notice has attended at any place all reasonable and necessary expenses of the attendance which have not already been paid to the person and in default of such payment by the Appeals Officer the expenses shall be recoverable as a simple contract debt in a court of competent jurisdiction.

(6) A person to whom a notice under *subsection (5)(c)* has been given who—

(a) refuses or wilfully neglects to attend in accordance with the notice,

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- (b) wilfully alters, suppresses, conceals or destroys any document to which the notice relates, or Pr.3 S.8
- (c) having so attended, refuses to give evidence or refuses or wilfully fails to produce any document to which the notice relates,

is guilty of an offence.

(7) A person guilty of an offence under *subsection (6)* is liable on summary conviction to a fine not exceeding €3,000.

9.—(1) An Appeals Officer shall, as soon as practicable after receiving a notice of appeal, send by post to the licensing authority a copy of the notice and shall arrange for publication of the notice by electronic means. Notification of appeals to, and supply of documents, etc., by, licensing authority.

(2) The licensing authority shall, within 14 days after receiving a copy of the notice of appeal sent to him or her in accordance with *subsection (1)*, submit to the Appeals Officer concerned—

- (a) a copy of the licence application concerned and of any drawings, particulars, evidence, written study or further information received or obtained from the applicant for the licence in accordance with a requirement of or under section 222B of the Principal Act,
- (b) a copy of any report prepared for the licensing authority in relation to the application, revocation or amendment,
- (c) a copy of any document recording the decision of the licensing authority in respect of the application, revocation or amendment and of the notification of the decision given to the applicant for or holder of the licence concerned, and
- (d) any supplementary documentation or information which the licensing authority considers to be necessary to enable the Appeals Officer to duly consider the appeal.

10.—(1) An Appeals Officer shall, as soon as practicable, after receiving a notice of appeal, give a copy to each other party to the appeal. Submissions or observations by parties to appeal.

(2) The licensing authority and each other party except the appellant may make submissions or observations in writing to an Appeals Officer in relation to the appeal within a period of one month beginning on the day on which a copy of the notice of appeal is sent to that party by the Appeals Officer and any submissions or observations received by the Appeals Officer after the expiration of that period shall not be considered by him or her.

(3) Where no submissions or observations have been received from a party within the period referred to in *subsection (2)*, an Appeals Officer may, without further notice to that party, determine the appeal.

(4) Without prejudice to *section 12(1)*, a party shall not be entitled to elaborate in writing on any submissions or observations made in accordance with *subsection (2)* or make any further submissions or

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observations in writing in relation to the appeal, and any such elaboration or further submissions or observations shall not be considered by an Appeals Officer.

Submissions or observations by persons other than parties to appeal.

11.—(1) A person who is not a party may make submissions or observations in writing to an Appeals Officer in relation to an appeal.

(2) Submissions or observations referred to in *subsection (1)* may be made within the period of one month beginning on the day an Appeals Officer received the notice of appeal or, where there is more than one appeal against the decision of the licensing authority, on the day on which the Appeals Officer last received a notice of appeal, and any submissions or observations received by the Appeals Officer after the expiration of that period shall not be considered.

(3) Without prejudice to *section 12(1)*, a person who makes submissions or observations to an Appeals Officer in accordance with this section shall not be entitled to elaborate in writing on the submissions or observations or to make further submissions or observations in writing in relation to the appeal, and any such elaboration or further submissions or observations shall not be considered by the Appeals Officer.

Power of Appeals Officer to request submissions or observations.

12.—(1) Where an Appeals Officer is of the opinion that, in the particular circumstances of an appeal, it is appropriate in the interests of justice to request a party or other person who has made or was entitled to make submissions or observations to the Appeals Officer in relation to the appeal to make submissions or observations in relation to any matter which has arisen in relation to the appeal, he or she may, in his or her discretion, notwithstanding *section 8(3)*, *10(4)*, *11(3)* or *16(4)*, serve on the party or person a notice—

- (a) requesting the party or person, within a period specified in the notice (being not less than 14 or more than 28 days beginning on the date of service of the notice) to submit to the Appeals Officer submissions or observations in relation to the matter, and
- (b) stating that, if submissions or observations are not received before the expiration of the specified period, the Appeals Officer will, after the expiration of that period and without further notice to the party or person, pursuant to *section 16(2)*, determine the appeal.

(2) A party or other person shall not be entitled to elaborate in writing on submissions or observations made in response to a request under *subsection (1)* or make further submissions or observations in writing in relation to the matter concerned, and any such elaboration, or further submissions or observations shall not be considered by an Appeals Officer.

Appeals Officer to give copy of submissions or observations to appellant, etc.

13.—Where any submissions or observations are made under *section 10*, *11* or *12* to an Appeals Officer, he or she shall, as soon as practicable, give a copy of the submissions or observations to—

- (a) the appellant, or
- (b) where the submissions or observations are made in respect of an application for or revocation or amendment of a licence and the appellant is not the applicant for or

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holder of the licence, the applicant or holder, unless the applicant or holder has made the submissions or observations,

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and the appellant or the applicant or holder, as the case may be, may make comment in writing on the submissions or observations to the Appeals Officer not later than 14 days after having been given them.

14.—(1) Where an Appeals Officer is of the opinion that any document, particulars or other information is or are necessary for the purpose of enabling him or her to determine an appeal, he or she shall serve on a party or on any person who has made submissions or observations to the Appeals Officer in relation to the appeal a notice—

Power of Appeals Officer to require submission of documents, etc.

(a) requiring the party or person, within a period specified in the notice (being not less than 14 days beginning on the date of service of the notice) to submit to the Appeals Officer such documents, particulars or other information as are specified in the notice, and

(b) stating that, if the documents, particulars or other information is or are not received by the Appeals Officer before the expiration of the specified period, the Appeals Officer will, after the expiration of that period and without further notice to the party or person, pursuant to *section 16(2)*, determine the appeal.

(2) A person who refuses or fails without reasonable excuse to comply with a requirement under *subsection (1)(a)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,000.

15.—An Appeals Officer shall, as soon as practicable, give a copy of any document, particulars or other information received by him or her under *section 9* or *14* to—

Appeals Officer to give copy of documents, etc., submitted to appellant, etc.

(a) the appellant, or

(b) where the document, particulars or other information was submitted under *section 14* in respect of an application for or revocation or amendment of a licence and the appellant is not the applicant for or holder of the licence, the applicant or holder, unless the applicant or holder has submitted the document, particulars or other information,

and the appellant or the applicant or holder, as the case may be, may make comment in writing on the document, particulars or other information to the Appeals Officer not later than 14 days after having been given the copy.

16.—(1) An Appeals Officer shall have a discretion to dismiss an appeal where, having considered the grounds of appeal, he or she is of the opinion that the appeal is vexatious, frivolous or without substance or foundation.

Determination of appeals.

(2) Where a notice has been served under *section 12(1)* or *14(1)*, an Appeals Officer, at any time after the expiration of the period specified in the notice, may having considered all submissions or

observations or documents, particulars or other information, as the case may be, submitted by the person on whom the notice has been served, and any comments duly made on any such submissions or observations under *section 13* or on any such documents, particulars or other information under *section 15*, as the case may be, without further notice to that person, determine the appeal.

- (3) (a) Where an Appeals Officer is of the opinion that an appeal, or an application for a licence to which the appeal relates, has been abandoned, he or she may serve on the person who made the appeal or application, as may be appropriate, a notice stating that he or she is of the opinion and requiring the person, within the period specified in the notice (being not less than 14 or more than 28 days beginning on the date of service of the notice) to make to an Appeals Officer a submission in writing as to why the appeal or application should not be regarded as having been withdrawn.
- (b) Where a notice has been served under *paragraph (a)* an Appeals Officer may, at any time after the expiration of the period specified in the notice, and after considering any submissions made to him or her pursuant to the notice, declare—
- (i) in a case where the notice refers to an application for a licence, that the application shall be regarded as having been withdrawn, and
- (ii) in a case where the notice refers to an appeal, that the appeal shall be regarded as having been withdrawn.
- (c) Where under *paragraph (b)(i)* an Appeals Officer declares that an application for a licence is to be regarded as having been withdrawn—
- (i) any appeal in relation to the application shall be regarded as having been withdrawn and accordingly shall not be determined by an Appeals Officer, and
- (ii) notwithstanding any previous decision relating to the application, no licence shall be granted as a result of the application.
- (4) (a) Where an appeal is brought under *section 7(1)* and is not withdrawn, an Appeals Officer shall, subject to *subsection (5)*, determine the appeal by—
- (i) confirming the decision or action of the licensing authority,
- (ii) determining the application for the licence as if the application had been made to an Appeals Officer in the first instance,
- (iii) in relation to the revocation or amendment of a licence, substituting his or her decision on the matter for that of the licensing authority.
- (b) An Appeals Officer shall not determine an appeal as provided in *paragraph (a)(i)* except in circumstances referred to in *subsection (1), (2) or (3)*.

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(c) The determination under *paragraph (a)(ii) or (iii) of an appeal shall annul the decision or action of the licensing authority immediately the determination is made.* Pr.3 S.16

(5) Where—

- (a) an appeal is brought against a decision to grant or amend a licence,
- (b) the appeal relates only to a condition or conditions to which the decision provides the licence shall be subject, and
- (c) an Appeals Officer is satisfied, having regard to the nature of the condition or conditions, that the determination by an Appeals Officer of the relevant application as if the application had been made to an Appeals Officer in the first instance would not be warranted,

then the Appeals Officer may, in his or her discretion, deal with the appeal by reference only to the condition or conditions to which the appeal relates, and such other conditions, if any, as he or she considers relevant.

(6) An Appeals Officer shall state the reasons and considerations on which the determination of an appeal is based when—

- (a) determining the appeal,
- (b) notifying the determination in writing, as hereby required to do, to—
 - (i) the appellant,
 - (ii) the licensing authority,
 - (iii) any other party to the appeal,
 - (iv) any other person who made a submission or observation under *section 10 or 11* or submitted documents, particulars or other information under *section 12*, and
 - (v) any other person who requested notification of the determination,

and

- (c) arranging publication of the determination by electronic means, as hereby required to do.

17.—Where a provision of or under this Act requires or allows appeals, submissions, observations or a request to be made, or documents, particulars or other information or comment to be submitted, to an Appeals Officer within a specified period and the last day of that period is a day on which the office of the Appeals Officer is closed, the appeal, submissions, observations or request, or documents, particulars or other information or comment, shall be regarded as having been received before the expiration of that period if received by the Appeals Officer on the next following day on which the office of the Appeals Officer is open.

Time for appeals, etc., extended where office of Appeals Officer is closed.

[No. 21.] *Fisheries (Amendment) Act 2003.* [2003.]

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Reference of
certain questions of
law to High Court.

18.—Where a question of law arises on appeal to an Appeals Officer, the question may be referred by the Appeals Officer to the High Court for decision.

Applications for
judicial review.

19.—(1) A person shall not question a decision of an Appeals Officer on an appeal otherwise than by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) (in this section referred to as “the Order”).

(2) An application for leave to apply for judicial review under the Order in respect of a decision of an Appeals Officer—

(a) shall be made within the period of 3 months commencing on the date on which the decision was made, and

(b) shall be made by notice of motion (grounded in the manner specified in the Order in respect of an *ex parte* motion for leave) which shall be served on an Appeals Officer and each party or each other party, as the case may be, to the appeal, or any other person specified for that purpose by order of the High Court, and leave shall not be granted unless the High Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed.

(3) The determination of the High Court of an application for leave to apply for judicial review referred to in *subsection (2)*, or of an application for such judicial review, shall be final and no appeal shall lie from the decision of the High Court to the Supreme Court in either case except with the leave of the High Court, which leave shall only be granted where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

(4) *Subsection (3)* shall not apply to a determination of the High Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution.

(5) References in *subsection (1)* to the Order shall be construed as including references to the Order as amended or re-enacted (with or without modification) by rules of court.

Regulations
(Part 3).

20.—(1) The Minister may make regulations for—

(a) prescribing, with the consent of the Minister for Finance, fees payable to an Appeals Officer in relation to appeals, including oral hearings of such appeals; different fees may be payable in relation to cases of different classes or description, and

(b) the purpose of enabling this Act to have full effect.

(2) All fees received under regulations made under *subsection (1)* shall be disposed of for the benefit of the Exchequer in such manner as the Minister for Finance shall direct.

Offences and
penalties.

21.—(1) A person who communicates with an Appeals Officer for the purpose of influencing improperly the consideration by an

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Appeals Officer of an appeal or the decision of an Appeals Officer Pr.3 S.21
in relation to an appeal is guilty of an offence.

(2) (a) A person who in or in relation to an application for a licence, or an appeal against a decision on an application for a licence or the revocation or amendment of a licence, makes a statement in writing which to the person's knowledge is false or misleading in a material respect is guilty of an offence.

(b) Where a person is convicted of an offence under *paragraph (a)*, any licence granted to that person, or to some other person on whose behalf the convicted person was authorised to act, consequent on the application or appeal in relation to which the information was furnished, shall be revoked from the date of the conviction.

(3) (a) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate is guilty of an offence and liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(b) Where the affairs of a body corporate are managed by its members, *paragraph (a)* shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

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

PART 4

CONSERVATION AND MANAGEMENT OF FISH STOCKS

22.—(1) In this Part—

Interpretation
(Part 4).

“Act of 1978” means Fisheries (Amendment) Act 1978;

“Agreement” means the United Nations Agreement on the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks, done at New York on 4 August 1995 and signed on behalf of the State at New York on 27 June 1996, the text of which in the English language is, for convenience of reference, set out in *Schedule 2*;

“conservation area” shall be construed in accordance with *section 24*;

“conservation regulations” means regulations made under *section 25*;

“Convention” means the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982 and ratified by the State on 21 June 1996;

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“highly migratory fish stocks” means stocks of fish species listed in *Schedule 3*;

“licence” means, in the case of an Irish sea-fishing boat, a licence granted under section 222B(3) of the Principal Act and, in the case of a foreign sea-fishing boat, a similar licence granted by the competent authority of the flag state of the boat;

“master”, in relation to a sea-fishing boat, includes a person in charge of the boat;

“party state” means a state which has consented to be bound by the Agreement and for which the Agreement is in force and which has been declared to be a party state by the Minister for Foreign Affairs under *section 23*;

“straddling fish stocks” means stocks occurring within the exclusive economic zones of two or more coastal states or both within the exclusive economic zones of two or more coastal states and in an area beyond and adjacent to such zones.

(2) A word or expression which is used in this Part and which is also used in the Agreement has, unless the context otherwise requires, the same meaning in this Part as it has in the Agreement.

Party states.

23.—(1) The Minister for Foreign Affairs may by order declare—

- (a) that any state specified in the order is a party state, and
- (b) that a designation of an appropriate authority (the details of which shall be set out in the order) has been made to the Secretary-General of the United Nations by that state pursuant to Article 21(4) of the Agreement.

(2) An order that is in force under *subsection (1)* shall be *prima facie* evidence that any state specified in the order is a party state.

(3) The Minister for Foreign Affairs may by order amend or revoke an order under *subsection (1)*.

(4) Every order under this section shall be laid before each House of the Oireachtas as soon as may be after it is made.

Conservation areas.

24.—(1) The Minister may by order declare that an area of the high seas (the co-ordinates of which shall be set out in the order) is a conservation area (“conservation area”) being an area of the high seas which is a conservation and management area for straddling fish stocks and highly migratory fish stocks covered by a subregional or regional fisheries management organisation or arrangement for the purposes of Part III of the Agreement.

(2) An order that is in force under *subsection (1)* shall be *prima facie* evidence that the area of the high seas mentioned in the order is a conservation area.

(3) The Minister may by order amend or revoke an order under *subsection (1)*.

(4) Every order made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made.

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25.—(1) Without prejudice to the generality of section 3(1) of the European Communities Act 1972, the Minister may by regulations (“conservation regulations”) make provision to give effect to any provision either of the treaties or of any act adopted by an institution of the European Communities which authorises any or all of the Member States of the European Communities to prohibit, or otherwise regulate in a manner specified in the provision, fishing of straddling fish stocks or highly migratory fish stocks—

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Regulations relating to conservation and management of straddling and highly migratory fish stocks.

- (a) with respect to any sea-fishing boat within the exclusive fishery limits of the State, in waters, or in part of waters, under its or their sovereignty or jurisdiction,
- (b) with respect to an Irish sea-fishing boat, wherever it may be, in waters anywhere, and
- (c) with respect to a foreign sea-fishing boat flying the flag of a party state within a conservation area, in waters outside those under its or their sovereignty or jurisdiction (subject to the rules of international law).

(2) Conservation regulations may include such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purposes of the regulations (including provisions repealing, amending or applying, with or without modification, other enactments, exclusive of this Act).

(3) A person who fishes or attempts to fish in contravention of any conservation regulation is guilty of an offence and is liable on conviction on indictment to a fine not exceeding €500,000 and, as a statutory consequence of the conviction, to forfeiture of all or any fish or fishing gear found on the boat to which the offence relates.

26.—(1) Section 220 of the Principal Act is amended by—

Sea fisheries protection officers.

- (a) substituting for paragraph (b) the following paragraph:

“(b) every member of the Defence Forces (not below the rank of corporal or leading rating) for the time being serving on board any ship, vessel or aircraft belonging to or employed in the service of the State;”,

and

- (b) deleting paragraph (e).

(2) Subject to any Agreement procedures and *subsection (3)* in the case of a foreign sea-fishing boat flying the flag of another party state, a sea fisheries protection officer may, for the purpose of enforcing conservation regulations or *section 27* or ensuring compliance with conservation and management measures for straddling fish stocks and highly migratory fish stocks established by a sub-regional or regional fisheries management organisation or arrangement under the Agreement, with respect to an Irish sea-fishing boat or a foreign sea-fishing boat flying the flag of another party state, within a conservation area, do all or any of the following:

- (a) order the boat to be stopped for the purposes of identification or of allowing the officer to board it,
- (b) board and search the boat,

(c) inspect—

- (i) the boat and any gear, facilities, fish and fish products on the boat, and
- (ii) any relevant documents, and for that purpose to require the master or a member of the crew of the boat to produce any certificates of registry, licences, log-books, papers or other documents relating to the boat, for inspection and take extracts from or copies of such,

to verify compliance with the relevant conservation and management measures under the Agreement or any conservation regulations,

- (d) require the name and address of every person on board the boat,
- (e) if the officer suspects there has been a serious violation or a serious contravention of, or a serious failure to comply with, any conservation regulations, *section 27* or *subsection (6)*, by any person on board the boat, the officer may, without warrant, arrest the person and seize and detain the boat and take the boat and all persons on board the boat to the nearest or most convenient port and there or at such other suitable port detain the boat and persons,
- (f) use such reasonable force as is necessary for the purpose of exercising the foregoing powers,
- (g) exercise such other powers of inspection, in respect of a foreign sea-fishing boat flying the flag of another party state, as established in any Agreement procedures.

(3) A sea fisheries protection officer may only exercise the powers of a sea fisheries protection officer under *subsection (2)* or *(9)* in respect of a foreign sea-fishing boat flying the flag of another party state in accordance with and if permitted by any Agreement procedures.

(4) A sea fisheries protection officer boarding or intending to board or inspecting a sea-fishing boat under this section shall—

- (a) in the case of a foreign sea-fishing boat flying the flag of another party state, comply with any Agreement procedures,
- (b) present credentials to the master of the boat and produce a copy of the text of the relevant conservation and management measures under the Agreement or conservation regulations pursuant to those measures in the conservation area in question,
- (c) initiate notice to the flag state at the time of the boarding and inspection,
- (d) not interfere with the master's ability to communicate with the authorities of the flag state during the boarding and inspection,

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- (e) provide a copy of a report on the boarding and inspection to the master and to the authorities of the flag state concerned, noting therein any objection or statement which the master wishes to have included in the report, Pr.4 S.26
- (f) promptly leave the boat following completion of the inspection if he or she finds no evidence of a serious violation, and
- (g) avoid the use of force except when and to the degree necessary to ensure the safety of the officer and where the officer is obstructed, intimidated or interfered with in exercising his or her duties. The degree of force used shall not exceed that reasonably required in the circumstances.

(5) Where, following boarding and inspection under this section of a foreign sea-fishing boat flying the flag of a party state, there are clear grounds for believing that the boat has committed a serious violation, and the flag state concerned has either failed to respond or failed to take any action as required under Article 21(6) or (7) of the Agreement, a sea fisheries protection officer may remain on board the boat and secure evidence and may require the master to assist in further investigation, including, where appropriate, by bringing the boat without delay to the nearest appropriate port as specified in any Agreement procedures.

(6) A person who—

- (a) obstructs, intimidates or interferes with a sea fisheries protection officer in the exercise of any of the powers conferred on him or her, or
- (b) refuses or neglects to comply with any requirement of such officer or answer any question asked by such officer,

under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 6 months, or to both.

(7) In a prosecution for an offence under *subsection (6)* it is a defence for the defendant to show that the sea fisheries protection officer concerned failed to comply with *subsection (4)*.

(8) A sea fisheries protection officer or a person acting under the orders of a sea fisheries protection officer is not liable in any proceedings for anything done in the purported exercise of the powers of a sea fisheries protection officer under this section or *section 27* if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(9) Where a sea fisheries protection officer in exercise of the powers conferred on him or her under *subsection (2)(e)* has detained a sea-fishing boat and the persons on board the boat at a port, sections 233A (inserted by section 11 of the Act of 1994), 234 (inserted by section 13 of the Act of 1978 and amended by section 12 of the Act of 1994), 235 (inserted by section 14 of the Act of 1978) and 236 of the Principal Act apply and shall be construed accordingly and any reference in those sections to Chapter II or III of Part XIII of the Principal Act shall be construed as including a reference to this Part.

(10) In this section—

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“Agreement procedures” means procedures established under Article 21(2) pursuant to Article 21(1) of the Agreement;

“serious violation” has the meaning assigned to it by Article 21(11) of the Agreement.

Duty of master of sea-fishing boat in conservation area.

27.—(1) It shall be the duty of the master or other person in charge of an Irish sea-fishing boat or a foreign sea-fishing boat flying the flag of a party state in any conservation area—

- (a) to accept and facilitate prompt and safe boarding by a sea fisheries protection officer under *section 26(2)*,
- (b) to co-operate with and assist in the inspection under *section 26(2)* of the sea-fishing boat,
- (c) not to obstruct, intimidate or interfere or allow any obstruction, intimidation or interference with the sea fisheries protection officer in the exercise of his or her powers under *section 26(2)*,
- (d) to allow the sea fisheries protection officer to communicate with the authorities of the flag state and the inspecting state during the boarding and inspection,
- (e) to provide reasonable facilities, including where appropriate, food and accommodation, to the sea fisheries protection officer, and
- (f) to facilitate safe disembarcation by the sea fisheries protection officer.

(2) Where the master of a sea-fishing boat refuses to accept boarding and inspection in accordance with *section 26* or Article 21 of the Agreement, the sea fisheries protection officer concerned shall (except in circumstances where, in accordance with generally accepted international regulations, procedures and practices relating to safety at sea, it is necessary to delay the boarding and inspection) direct the master to submit immediately to boarding and inspection.

(3) If a direction under *subsection (2)* is not complied with—

- (a) the sea fisheries protection officer shall order the sea-fishing boat to be returned to port immediately and the master shall comply with the direction forthwith, and
- (b) where the boat is an Irish sea-fishing boat, any licence in force in respect of the boat shall stand suspended forthwith. The period of suspension of the licence shall, subject to *subsection (6)*, be decided by the licensing authority.

(4) A person who fails to comply with *subsection (1)* or (2) is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000.

(5) A person who fails to comply with *subsection (3)(a)* is guilty of an offence and is liable on conviction on indictment to a fine not exceeding €500,000 and, as a statutory consequence of the conviction, to forfeiture of any fish or fishing gear on the sea-fishing boat concerned.

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(6) Where a licence has been suspended under *subsection (3)(b)*, the District Court may, upon application to it, if it thinks the circumstances so warrant, direct the licensing authority to re-issue and return the licence or it may reduce the period of suspension.

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(7) A licence suspended under *subsection (3)(b)* shall be delivered to the licensing authority as soon as practicable after it is suspended.

(8) A person who fails to comply with *subsection (7)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €500.

28.—Section 4(1) (inserted by section 14 of the Act of 1994) of the Act of 1978 is amended by inserting “and *sections 25(3) and 27(5) of the Fisheries (Amendment) Act 2003*” after “and 227”.

Forfeiture of sea-fishing boats in certain circumstances.

29.—(1) On conviction on indictment of a person under section 221, 222, 222A, 222B, 222C, 223, 223A, 224B, 226 or 227 of the Principal Act, a conservation regulation or *section 27(5)*, the court may at its discretion, in addition to any other fines and forfeitures to which any such person may be liable, suspend or cancel a certificate of competency held by the person being the master or other officer of the Irish sea-fishing boat concerned and require the holder to surrender the certificate to the Minister.

Suspension or cancellation of certificate of competency of master, etc., of Irish sea-fishing boat in certain circumstances.

(2) Where a certificate of competency has been suspended or cancelled under *subsection (1)*, the court may, upon application to it, if it thinks the circumstances so warrant, direct the Minister to re-issue and return the certificate suspended or cancelled or it may reduce the period of suspension.

(3) Any certificate of competency suspended or cancelled under this section shall be delivered to the Minister as soon as practicable after it is suspended or cancelled.

(4) A person who fails to comply with *subsection (3)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €500.

(5) In this section, “certificate of competency” means a valid certificate of competency issued by the Minister under section 3 of the Merchant Shipping (Certification of Seamen) Act 1979.

30.—(1) Table I (as amended by section 16 of the Act of 1994) to section 2 of the Act of 1978 is amended at reference number 4 by substituting “€500,000” for “£200,000” in column (3).

Increase in certain fines.

(2) Section 222C(5) (inserted by section 3 of the Act of 1983) of the Principal Act is amended by substituting “€500,000” for “£200,000”.

(3) Section 15 of the Act of 1994 is amended by substituting—

(a) in subsection (2), “€3,000” for “£1,000”, and

(b) in subsection (3), “a fine not exceeding €3,000 or to imprisonment for a term not exceeding 6 months” for “a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months”.

[No. 21.] *Fisheries (Amendment) Act 2003.* [2003.]

Pt.4
Amendment of
Schedule 3.

31.—(1) The Minister may by order amend *Schedule 3* in order to reflect amendments made to the list of highly migratory species of fish in Annex 1 to the Convention in accordance with the Convention.

(2) Every order made under *subsection (1)* shall be laid before each House of the Oireachtas as soon as may be after it is made.

PART 5

FORESHORE APPLICATION AND OTHER FEES

Foreshore
application and
other fees.

32.—(1) An application for—

- (a) a lease under section 2 of the Act of 1933,
- (b) a licence under section 3 of that Act,
- (c) approval under section 10 of that Act,
- (d) a consent under section 13 of that Act, or
- (e) an amendment of any such lease, licence, approval or consent,

shall be subject to such fee as the Minister may, with the consent of the Minister for Finance, prescribe.

(2) Every—

- (a) approval under section 10 of the Act of 1933, or
- (b) consent under section 13 of that Act,

shall be subject to such fee as the Minister may, with the consent of the Minister for Finance, prescribe.

(3) Regulations under this section may provide for fees of different amounts in respect of applications referred to in *subsection (1)* or approvals or consents referred to in *subsection (2)* of different categories and in different circumstances.

(4) Where under regulations made under this section a fee is payable in respect of any application referred to in *subsection (1)* or approval or consent referred to in *subsection (2)*, the application shall not be considered or the approval or consent granted, as the case may be, unless the Department of Communications, Marine and Natural Resources is in receipt of the fee.

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

(6) Every fee received by the Department of Communications, Marine and Natural Resources under this section shall be disposed of for the benefit of the Exchequer in such manner as the Minister for Finance directs.

(7) In this section—

“Act of 1933” means the Foreshore Act 1933;

“prescribe” means prescribe by regulations.

APPEALS OFFICER

Terms and conditions of appointment

1. The term of office of an Appeals Officer shall be 3 years and, subject to *paragraph 3*, a person may be reappointed to that office for a second or subsequent term.

2. An Appeals Officer shall be paid such remuneration and such allowances for expenses as the Minister, with the consent of the Minister for Finance, may from time to time determine.

3. An Appeals Officer—

(a) may at any time resign his or her office by letter addressed to the Minister and the resignation shall take effect on and from the date of receipt of the letter,

(b) may at any time be removed from office by the Minister for stated reasons.

4. (a) A person who is, for the time being—

(i) entitled under the Standing Orders of either House of the Oireachtas to sit therein,

(ii) a member of the European Parliament, or

(iii) a member of a local authority,

shall be disqualified from being appointed as an Appeals Officer.

(b) Where an Appeals Officer—

(i) accepts nomination as a member of Seanad Éireann,

(ii) is nominated as a candidate for election to either House of the Oireachtas or to the European Parliament,

(iii) is regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997, as having been elected to that Parliament to fill a vacancy, or

(iv) becomes a member of a local authority,

he or she shall thereupon cease to be an Appeals Officer.

Avoidance of conflict of interests

5. An Appeals Officer shall advise the licensing authority and the appellant forthwith of any particular appeal which might give rise to a conflict of interests for the Appeals Officer and shall not consider that appeal any further.

Accounts and Audit

6. (a) An Appeals Officer shall keep, in such form as may be approved by the Minister with the consent of the Minister for Finance, proper and usual accounts of all moneys received or expended by him or her in each financial year.
- (b) Accounts kept in pursuance of *paragraph (a)* shall be submitted to the Comptroller and Auditor General for audit within 6 months after the year to which they relate and those accounts, when so audited, shall (together with the report of the Comptroller and Auditor General on the accounts) be presented to the Minister, who shall cause copies of the audited accounts and the report to be laid before each House of the Oireachtas.

Annual and other reports, etc., to Minister

7. (a) As soon as practicable, but not later than 6 months, after the end of each financial year, an Appeals Officer shall, in writing, report to the Minister on the performance of the functions of the Appeals Officer in that year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas.
- (b) The report shall identify the appellants involved and the number, subject matter and results of each appeal determined by an Appeals Officer during the year to which it relates.
- (c) An Appeals Officer shall give to the Minister such information relating to the performance of his or her functions as the Minister may from time to time request. In particular, and without prejudice to the generality of the foregoing, an Appeals Officer shall, at such intervals as he or she thinks fit, or as the Minister may direct, conduct reviews of his or her organisation and of the systems and procedures used by him or her in relation to appeals and shall report thereon to the Minister with any recommendations designed to improve the due processing of appeals.
- (d) An Appeals Officer may, on his or her own initiative, or at the request of the Minister, make submissions or recommendations to the Minister on any matter relating to the functions of the Appeals Officer or to licensing under section 222B of the Principal Act.

Secretarial assistance

8. (a) The Minister may appoint such and so many persons as he or she considers necessary to assist an Appeals Officer in the performance of his or her functions and such persons shall receive such remuneration and be subject to such other terms and conditions of service as the Minister may, with the consent of the Minister for Finance, determine.
- (b) Any person appointed under *paragraph (a)* shall be a civil servant within the meaning of the Civil Service Regulation Act 1956.

Indemnity

9. An Appeals Officer shall be entitled to an indemnity in respect of proceedings taken against him or her in respect of acts done in good faith in his or her official capacity.

UNITED NATIONS AGREEMENT ON THE IMPLEMENTATION OF THE
PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE
SEA OF 10 DECEMBER 1982 RELATING TO THE CONSERVATION AND
MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY
FISH STOCKS

THE STATES PARTIES TO THIS AGREEMENT,

RECALLING the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982,

DETERMINED to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks,

RESOLVED to improve cooperation between States to that end,

CALLING for more effective enforcement by flag States, port States and coastal States of the conservation and management measures adopted for such stocks,

SEEKING to address in particular the problems identified in Chapter 17, programme area C, of Agenda 21 adopted by the United Nations Conference on Environment and Development, namely, that the management of high seas fisheries is inadequate in many areas and that some resources are over-utilised; noting that there are problems of unregulated fishing, over-capitalisation, excessive fleet size, vessel reflagging to escape controls, insufficiently selective gear, unreliable databases and lack of sufficient cooperation between States,

COMMITTING themselves to responsible fisheries,

CONSCIOUS of the need to avoid adverse impacts on the marine environment, preserve biodiversity, maintain the integrity of marine ecosystems and minimise the risk of long-term or irreversible effects of fishing operations,

RECOGNISING the need for specific assistance, including financial, scientific and technological assistance, in order that developing States can participate effectively in the conservation, management and sustainable use of straddling fish stocks and highly migratory fish stocks,

CONVINCED that an agreement for the implementation of the relevant provisions of the Convention would best serve these purposes and contribute to the maintenance of international peace and security,

AFFIRMING that matters not regulated by the Convention or by this Agreement continue to be governed by the rules and principles of general international law,

HAVE AGREED AS FOLLOWS:

PART I

GENERAL PROVISIONS

Article 1

Use of terms and scope

1. For the purposes of this Agreement:
 - (a) 'Convention' means the United Nations Convention on the Law of the Sea of 10 December 1982;
 - (b) 'conservation and management measures' means measures to conserve and manage one or more species of living marine resources that are adopted and applied consistent with the relevant rules of international law as reflected in the Convention and this Agreement;
 - (c) 'fish' includes molluscs and crustaceans except those belonging to sedentary species as defined in Article 77 of the Convention; and
 - (d) 'arrangement' means a cooperative mechanism established in accordance with the Convention and this Agreement by two or more States for the purpose, *inter alia*, of establishing conservation and management measures in a sub-region or region for one or more straddling fish stocks or highly migratory fish stocks.
2. (a) 'States Parties' means States which have consented to be bound by this Agreement and for which the Agreement is in force.
 - (b) This Agreement applies *mutatis mutandis*:
 - (i) to any entity referred to in Article 305(1)(c), (d) and (e) of the Convention and
 - (ii) subject to Article 47, to any entity referred to as an 'international organisation' in Annex IX, Article 1, of the Convention

which becomes a Party to this Agreement, and to that extent 'States Parties' refers to those entities.
3. This Agreement applies *mutatis mutandis* to other fishing entities whose vessels fish on the high seas.

Article 2

Objective

The objective of this Agreement is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention.

Application

1. Unless otherwise provided, this Agreement applies to the conservation and management of straddling fish stocks and highly migratory fish stocks beyond areas under national jurisdiction, except that Articles 6 and 7 apply also to the conservation and management of such stocks within areas under national jurisdiction, subject to the different legal régimes that apply within areas under national jurisdiction and in areas beyond national jurisdiction as provided for in the Convention.

2. In the exercise of its sovereign rights for the purpose of exploring and exploiting, conserving and managing straddling fish stocks and highly migratory fish stocks within areas under national jurisdiction, the coastal State shall apply *mutatis mutandis* the general principles enumerated in Article 5.

3. States shall give due consideration to the respective capacities of developing States to apply Articles 5, 6 and 7 within areas under national jurisdiction and their need for assistance as provided for in this Agreement. To this end, Part VII applies *mutatis mutandis* in respect of areas under national jurisdiction.

Article 4

Relationship between this Agreement and the Convention

Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention.

PART II

CONSERVATION AND MANAGEMENT OF STRADDLING
FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Article 5

General principles

In order to conserve and manage straddling fish stocks and highly migratory fish stocks, coastal States and States fishing on the high seas shall, in giving effect to their duty to cooperate in accordance with the Convention:

- (a) adopt measures to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimum utilisation;
- (b) ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

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SCH.2

- (c) apply the precautionary approach in accordance with Article 6;
- (d) assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent on the target stocks;
- (e) adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent on the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;
- (f) minimise pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species (hereinafter referred to as 'non-target species'), and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;
- (g) protect biodiversity in the marine environment;
- (h) take measures to prevent or eliminate over-fishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;
- (i) take into account the interests of artisanal and subsistence fishers;
- (j) collect and share, in a timely manner, complete and accurate data concerning fishing activities on, *inter alia*, vessel position, catch of target and non-target species and fishing effort, as set out in Annex I, as well as information from national and international research programmes;
- (k) promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management; and
- (l) implement and enforce conservation and management measures through effective monitoring, control and surveillance.

Article 6

Application of the precautionary approach

1. States shall apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment.

2. States shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.

3. In implementing the precautionary approach, States shall: SCH.2

- (a) improve decision-making for fishery resource conservation and management by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty;
- (b) apply the guidelines set out in Annex II and determine, on the basis of the best scientific information available, stock-specific reference points and the action to be taken if they are exceeded;
- (c) take into account, *inter alia*, uncertainties relating to the size and productivity of the stocks, reference points, stock condition in relation to such reference points, levels and distribution of fishing mortality and the impact of fishing activities on non-target and associated or dependent species, as well as existing and predicted oceanic, environmental and socio-economic conditions; and
- (d) develop data-collection and research programmes to assess the impact of fishing on non-target and associated or dependent species and their environment, and adopt plans which are necessary to ensure the conservation of such species and to protect habitats of special concern.

4. States shall take measures to ensure that, when reference points are approached, they will not be exceeded. In the event that they are exceeded, States shall, without delay, take the action determined under paragraph 3(b) to restore the stocks.

5. Where the status of target stocks or non-target or associated or dependent species is of concern, States shall subject such stocks and species to enhanced monitoring in order to review their status and the efficacy of conservation and management measures. They shall revise those measures regularly in the light of new information.

6. For new or exploratory fisheries, States shall adopt as soon as possible cautious conservation and management measures, including, *inter alia*, catch limits and effort limits. Such measures shall remain in force until there are sufficient data to allow assessment of the impact of the fisheries on the long-term sustainability of the stocks, whereupon conservation and management measures based on that assessment shall be implemented. The latter measures shall, if appropriate, allow for the gradual development of the fisheries.

7. If a natural phenomenon has a significant adverse impact on the status of straddling fish stocks or highly migratory fish stocks, States shall adopt conservation and management measures on an emergency basis to ensure that fishing activity does not exacerbate such adverse impact. States shall also adopt such measures on an emergency basis where fishing activity presents a serious threat to the sustainability of such stocks. Measures taken on an emergency basis shall be temporary and shall be based on the best scientific evidence available.

Article 7

Compatibility of conservation and management measures

1. Without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing

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the living marine resources within areas under national jurisdiction as provided for in the Convention, and the right of all States for their nationals to engage in fishing on the high seas in accordance with the Convention:

- (a) with respect to straddling fish stocks, the relevant coastal States and the States whose nationals fish for such stocks in the adjacent high seas area shall seek, either directly or through the appropriate mechanisms for cooperation provided for in Part III, to agree upon the measures necessary for the conservation of these stocks in the adjacent high seas area;
- (b) with respect to highly migratory fish stocks, the relevant coastal States and other States whose nationals fish for such stocks in the region shall cooperate, either directly or through the appropriate mechanisms for cooperation provided for in Part III, with a view to ensuring conservation and promoting the objective of optimum utilisation of such stocks throughout the region, both within and beyond the areas under national jurisdiction.

2. Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory fish stocks in their entirety. To this end, coastal States and States fishing on the high seas have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks. In determining compatible conservation and management measures, States shall:

- (a) take into account the conservation and management measures adopted and applied in accordance with Article 61 of the Convention in respect of the same stocks by coastal States within areas under national jurisdiction and ensure that measures established in respect of such stocks for the high seas do not undermine the effectiveness of such measures;
- (b) take into account previously agreed measures established and applied for the high seas in accordance with the Convention in respect of the same stocks by relevant coastal States and States fishing on the high seas;
- (c) take into account previously agreed measures established and applied in accordance with the Convention in respect of the same stocks by a subregional or regional fisheries management organisation or arrangement;
- (d) take into account the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and the geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction;
- (e) take into account the respective dependence of the coastal States and the States fishing on the high seas on the stocks concerned; and
- (f) ensure that such measures do not result in harmful impact on the living marine resources as a whole.

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3. In giving effect to their duty to cooperate, States shall make every effort to agree on compatible conservation and management measures within a reasonable period of time. SCH.2

4. If no agreement can be reached within a reasonable period of time, any of the States concerned may invoke the procedures for the settlement of disputes provided for in Part VIII.

5. Pending agreement on compatible conservation and management measures, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature. In the event that they are unable to agree on such arrangements, any of the States concerned may, for the purpose of obtaining provisional measures, submit the dispute to a court or tribunal in accordance with the procedures for the settlement of disputes provided for in Part VIII.

6. Provisional arrangements or measures entered into or prescribed pursuant to paragraph 5 shall take into account the provisions of this Part, shall have due regard to the rights and obligations of all States concerned, shall not jeopardise or hamper the reaching of final agreement on compatible conservation and management measures and shall be without prejudice to the final outcome of any dispute settlement procedure.

7. Coastal States shall regularly inform States fishing on the high seas in the subregion or region, either directly or through appropriate subregional or regional fisheries management organisations or arrangements, or through other appropriate means, of the measures they have adopted for straddling fish stocks and highly migratory fish stocks within areas under their national jurisdiction.

8. States fishing on the high seas shall regularly inform other interested States, either directly or through appropriate subregional or regional fisheries management organisations or arrangements, or through other appropriate means, of the measures they have adopted for regulating the activities of vessels flying their flag which fish for such stocks on the high seas.

PART III

MECHANISMS FOR INTERNATIONAL COOPERATION CONCERNING STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Article 8

Cooperation for conservation and management

1. Coastal States and States fishing on the high seas shall, in accordance with the Convention, pursue cooperation in relation to straddling fish stocks and highly migratory fish stocks either directly or through appropriate subregional or regional fisheries management organisations or arrangements, taking into account the specific characteristics of the subregion or region, to ensure effective conservation and management of such stocks.

2. States shall enter into consultations in good faith and without delay, particularly where there is evidence that the straddling fish stocks and highly migratory fish stocks concerned may be under threat of over-exploitation or where a new fishery is being developed for such stocks. To this end, consultations may be initiated at the

request of any interested State with a view to establishing appropriate arrangements to ensure conservation and management of the stocks. Pending agreement on such arrangements, States shall observe the provisions of this Agreement and shall act in good faith and with due regard to the rights, interests and duties of other States.

3. Where a subregional or regional fisheries management organisation or arrangement has the competence to establish conservation and management measures for particular straddling fish stocks or highly migratory fish stocks, States fishing for the stocks on the high seas and relevant coastal States shall give effect to their duty to cooperate by becoming members of such organisation or participants in such arrangement, or by agreeing to apply the conservation and management measures established by such organisation or arrangement. States having a real interest in the fisheries concerned may become members of such organisation or participants in such arrangement. The terms of participation in such organisation or arrangement shall not preclude such States from membership or participation; nor shall they be applied in a manner which discriminates against any State or group of States having a real interest in the fisheries concerned.

4. Only those States which are members of such an organisation or participants in such an arrangement, or which agree to apply the conservation and management measures established by such organisation or arrangement, shall have access to the fishery resources to which those measures apply.

5. Where there is no subregional or regional fisheries management organisation or arrangement to establish conservation and management measures for a particular straddling fish stock or highly migratory fish stock, relevant coastal States and States fishing on the high seas for such stock in the subregion or region shall cooperate to establish such an organisation or enter into other appropriate arrangements to ensure conservation and management of such stock and shall participate in the work of the organisation or arrangement.

6. Any State intending to propose that action be taken by an intergovernmental organisation having competence with respect to living resources should, where such action would have a significant effect on conservation and management measures already established by a competent subregional or regional fisheries management organisation or arrangement, consult through that organisation or arrangement with its members or participants. To the extent practicable, such consultation should take place prior to the submission of the proposal to the intergovernmental organisation.

Article 9

Subregional and regional fisheries management organisations and arrangements

1. In establishing subregional or regional fisheries management organisations or in entering into subregional or regional fisheries management arrangements for straddling fish stocks and highly migratory fish stocks, States shall agree, *inter alia*, on:

- (a) the stocks to which conservation and management measures apply, taking into account the biological characteristics of the stocks concerned and the nature of the fisheries involved;

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- (b) the area of application, taking into account Article 7(1), and SCH.2
the characteristics of the subregion or region, including
socio-economic, geographical and environmental factors;
- (c) the relationship between the work of the new organisation
or arrangement and the rôle, objectives and operations
of any relevant existing fisheries management organis-
ations or arrangements; and
- (d) the mechanisms by which the organisation or arrangement
will obtain scientific advice and review the status of the
stocks, including, where appropriate, the establishment of
a scientific advisory body.

2. States cooperating in the formation of a subregional or regional fisheries management organisation or arrangement shall inform other States which they are aware have a real interest in the work of the proposed organisation or arrangement of such cooperation.

Article 10

Functions of subregional and regional fisheries management organisations and arrangements

In fulfilling their obligations to cooperate through subregional or regional fisheries management organisations or arrangements, States shall:

- (a) agree on and comply with conservation and management measures to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks;
- (b) agree, as appropriate, on participatory rights such as allocations of allowable catch or levels of fishing effort;
- (c) adopt and apply any generally recommended international minimum standards for the responsible conduct of fishing operations;
- (d) obtain and evaluate scientific advice, review the status of the stocks and assess the impact of fishing on non-target and associated or dependent species;
- (e) agree on standards for collection, reporting, verification and exchange of data on fisheries for the stocks;
- (f) compile and disseminate accurate and complete statistical data, as described in Annex I, to ensure that the best scientific evidence is available, while maintaining confidentiality where appropriate;
- (g) promote and conduct scientific assessments of the stocks and relevant research and disseminate the results thereof;
- (h) establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement;
- (i) agree on means by which the fishing interests of new members of the organisation or new participants in the arrangement will be accommodated;

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- (j) agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner;
- (k) promote the peaceful settlement of disputes in accordance with Part VIII;
- (l) ensure the full cooperation of their relevant national agencies and industries in implementing the recommendations and decisions of the organisation or arrangement; and
- (m) give due publicity to the conservation and management measures established by the organisation or arrangement.

Article 11

New members or participants

In determining the nature and extent of participatory rights for new members of a subregional or regional fisheries management organisation, or for new participants in a subregional or regional fisheries management arrangement, States shall take into account, *inter alia*:

- (a) the status of the straddling fish stocks and highly migratory fish stocks and the existing level of fishing effort in the fishery;
- (b) the respective interests, fishing patterns and fishing practices of new and existing members or participants;
- (c) the respective contributions of new and existing members or participants to conservation and management of the stocks, to the collection and provision of accurate data and to the conduct of scientific research on the stocks;
- (d) the needs of coastal fishing communities which are dependent mainly on fishing for the stocks;
- (e) the needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources; and
- (f) the interests of developing States from the subregion or region in whose areas of national jurisdiction the stocks also occur.

Article 12

Transparency in activities of subregional and regional fisheries management organisations and arrangements

1. States shall provide for transparency in the decision-making process and other activities of subregional and regional fisheries management organisations and arrangements.

2. Representatives from other intergovernmental organisations and representatives from non-governmental organisations concerned with straddling fish stocks and highly migratory fish stocks shall be afforded the opportunity to take part in meetings of subregional and regional fisheries management organisations and arrangements as observers or otherwise, as appropriate, in accordance with the

procedures of the organisation or arrangement concerned. Such procedures shall not be unduly restrictive in this respect. Such intergovernmental organisations and non-governmental organisations shall have timely access to the records and reports of such organisations and arrangements, subject to the procedural rules on access to them. SCH.2

Article 13

Strengthening of existing organisations and arrangements

States shall cooperate to strengthen existing subregional and regional fisheries management organisations and arrangements in order to improve their effectiveness in establishing and implementing conservation and management measures for straddling fish stocks and highly migratory fish stocks.

Article 14

Collection and provision of information and cooperation in scientific research

1. States shall ensure that fishing vessels flying their flag provide such information as may be necessary in order to fulfil their obligations under this Agreement. To this end, States shall in accordance with Annex I:

- (a) collect and exchange scientific, technical and statistical data with respect to fisheries for straddling fish stocks and highly migratory fish stocks;
- (b) ensure that data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfil the requirements of subregional or regional fisheries management organisations or arrangements; and
- (c) take appropriate measures to verify the accuracy of such data.

2. States shall cooperate, either directly or through subregional or regional fisheries management organisations or arrangements:

- (a) to agree on the specification of data and the format in which they are to be provided to such organisations or arrangements, taking into account the nature of the stocks and the fisheries for those stocks; and
- (b) to develop and share analytical techniques and stock assessment methodologies to improve measures for the conservation and management of straddling fish stocks and highly migratory fish stocks.

3. Consistent with Part XIII of the Convention, States shall cooperate, either directly or through competent international organisations, to strengthen scientific research capacity in the field of fisheries and promote scientific research related to the conservation and management of straddling fish stocks and highly migratory fish stocks for the benefit of all. To this end, a State or the competent international organisation conducting such research beyond areas under national jurisdiction shall actively promote the publication and

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dissemination to any interested States of the results of that research and information relating to its objectives and methods and, to the extent practicable, shall facilitate the participation of scientists from those States in such research.

Article 15

Enclosed and semi-enclosed seas

In implementing this Agreement in an enclosed or semi-enclosed sea, States shall take into account the natural characteristics of that sea and shall also act in a manner consistent with Part IX of the Convention and other relevant provisions thereof.

Article 16

Areas of high seas surrounded entirely by an area under the national jurisdiction of a single State

1. States fishing for straddling fish stocks and highly migratory fish stocks in an area of the high seas surrounded entirely by an area under the national jurisdiction of a single State and the latter State shall cooperate to establish conservation and management measures in respect of those stocks in the high seas area. Having regard to the natural characteristics of the area, States shall pay special attention to the establishment of compatible conservation and management measures for such stocks pursuant to Article 7. Measures taken in respect of the high seas shall take into account the rights, duties and interests of the coastal State under the Convention, shall be based on the best scientific evidence available and shall also take into account any conservation and management measures adopted and applied in respect of the same stocks in accordance with Article 61 of the Convention by the coastal State in the area under national jurisdiction. States shall also agree on measures for monitoring, control, surveillance and enforcement to ensure compliance with the conservation and management measures in respect of the high seas.

2. Pursuant to Article 8, States shall act in good faith and make every effort to agree without delay on conservation and management measures to be applied in the carrying out of fishing operations in the area referred to in paragraph 1. If, within a reasonable period of time, the fishing States concerned and the coastal State are unable to agree on such measures, they shall, having regard to paragraph 1, apply Article 7(4)(5) and (6) relating to provisional arrangements or measures. Pending the establishment of such provisional arrangements or measures, the States concerned shall take measures in respect of vessels flying their flag in order that they not engage in fisheries which could undermine the stocks concerned.

PART IV

NON-MEMBERS AND NON-PARTICIPANTS

Article 17

Non-members of organisations and non-participants in arrangements

1. A State which is not a member of a subregional or regional fisheries management organisation or is not a participant in a subregional or regional fisheries management arrangement, and which

[2003.] *Fisheries (Amendment) Act 2003.* [No. 21.]

does not otherwise agree to apply the conservation and management measures established by such organisation or arrangement, is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and management of the relevant straddling fish stocks and highly migratory fish stocks. SCH.2

2. Such State shall not authorise vessels flying its flag to engage in fishing operations for the straddling fish stocks or highly migratory fish stocks which are subject to the conservation and management measures established by such organisation or arrangement.

3. States which are members of a subregional or regional fisheries management organisation or participants in a subregional or regional fisheries management arrangement shall, individually or jointly, request the fishing entities referred to in Article 1(3) which have fishing vessels in the relevant area to cooperate fully with such organisation or arrangement in implementing the conservation and management measures it has established, with a view to having such measures applied *de facto* as extensively as possible to fishing activities in the relevant area. Such fishing entities shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures in respect of the stocks.

4. States which are members of such organisation or participants in such arrangement shall exchange information with respect to the activities of fishing vessels flying the flags of States which are neither members of the organisation nor participants in the arrangement and which are engaged in fishing operations for the relevant stocks. They shall take measures consistent with this Agreement and international law to deter activities of such vessels which undermine the effectiveness of subregional or regional conservation and management measures.

PART V

DUTIES OF THE FLAG STATE

Article 18

Duties of the flag State

1. A State whose vessels fish on the high seas shall take such measures as may be necessary to ensure that vessels flying its flag comply with subregional and regional conservation and management measures and that such vessels do not engage in any activity which undermines the effectiveness of such measures.

2. A State shall authorise the use of vessels flying its flag for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels under the Convention and this Agreement.

3. Measures to be taken by a State in respect of vessels flying its flag shall include:

- (a) control of such vessels on the high seas by means of fishing licences, authorisations or permits, in accordance with any applicable procedures agreed at the subregional, regional or global level;

- (b) establishment of regulations:
- (i) to apply terms and conditions to the licence, authorisation or permit sufficient to fulfil any subregional, regional or global obligations of the flag State,
 - (ii) to prohibit fishing on the high seas by vessels which are not duly licensed or authorised to fish, or fishing on the high seas by vessels otherwise than in accordance with the terms and conditions of a licence, authorisation or permit,
 - (iii) to require vessels fishing on the high seas to carry the licence, authorisation or permit on board at all times and to produce it on demand for inspection by a duly authorised person,
 - (iv) to ensure that vessels flying its flag do not conduct unauthorised fishing within areas under the national jurisdiction of other States;
- (c) establishment of a national record of fishing vessels authorised to fish on the high seas and provision of access to the information contained in that record on request by directly interested States, taking into account any national laws of the flag State regarding the release of such information;
- (d) requirements for marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognisable vessel and gear marking systems, such as the Food and Agriculture Organisation of the United Nations Standard Specifications for the Marking and Identification of Fishing Vessels;
- (e) requirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with subregional, regional and global standards for collection of such data;
- (f) requirements for verifying the catch of target and non-target species through such means as observer programmes, inspection schemes, unloading reports, supervision of transshipment and monitoring of landed catches and market statistics;
- (g) monitoring, control and surveillance of such vessels, their fishing operations and related activities by, *inter alia*:
- (i) the implementation of national inspection schemes and subregional and regional schemes for cooperation in enforcement pursuant to Articles 21 and 22, including requirements for such vessels to permit access by duly authorised inspectors from other States,
 - (ii) the implementation of national observer programmes and subregional and regional observer programmes in which the flag State is a participant, including requirements for such vessels to permit access by observers from other States to carry out the functions agreed under the programmes,

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(iii) the development and implementation of vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with any national programmes and those which have been subregionally, regionally or globally agreed among the States concerned; SCH.2

(h) regulation of transshipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined;

(i) regulation of fishing activities to ensure compliance with sub-regional, regional or global measures, including those aimed at minimising catches of non-target species.

4. Where there is a subregionally, regionally or globally agreed system of monitoring, control and surveillance in effect, States shall ensure that the measures they impose on vessels flying their flag are compatible with that system.

PART VI

COMPLIANCE AND ENFORCEMENT

Article 19

Compliance and enforcement by the flag State

1. A State shall ensure compliance by vessels flying its flag with subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks. To this end, that State shall:

(a) enforce such measures irrespective of where violations occur;

(b) investigate immediately and fully any alleged violation of subregional or regional conservation and management measures, which may include the physical inspection of the vessels concerned, and report promptly to the State alleging the violation and the relevant subregional or regional organisation or arrangement on the progress and outcome of the investigation;

(c) require any vessel flying its flag to give information to the investigating authority regarding vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation;

(d) if satisfied that sufficient evidence is available in respect of an alleged violation, refer the case to its authorities with a view to instituting proceedings without delay in accordance with its laws and, where appropriate, detain the vessel concerned;

(e) ensure that, where it has been established, in accordance with its laws, a vessel has been involved in the commission of a serious violation of such measures, the vessel does not engage in fishing operations on the high seas until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with.

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2. All investigations and judicial proceedings shall be carried out expeditiously. Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities. Measures applicable in respect of masters and other officers of fishing vessels shall include provisions which may permit, *inter alia*, refusal, withdrawal or suspension of authorisations to serve as masters or officers on such vessels.

Article 20

International cooperation in enforcement

1. States shall cooperate, either directly or through subregional or regional fisheries management organisations or arrangements, to ensure compliance with and enforcement of subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks.

2. A flag State conducting an investigation of an alleged violation of conservation and management measures for straddling fish stocks or highly migratory fish stocks may request the assistance of any other State whose cooperation may be useful in the conduct of that investigation. All States shall endeavour to meet reasonable requests made by a flag State in connection with such investigations.

3. A flag State may undertake such investigations directly, in cooperation with other interested States or through the relevant subregional or regional fisheries management organisation or arrangement. Information on the progress and outcome of the investigations shall be provided to all States having an interest in, or affected by, the alleged violation.

4. States shall assist each other in identifying vessels reported to have engaged in activities undermining the effectiveness of subregional, regional or global conservation and management measures.

5. States shall, to the extent permitted by national laws and regulations, establish arrangements for making available to prosecuting authorities in other States evidence relating to alleged violations of such measures.

6. Where there are reasonable grounds for believing that a vessel on the high seas has been engaged in unauthorised fishing within an area under the jurisdiction of a coastal State, the flag State of that vessel, at the request of the coastal State concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the coastal State in taking appropriate enforcement action in such cases and may authorise the relevant authorities of the coastal State to board and inspect the vessel on the high seas. This paragraph is without prejudice to Article 111 of the Convention.

7. States Parties which are members of a subregional or regional fisheries management organisation or participants in a subregional or regional fisheries management arrangement may take action in accordance with international law, including through recourse to subregional or regional procedures established for this purpose, to deter vessels which have engaged in activities which undermine the effectiveness of or otherwise violate the conservation and management

measures established by that organisation or arrangement from fishing on the high seas in the subregion or region until such time as appropriate action is taken by the flag State. SCH.2

Article 21

Subregional and regional cooperation in enforcement

1. In any high seas area covered by a subregional or regional fisheries management organisation or arrangement, a State Party which is a member of such organisation or a participant in such arrangement may, through its duly authorised inspectors, board and inspect, in accordance with paragraph 2, fishing vessels flying the flag of another State Party to this Agreement, whether or not such State Party is also a member of the organisation or a participant in the arrangement, for the purpose of ensuring compliance with conservation and management measures for straddling fish stocks and highly migratory fish stocks established by that organisation or arrangement.

2. States shall establish, through subregional or regional fisheries management organisations or arrangements, procedures for boarding and inspection pursuant to paragraph 1, as well as procedures to implement other provisions of this Article. Such procedures shall be consistent with this Article and the basic procedures set out in Article 22 and shall not discriminate against non-members of the organisation or non-participants in the arrangement. Boarding and inspection as well as any subsequent enforcement action shall be conducted in accordance with such procedures. States shall give due publicity to procedures established pursuant to this paragraph.

3. If, within two years of the adoption of this Agreement, any organisation or arrangement has not established such procedures, boarding and inspection pursuant to paragraph 1, as well as any subsequent enforcement action, shall, pending the establishment of such procedures, be conducted in accordance with this Article and the basic procedures set out in Article 22.

4. Prior to taking action under this Article, inspecting States shall, either directly or through the relevant subregional or regional fisheries management organisation or arrangement, inform all States whose vessels fish on the high seas in the subregion or region of the form of identification issued to their duly authorised inspectors. The vessels used for boarding and inspection shall be clearly marked and identifiable as being on government service. At the time of becoming a Party to this Agreement, a State shall designate an appropriate authority to receive notifications pursuant to this Article and shall give due publicity of such designation through the relevant subregional or regional fisheries management organisation or arrangement.

5. Where, following a boarding and inspection, there are clear grounds for believing that a vessel has engaged in any activity contrary to the conservation and management measures referred to in paragraph 1, the inspecting State shall, where appropriate, secure evidence and shall promptly notify the flag State of the alleged violation.

6. The flag State shall respond to the notification referred to in paragraph 5 within three working days of its receipt, or such other period as may be prescribed in procedures established in accordance with paragraph 2, and shall either:

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- (a) fulfil, without delay, its obligations under Article 19 to investigate and, if evidence so warrants, take enforcement action with respect to the vessel, in which case it shall promptly inform the inspecting State of the results of the investigation and of any enforcement action taken; or
- (b) authorise the inspecting State to investigate.

7. Where the flag State authorises the inspecting State to investigate an alleged violation, the inspecting State shall, without delay, communicate the results of that investigation to the flag State. The flag State shall, if evidence so warrants, fulfil its obligations to take enforcement action with respect to the vessel. Alternatively, the flag State may authorise the inspecting State to take such enforcement action as the flag State may specify with respect to the vessel, consistent with the rights and obligations of the flag State under this Agreement.

8. Where, following boarding and inspection, there are clear grounds for believing that a vessel has committed a serious violation, and the flag State has either failed to respond or failed to take action as required under paragraph 6 or 7, the inspectors may remain on board and secure evidence and may require the master to assist in further investigation including, where appropriate, by bringing the vessel without delay to the nearest appropriate port, or to such other port as may be specified in procedures established in accordance with paragraph 2. The inspecting State shall immediately inform the flag State of the name of the port to which the vessel is to proceed. The inspecting State and the flag State and, as appropriate, the port State shall take all necessary steps to ensure the well-being of the crew regardless of their nationality.

9. The inspecting State shall inform the flag State and the relevant organisation or the participants in the relevant arrangement of the results of any further investigation.

10. The inspecting State shall require its inspectors to observe generally accepted international regulations, procedures and practices relating to the safety of the vessel and the crew, minimise interference with fishing operations and, to the extent practicable, avoid action which would adversely affect the quality of the catch on board. The inspecting State shall ensure that boarding and inspection is not conducted in a manner that would constitute harassment of any fishing vessel.

11. For the purposes of this Article, a serious violation means:

- (a) fishing without a valid licence, authorisation or permit issued by the flag State in accordance with Article 18(3)(a);
- (b) failing to maintain accurate records of catch and catch-related data, as required by the relevant subregional or regional fisheries management organisation or arrangement, or serious misreporting of catch, contrary to the catch reporting requirements of such organisation or arrangement;
- (c) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established by the relevant subregional or regional fisheries management organisation or arrangement;

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- (d) directed fishing for a stock which is subject to a moratorium SCH.2 or for which fishing is prohibited;
- (e) using prohibited fishing gear;
- (f) falsifying or concealing the markings, identity or registration of a fishing vessel;
- (g) concealing, tampering with or disposing of evidence relating to an investigation;
- (h) multiple violations which together constitute a serious disregard of conservation and management measures; or
- (i) such other violations as may be specified in procedures established by the relevant subregional or regional fisheries management organisation or arrangement.

12. Notwithstanding the other provisions of this Article, the flag State may, at any time, take action to fulfil its obligations under Article 19 with respect to an alleged violation. Where the vessel is under the direction of the inspecting State, the inspecting State shall, at the request of the flag State, release the vessel to the flag State along with full information on the progress and outcome of its investigation.

13. This Article is without prejudice to the right of the flag State to take any measures, including proceedings to impose penalties, according to its laws.

14. This Article applies *mutatis mutandis* to boarding and inspection by a State Party which is a member of a subregional or regional fisheries management organisation or a participant in a subregional or regional fisheries management arrangement and which has clear grounds for believing that a fishing vessel flying the flag of another State Party has engaged in any activity contrary to relevant conservation and management measures referred to in paragraph 1 in the high seas area covered by such organisation or arrangement, and such vessel has subsequently, during the same fishing trip, entered into an area under the national jurisdiction of the inspecting State.

15. Where a subregional or regional fisheries management organisation or arrangement has established an alternative mechanism which effectively discharges the obligation under this Agreement of its members or participants to ensure compliance with the conservation and management measures established by the organisation or arrangement, members of such organisation or participants in such arrangement may agree to limit the application of paragraph 1 as between themselves in respect of the conservation and management measures which have been established in the relevant high seas area.

16. Action taken by States other than the flag State in respect of vessels having engaged in activities contrary to subregional or regional conservation and management measures shall be proportionate to the seriousness of the violation.

17. Where there are reasonable grounds for suspecting that a fishing vessel on the high seas is without nationality, a State may board and inspect the vessel. Where evidence so warrants, the State may take such action as may be appropriate in accordance with international law.

18. States shall be liable for damage or loss attributable to them arising from action taken pursuant to this Article when such action is unlawful or exceeds that reasonably required in the light of available information to implement the provisions of this Article.

Article 22

Basic procedures for boarding and inspection pursuant to
Article 21

1. The inspecting State shall ensure that its duly authorised inspectors:

- (a) present credentials to the master of the vessel and produce a copy of the text of the relevant conservation and management measures or rules and regulations in force in the high seas area in question, pursuant to those measures;
- (b) initiate notice to the flag State at the time of the boarding and inspection;
- (c) do not interfere with the master's ability to communicate with the authorities of the flag State during the boarding and inspection;
- (d) provide a copy of a report on the boarding and inspection to the master and to the authorities of the flag State, noting therein any objection or statement which the master wishes to have included in the report;
- (e) promptly leave the vessel following completion of the inspection if they find no evidence of a serious violation; and
- (f) avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.

2. The duly authorised inspectors of an inspecting State shall have the authority to inspect the vessel, its licence, gear, equipment, records, facilities, fish and fish products and any relevant documents necessary to verify compliance with the relevant conservation and management measures.

3. The flag State shall ensure that vessel masters:

- (a) accept and facilitate prompt and safe boarding by the inspectors;
- (b) cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures;
- (c) do not obstruct, intimidate or interfere with the inspectors in the performance of their duties;
- (d) allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection;

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(e) provide reasonable facilities, including, where appropriate, SCH.2 food and accommodation, to the inspectors;

(f) facilitate safe disembarcation by the inspectors.

4. In the event that the master of a vessel refuses to accept boarding and inspection in accordance with this Article and Article 21, the flag State shall, except in circumstances where, in accordance with generally accepted international regulations, procedures and practices relating to safety at sea, it is necessary to delay the boarding and inspection, direct the master of the vessel to submit immediately to boarding and inspection and, if the master does not comply with such direction, shall suspend the vessel's authorisation to fish and order the vessel to return immediately to port. The flag State shall advise the inspecting State of the action it has taken when the circumstances referred to in this paragraph arise.

Article 23

Measures taken by a port State

1. A port State has the right and the duty to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures. When taking such measures a port State shall not discriminate in form or in fact against the vessels of any State.

2. A port State may, *inter alia*, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals.

3. States may adopt regulations empowering the relevant national authorities to prohibit landings and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of subregional, regional or global conservation and management measures on the high seas.

4. Nothing in this Article affects the exercise by States of their sovereignty over ports in their territory in accordance with international law.

PART VII

REQUIREMENTS OF DEVELOPING STATES

Article 24

Recognition of the special requirements of developing States

1. States shall give full recognition to the special requirements of developing States in relation to conservation and management of straddling fish stocks and highly migratory fish stocks and development of fisheries for such stocks. To this end, States shall, either directly or through the United Nations Development Programme, the Food and Agriculture Organisation of the United Nations and other specialised agencies, the Global Environment Facility, the Commission on Sustainable Development and other appropriate international and regional organisations and bodies, provide assistance to developing States.

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2. In giving effect to the duty to cooperate in the establishment of conservation and management measures for straddling fish stocks and highly migratory fish stocks, States shall take into account the special requirements of developing States, in particular:

- (a) the vulnerability of developing States which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or parts thereof;
- (b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States, particularly small island developing States;
- (c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States.

Article 25

Forms of cooperation with developing States

1. States shall cooperate, either directly or through subregional, regional or global organisations:

- (a) to enhance the ability of developing States, in particular the least-developed among them and small island developing States, to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks;
- (b) to assist developing States, in particular the least-developed among them and small island developing States, to enable them to participate in high seas fisheries for such stocks, including facilitating access to such fisheries subject to Articles 5 and 11;
- (c) to facilitate the participation of developing States in subregional and regional fisheries management organisations and arrangements.

2. Cooperation with developing States for the purposes set out in this Article shall include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, including through joint-venture arrangements, and advisory and consultative services.

3. Such assistance shall, *inter alia*, be directed specifically towards:

- (a) improved conservation and management of straddling fish stocks and highly migratory fish stocks through collection, reporting, verification, exchange and analysis of fisheries data and related information;
- (b) stock assessment and scientific research;
- (c) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional

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observer programmes and access to technology and SCH.2 equipment.

Article 26

Special assistance in the implementation of this Agreement

1. States shall cooperate to establish special funds to assist developing States in the implementation of this Agreement, including assisting developing States to meet the costs involved in any proceedings for the settlement of disputes to which they may be parties.

2. States and international organisations should assist developing States in establishing new subregional or regional fisheries management organisations or arrangements, or in strengthening existing organisations or arrangements, for the conservation and management of straddling fish stocks and highly migratory fish stocks.

PART VIII

PEACEFUL SETTLEMENT OF DISPUTES

Article 27

Obligation to settle disputes by peaceful means

States have the obligation to settle their disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Article 28

Prevention of disputes

States shall cooperate in order to prevent disputes. To this end, States shall agree on efficient and expeditious decision-making procedures within subregional and regional fisheries management organisations and arrangements and shall strengthen existing decision-making procedures as necessary.

Article 29

Disputes of a technical nature

Where a dispute concerns a matter of a technical nature, the States concerned may refer the dispute to an *ad hoc* expert panel established by them. The panel shall confer with the States concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.

Article 30

Procedures for the settlement of disputes

1. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply *mutatis mutandis* to any dispute

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between States Parties to this Agreement concerning the interpretation or application of this Agreement, whether or not they are also Parties to the Convention.

2. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply *mutatis mutandis* to any dispute between States Parties to this Agreement concerning the interpretation or application of a subregional, regional or global fisheries agreement relating to straddling fish stocks or highly migratory fish stocks to which they are parties, including any dispute concerning the conservation and management of such stocks, whether or not they are also Parties to the Convention.

3. Any procedure accepted by a State Party to this Agreement and the Convention pursuant to Article 287 of the Convention shall apply to the settlement of disputes under this Part, unless that State Party, when signing, ratifying or acceding to this Agreement, or at any time thereafter, has accepted another procedure pursuant to Article 287 for the settlement of disputes under this Part.

4. A State Party to this Agreement which is not a Party to the Convention, when signing, ratifying or acceding to this Agreement, or at any time thereafter, shall be free to choose, by means of a written declaration, one or more of the means set out in Article 287(1) of the Convention for the settlement of disputes under this Part. Article 287 shall apply to such a declaration, as well as to any dispute to which such State is a party which is not covered by a declaration in force. For the purposes of conciliation and arbitration in accordance with Annexes V, VII and VIII to the Convention, such State shall be entitled to nominate conciliators, arbitrators and experts to be included in the lists referred to in Annex V, Article 2, Annex VII, Article 2, and Annex VIII, Article 2, for the settlement of disputes under this Part.

5. Any court or tribunal to which a dispute has been submitted under this Part shall apply the relevant provisions of the Convention, of this Agreement and of any relevant subregional, regional or global fisheries agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law not incompatible with the Convention, with a view to ensuring the conservation of the straddling fish stocks and highly migratory fish stocks concerned.

Article 31

Provisional measures

1. Pending the settlement of a dispute in accordance with this Part, the parties to the dispute shall make every effort to enter into provisional arrangements of a practical nature.

2. Without prejudice to Article 290 of the Convention, the court or tribunal to which the dispute has been submitted under this Part may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent damage to the stocks in question, as well as in the circumstances referred to in Article 7(5) and Article 16(2).

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3. A State Party to this Agreement which is not a Party to the Convention may declare that, notwithstanding Article 290(5), of the Convention, the International Tribunal for the Law of the Sea shall not be entitled to prescribe, modify or revoke provisional measures without the agreement of such State.

Article 32

Limitations on applicability of procedures for the settlement of disputes

Article 297(3) of the Convention applies also to this Agreement.

PART IX

NON-PARTIES TO THIS AGREEMENT

Article 33

Non-parties to this Agreement

1. States Parties shall encourage non-parties to this Agreement to become parties thereto and to adopt laws and regulations consistent with its provisions.

2. States Parties shall take measures consistent with this Agreement and international law to deter the activities of vessels flying the flag of non-parties which undermine the effective implementation of this Agreement.

PART X

GOOD FAITH AND ABUSE OF RIGHTS

Article 34

Good faith and abuse of rights

States Parties shall fulfil in good faith the obligations assumed under this Agreement and shall exercise the rights recognised in this Agreement in a manner which would not constitute an abuse of right.

PART XI

RESPONSIBILITY AND LIABILITY

Article 35

Responsibility and liability

States Parties are liable in accordance with international law for damage or loss attributable to them in regard to this Agreement.

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PART XII

REVIEW CONFERENCE

Article 36

Review conference

1. Four years after the date of entry into force of this Agreement, the Secretary-General of the United Nations shall convene a conference with a view to assessing the effectiveness of this Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks. The Secretary-General shall invite to the conference all States Parties and those States and entities which are entitled to become Parties to this Agreement as well as those intergovernmental and non-governmental organisations entitled to participate as observers.

2. The Conference shall review and assess the adequacy of the provisions of this Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in the conservation and management of straddling fish stocks and highly migratory fish stocks.

PART XIII

FINAL PROVISIONS

Article 37

Signature

This Agreement shall be open for signature by all States and the other entities referred to in Article 1(2)(b) and shall remain open for signature at United Nations Headquarters for 12 months from 4 December 1995.

Article 38

Ratification

This Agreement is subject to ratification by States and the other entities referred to in Article 1(2)(b). The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 39

Accession

This Agreement shall remain open for accession by States and the other entities referred to in Article 1(2)(b). The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 40

Entry into force

1. This Agreement shall enter into force 30 days after the date of deposit of the 30th instrument of ratification or accession.

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2. For each State or entity which ratifies the Agreement or accedes thereto after the deposit of the 30th instrument of ratification or accession, this Agreement shall enter into force on the 30th day following the deposit of its instrument of ratification or accession. SCH.2

Article 41

Provisional application

1. This Agreement shall be applied provisionally by a State or entity which consents to its provisional application by so notifying the depositary in writing. Such provisional application shall become effective from the date of receipt of the notification.

2. Provisional application by a State or entity shall terminate on the entry into force of this agreement for that State or entity or on notification by that State or entity to the depositary in writing of its intention to terminate provisional application.

Article 42

Reservations and exceptions

No reservations or exceptions may be made to this Agreement.

Article 43

Declarations and statements

Article 42 does not preclude a State or entity, when signing, ratifying or acceding to this Agreement, from making declarations or statements, however phrased or named, with a view, *inter alia*, to the harmonisation of its laws and regulations with the provisions of this Agreement, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Agreement in their application to that State or entity.

Article 44

Relation to other agreements

1. This Agreement shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Agreement and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.

2. Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Agreement, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Agreement, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.

3. States Parties intending to conclude an agreement referred to in paragraph 2 shall notify the other States Parties through the depositary of this Agreement of their intention to conclude the agreement and of the modification or suspension for which it provides.

Article 45

Amendment

1. A State may, by written communication addressed to the Secretary-General of the United Nations, propose amendments to this Agreement and request the convening of a conference to consider such proposed amendments. The Secretary-General shall circulate such communication to all States Parties. If, within six months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Secretary-General shall convene the conference.

2. The decision-making procedure applicable at the amendment conference convened pursuant to paragraph 1 shall be the same as that applicable at the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, unless otherwise decided by the conference. The conference should make every effort to reach agreement on any amendments by way of consensus and there should be no voting on them until all efforts at consensus have been exhausted.

3. Once adopted, amendments to this agreement shall be open for signature at United Nations Headquarters by States Parties for 12 months from the date of adoption, unless otherwise provided in the amendment itself.

4. Articles 38, 39, 47 and 50 apply to all amendments to this Agreement.

5. Amendments to this Agreement shall enter into force for the States Parties ratifying or acceding to them on the 30th day following the deposit of instruments of ratification or accession by two-thirds of the States Parties. Thereafter, for each State Party ratifying or acceding to an amendment after the deposit of the required number of such instruments, the amendment shall enter into force on the 30th day following the deposit of its instrument of ratification or accession.

6. An amendment may provide that a smaller or a larger number of ratifications or accessions shall be required for its entry into force than are required by this Article.

7. A State which becomes a Party to this Agreement after the entry into force of amendments in accordance with paragraph 5 shall, failing an expression of a different intention by that State:

(a) be considered as a Party to this Agreement as so amended;

(b) be considered as a Party to the unamended Agreement in relation to any State Party not bound by the amendment.

Denunciation

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Agreement and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Agreement to which it would be subject under international law independently of this Agreement.

Article 47

Participation by international organisations

1. In cases where an international organisation referred to in Annex IX, Article 1, of the Convention does not have competence over all the matters governed by this Agreement, Annex IX to the Convention shall apply *mutatis mutandis* to participation by such international organisation in this Agreement, except that the following provisions of that Annex shall not apply:

(a) Article 2, first sentence;

(b) Article 3(1).

2. In cases where an international organisation referred to in Annex IX, Article 1, of the Convention has competence over all the matters governed by this Agreement, the following provisions shall apply to participation by such international organisation in this Agreement:

(a) at the time of signature or accession, such international organisation shall make a declaration stating:

(i) that it has competence over all the matters governed by this Agreement;

(ii) that, for this reason, its Member States shall not become States Parties, except in respect of their territories for which the international organisation has no responsibility;

(iii) that it accepts the rights and obligations of States under this Agreement;

(b) participation of such an international organisation shall in no case confer any rights under this Agreement on Member States of the international organisation;

(c) in the event of a conflict between the obligations of an international organisation under this Agreement and its obligations under the agreement establishing the international organisation or any acts relating to it, the obligations under this Agreement shall prevail.

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Article 48

Annexes

1. The Annexes form an integral part of this Agreement and, unless expressly provided otherwise, a reference to this Agreement or to one of its Parts includes a reference to the Annexes relating thereto.

2. The Annexes may be revised from time to time by States Parties. Such revisions shall be based on scientific and technical considerations. Notwithstanding the provisions of Article 45, if a revision to an Annex is adopted by consensus at a meeting of States Parties, it shall be incorporated in this Agreement and shall take effect from the date of its adoption or from such other date as may be specified in the revision. If a revision to an Annex is not adopted by consensus at such a meeting, the amendment procedures set out in Article 45 shall apply.

Article 49

Depositary

The Secretary-General of the United Nations shall be the depositary of this Agreement and any amendments or revisions thereto.

Article 50

Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Agreement are equally authentic.

In witness whereof, the undersigned Plenipotentiaries, being duly authorised thereto, have signed this Agreement.

Opened for signature at New York, this fourth day of December, one thousand nine hundred and ninety-five, in a single original, in the Arabic, Chinese, English, French, Russian and Spanish languages.

STANDARD REQUIREMENTS FOR THE COLLECTION
AND SHARING OF DATA

Article 1

General principles

1. The timely collection, compilation and analysis of data are fundamental to the effective conservation and management of straddling fish stocks and highly migratory fish stocks. To this end, data from fisheries for these stocks on the high seas and those in areas under national jurisdiction are required and should be collected and compiled in such a way as to enable statistically meaningful analysis for the purposes of fishery resource conservation and management. These data include catch and fishing effort statistics and other fishery-related information, such as vessel-related and other data for standardising fishing effort. Data collected should also include information on non-target and associated or dependent species. All data should be verified to ensure accuracy. Confidentiality of non-aggregated data shall be maintained. The dissemination of such data shall be subject to the terms on which they have been provided.

2. Assistance, including training as well as financial and technical assistance, shall be provided to developing States in order to build capacity in the field of conservation and management of living marine resources. Assistance should focus on enhancing capacity to implement data collection and verification, observer programmes, data analysis and research projects supporting stock assessments. The fullest possible involvement of developing State scientists and managers in conservation and management of straddling fish stocks and highly migratory fish stocks should be promoted.

Article 2

Principles of data collection, compilation and exchange

The following general principles should be considered in defining the parameters for collection, compilation and exchange of data from fishing operations for straddling fish stocks and highly migratory fish stocks:

- (a) States should ensure that data are collected from vessels flying their flag on fishing activities according to the operational characteristics of each fishing method (e.g., each individual tow for trawl, each set for long-line and purse-seine, each school fished for pole-and-line and each day fished for troll) and in sufficient detail to facilitate effective stock assessment;
- (b) States should ensure that fishery data are verified through an appropriate system;
- (c) States should compile fishery-related and other supporting scientific data and provide them in an agreed format and in a timely manner to the relevant subregional or regional fisheries management organisation or arrangement where one exists. Otherwise, States should cooperate to exchange data either directly or through such other cooperative mechanisms as may be agreed among them;

- (d) States should agree, within the framework of subregional or regional fisheries management organisations or arrangements, or otherwise, on the specification of data and the format in which they are to be provided, in accordance with this Annex and taking into account the nature of the stocks and the fisheries for those stocks in the region. Such organisations or arrangements should request non-members or non-participants to provide data concerning relevant fishing activities by vessels flying their flag;
- (e) such organisations or arrangements shall compile data and make them available in a timely manner and in an agreed format to all interested States under the terms and conditions established by the organisation or arrangement; and
- (f) scientists of the flag State and from the relevant subregional or regional fisheries management organisation or arrangement should analyse the data separately or jointly, as appropriate.

Article 3

Basic fishery data

1. States shall collect and make available to the relevant subregional or regional fisheries management organisation or arrangement the following types of data in sufficient detail to facilitate effective stock assessment in accordance with agreed procedures:

- (a) time series of catch and effort statistics by fishery and fleet;
- (b) total catch in number, nominal weight, or both, by species (both target and non-target) as is appropriate to each fishery. (Nominal weight is defined by the Food and Agriculture Organisation of the United Nations as the live-weight equivalent of the landings);
- (c) discard statistics, including estimates where necessary, reported as number or nominal weight by species, as is appropriate to each fishery;
- (d) effort statistics appropriate to each fishing method;
- (e) fishing location, date and time fished and other statistics on fishing operations as appropriate.

2. States shall also collect where appropriate and provide to the relevant subregional or regional fisheries management organisation or arrangement information to support stock assessment, including:

- (a) composition of the catch according to length, weight and sex;
- (b) other biological information supporting stock assessments, such as information on age, growth, recruitment, distribution and stock identity;
- (c) other relevant research, including surveys of abundance, biomass surveys, hydro-acoustic surveys, research on environmental factors affecting stock abundance, and oceanographic and ecological studies.

Vessel data and information

1. States should collect the following types of vessel-related data for standardising fleet composition and vessel fishing power and for converting between different measures of effort in the analysis of catch and effort data:

- (a) vessel identification, flag and port of registry;
- (b) vessel type;
- (c) vessel specifications (e.g., material of construction, date built, registered length, gross registered tonnage, power of main engines, hold capacity and catch storage methods);
- (d) fishing gear description (e.g., types, gear specifications and quantity).

2. The flag State will collect the following information:

- (a) navigation and position fixing aids;
- (b) communication equipment and international radio call sign;
- (c) crew size.

Article 5

Reporting

A State shall ensure that vessels flying its flag sends to its national fisheries administration and, where agreed, to the relevant subregional or regional fisheries management organisation or arrangement, logbook-data on catch and effort, including data on fishing operations on the high seas, at sufficiently frequent intervals to meet national requirements and regional and international obligations. Such data shall be transmitted, where necessary, by radio, telex, fax or satellite transmission or by other means.

Article 6

Data verification

States or, as appropriate, subregional or regional fisheries management organisations or arrangements should establish mechanisms for verifying fishery data, such as:

- (a) position verification through vessel monitoring systems;
- (b) scientific observer programmes to monitor catch, effort, catch composition (target and non-target) and other details of fishing operations;
- (c) vessel trip, landing and transshipment reports;
- (d) port sampling.

Article 7

Data exchange

1. Data collected by flag States must be shared with other flag States and relevant coastal States through appropriate subregional or regional fisheries management organisations or arrangements. Such organisations or arrangements shall compile data and make them available in a timely manner and in an agreed format to all interested States under the terms and conditions established by the organisation or arrangement, while maintaining confidentiality of non-aggregated data, and should, to the extent feasible, develop database systems which provide efficient access to data.

2. At the global level, collection and dissemination of data should be effected through the Food and Agriculture Organisation of the United Nations. Where a subregional or regional fisheries management organisation or arrangement does not exist, that organisation may also do the same at the subregional or regional level by agreement with the States concerned.

Annex II

GUIDELINES FOR THE APPLICATION OF
PRECAUTIONARY REFERENCE POINTS IN
CONSERVATION AND MANAGEMENT OF STRADDLING
FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

1. A precautionary reference point is an estimated value derived through an agreed scientific procedure, which corresponds to the state of the resource and of the fishery, and which can be used as a guide for fisheries management.

2. Two types of precautionary reference points should be used: conservation, or limit, reference points and management, or target, reference points. Limit reference points set boundaries which are intended to constrain harvesting within safe biological limits within which the stocks can produce maximum sustainable yield. Target reference points are intended to meet management objectives.

3. Precautionary reference points should be stock-specific to account, *inter alia*, for the reproductive capacity, the resilience of each stock and the characteristics of fisheries exploiting the stock, as well as other sources of mortality and major sources of uncertainty.

4. Management strategies shall seek to maintain or restore populations of harvested stocks, and where necessary associated or dependent species, at levels consistent with previously agreed precautionary reference points. Such reference points shall be used to trigger pre-agreed conservation and management action. Management strategies shall include measures which can be implemented when precautionary reference points are approached.

5. Fishery management strategies shall ensure that the risk of exceeding limit reference points is very low. If a stock falls below a limit reference point or is at risk of falling below such a reference point, conservation and management action should be initiated to facilitate stock recovery. Fishery management strategies shall ensure that target reference points are not exceeded on average.

[2003.] *Fisheries (Amendment) Act 2003.* [No. 21.]

6. When information for determining reference points for a fishery is poor or absent, provisional reference points shall be set. Provisional reference points may be established by analogy to similar and better-known stocks. In such situations, the fishery shall be subject to enhanced monitoring so as to enable revision of provisional reference points as improved information becomes available. SCH.2

7. The fishing mortality rate which generates maximum sustainable yield should be regarded as a minimum standard for limit reference points. For stocks which are not over-fished, fishery management strategies shall ensure that fishing mortality does not exceed that which corresponds to maximum sustainable yield, and that the biomass does not fall below a predefined threshold. For over-fished stocks, the biomass which would produce maximum sustainable yield can serve as a rebuilding target.

SCHEDULE 3

Sections 22 and 31.

LIST OF HIGHLY MIGRATORY FISH SPECIES

1.	Albacore tuna:	<i>Thunnus alalunga</i>
2.	Bluefin tuna:	<i>Thunnus thynnus</i>
3.	Bigeye tuna:	<i>Thunnus obesus</i>
4.	Skipjack tuna:	<i>Katsuwonus pelamis</i>
5.	Yellowfin tuna:	<i>Thunnus albacares</i>
6.	Blackfin tuna:	<i>Thunnus atlanticus</i>
7.	Little tuna:	<i>Euthynnus alletteratus; Euthynnus affinis</i>
8.	Southern bluefin tuna:	<i>Thunnus maccoyii</i>
9.	Frigate mackerel:	<i>Auxis thazard; Auxis rochei</i>
10.	Pomfrets:	Family <i>Bramidae</i>
11.	Marlins:	<i>Tetrapturus angustirostris; Tetrapturus belone; Tetrapturus pfluegeri; Tetrapturus albidus; Tetrapturus audax; Tetrapturus georgei; Makaira mazara; Makaira indica; Makaira nigricans</i>
12.	Sail-fishes:	<i>Istiophorus platypterus; Istiophorus albicans</i>
13.	Swordfish:	<i>Xiphias gladius</i>
14.	Sauries:	<i>Scomberesox saurus; Cololabis saira; Cololabis adocetus; Scomberesox saurus scombroides</i>
15.	Dolphin:	<i>Coryphaena hippurus; Coryphaena equiselis</i>
16.	Oceanic sharks:	<i>Hexanchus griseus; Cetorhinus maximus; Family Alopiidae; Rhincodon typus; Family Carcharhinidae; Family Sphyrnidae; Family Isurida</i>
17.	Cetaceans:	Family <i>Physeteridae; Family Balaenopteridae; Family Balaenidae; Family Eschrichtiidae; Family Monodontidae; Family Ziphiidae; Family Delphinidae</i>

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OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
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FISHERIES (AMENDMENT) ACT 2003

EXPLANATORY AND FINANCIAL MEMORANDUM

[*This memorandum is not part of the Act and does not purport to be a legal interpretation.*]

Introduction

The principal purposes of this Act are to

- **transfer sea-fishing boat licensing functions from the Minister for Communications, Marine and Natural Resources, to restate with amendments section 222B of the Fisheries (Consolidation) Act 1959 as amended, and to provide enabling power to the Minister to charge fees for sea-fishing licence and other applications, licences, etc. (Part 2),**
- establish an independent statutory appeals process for sea-fishing boat licensing, so as to give effect to a commitment in the current Programme for Government (*Part 3 with Schedule 1*),
- give effect to the United Nations Agreement (referred to in this document as the Agreement) on the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks, done at New York on 4 August 1995, which was signed by the State on 27 June 1996 subject to ratification [*Part 4 with Schedule 2* (which contains the text of that Agreement) and *Schedule 3* (which lists highly migratory fish species for protection)], and
- **provide enabling power to the Minister to charge foreshore application and other fees (Part 5).**

The opportunity is being taken to strengthen sea fisheries enforcement legislation in some important respects (*sections 26, 29 and 30*).

The remaining Part, *Part 1*, comprising *sections 1* (Short title, collective citation and construction) and *2* (Interpretation), is a standard feature of Acts.

Under *Part 3* of the Act, when enacted, applicants for sea-fishing boat licences, licensees and third parties will be entitled to appeal licensing decisions and the final decision on such licensing will be made by the independent Appeals Officer (who will be a suitably qualified and experienced lawyer) determining the appeal, subject only to:

- (a) that determination being in conformity with the law then in force (including the legal obligations of the State arising under any EU or other international instruments);
- (b) such policy directives in relation to sea-fishing boat licensing as the Minister for Communications, Marine and Natural Resources may give in writing from time to time; and
- (c) Judicial Review by the High Court if application is made thereto within 3 months after that determination is made (*section 19* of Act).

In essence, the appeals provisions of the Act represent a streamlined version of provisions of the Fisheries (Amendment) Act 1997 (No. 23 of 1997) in relation to aquaculture licensing appeals, with the appointment of an Appeals Officer (rather than a multi-person Appeals Board) generally modelled on membership of the Refugee Appeals Tribunal [appointed for the purposes of the Refugee Act 1996 (No. 17 of 1996) as amended by the Immigration Act 1999 (No. 22 of 1999) and the Illegal Immigrants (Trafficking) Act 2000 (No. 29 of 2000)].

The objective of the Agreement, which came into force on 11 December 2001, is to ensure the long-term conservation and sustainable fishing of straddling fish stocks and highly migratory fish stocks on the high seas as well as within waters subject to national sovereignty, through effective international co-operation in the implementation of the relevant provisions of the United Nations Convention on the Law of the Sea. As the Agreement is a “mixed agreement” involving matters within the competence of the EU itself and others within the competence of the Member States, it is necessary for both the EU and the Member States to ratify the Agreement simultaneously as soon as they are in a position to do so. The EU is most anxious to secure complete ratification of the Agreement by the EU and all 15 Member States as early as possible so as to signal its commitment to sustainable fishing on the high seas and elsewhere. Extension of Ireland’s sea fisheries legislation, contained in the Fisheries Acts 1959 to 2001, as provided in *Part 4* of the Act, is needed to meet the specific fishing control and enforcement obligations of the Agreement both beyond and within the exclusive fishery limits of the State, and to enable Ireland to ratify the Agreement. **The terms of the Agreement were approved by Dáil Éireann on 27 February 2003 pursuant to Article 29.5.2 of Bunreacht na h-Éireann.**

Part 5 of the Act fills a gap in the Foreshore Acts 1933 to 1998.

Provisions of Act

PART 1

PRELIMINARY AND GENERAL

Section 1 is a standard feature. It gives the short title of the Act for ease of reference, provides for collective referencing and interpretation of the Act with the Fisheries Acts 1959 to 2001, **and the Foreshore Acts 1933 to 1998, as appropriate.**

Section 2 is a standard feature which defines certain terms and references so as to avoid unnecessary duplication of definitions and references elsewhere in the Act.

PART 2

LICENSING OF SEA-FISHING BOATS AND CERTAIN SEA-FISHING

Section 3 provides for the full transfer of sea-fishing boat licensing functions from the Minister for Communications, Marine and Natural Resources to the Registrar General of Fishing Boats (and Deputy Registrar General under superintendence of Registrar General) appointed by the Minister under the Merchant Shipping (Registry, Lettering and Numbering of Fishing Boats) Regulations 1997 (S.I. 294 of 1997).

Section 4 restates, for convenience of reference, section 222B of the Fisheries (Consolidation) Act 1959 with necessary amendments consequential to the transfer of sea-fishing licensing functions from the Minister under *section 3* of the Act, and updating of reference to the current EU Regulation concerning the Common Fisheries Policy (adopted on 20 December 2002).

Section 5 enables fees to be charged for sea-fishing licence etc. applications and licences etc. so as to contribute to meeting costs of licensing which are at least €500,000 p.a. No such fees were chargeable under the Fisheries Acts 1959 to 2001.

PART 3

INDEPENDENT APPEALS SYSTEM

Section 6 provides for the appointment of an independent Appeals Officer (or more than one if sufficient appeals business arises or a conflict of interests would preclude a particular Appeals Officer from considering a particular appeal) to consider and decide appeals against decisions in regard to the licensing of sea-fishing boats under section 222B of the Fisheries (Consolidation) Act 1959 (No. 14 of 1959), inserted by section 2 of the Fisheries (Amendment) Act 1983 (No. 27 of 1983) and amended by sections 5, 6 and 7 of the Fisheries (Amendment) Act 1994 (No. 23 of 1994), the text of which at the time of initiation of the Act in Seanad Éireann on 12 November 2002 is appended to this document (but see *section 4* above).

Dáil Éireann inserted—

subsection (4) to expressly signal that a Ministerial policy directive to an Appeals Officer could cover the sustainability of fishing activity, and

subsection (6) to require the presentation to both Houses of the Oireachtas and publication in *Iris Oifigiúil* of any such Ministerial directive as soon as practicable after it has been given.

Schedule 1 to the Act contains detailed provisions on standard lines in relation to the terms and conditions of appointment, duties, etc., of any Appeals Officer.

Section 7 sets out the principal provisions regarding the making of appeals against sea-fishing boat licensing decisions and is modelled on the appeals provisions in relation to aquaculture licensing which are contained in sections 40 to 42 of the Fisheries (Amendment) Act 1997 (No. 23).

subsection (2) to make it clear that the applicant for or holder of a licence to which an appeal relates is a party to that appeal,

subsection (7) to make it clear that the statutory appeals provisions being provided for in the Act will only apply to licensing decisions made after one month after the Act becomes law, and so will not apply to any earlier decisions, and

subsection (8) to make it clear that a licensing decision which is duly appealed will be suspended until the appeal is decided or withdrawn, as the case may be.

Section 8, providing necessary discretion to the Appeals Officer to hold or not to hold an oral hearing of an appeal and arrangements for the proper conduct of oral hearings, is modelled on sections 49 and 57 of the Fisheries (Amendment) Act 1997, in relation to aquaculture licensing appeals. *Subsection (6)* of the section prescribes a fine of not more than €3,000 on summary conviction for obstruction of an oral hearing.

Section 9, modelled on section 43 of the Fisheries (Amendment) Act 1997, relating to aquaculture licensing appeals, obliges the Appeals Officer to notify the licensing authority of appeals made and obliges the licensing authority to supply relevant documentation to the Appeals Officer in relation to the decision under the appeal. It also additionally requires electronic publication of notices of appeal (i.e. via an appropriate WEBSITE) by the Appeals Officer, in the interests of transparency.

Section 10, modelled on section 44 of the Fisheries (Amendment) Act 1997, relating to aquaculture licensing appeals, enables parties to each appeal, including the licensing authority, to make written submissions or observations in relation to the appeal to the Appeals Officer.

Section 11, modelled on section 45 of the Fisheries (Amendment) Act 1997, relating to aquaculture licensing appeals, allows other interested persons (e.g. fishing industry) to make written submissions or observations to the Appeals Officer in relation to appeals (notice of which will be publicly available electronically by an appropriate WEBSITE, pursuant to *section 9* of the Act, in the interests of transparency).

Section 12, modelled on section 46 of the Fisheries (Amendment) Act 1997, in relation to aquaculture licensing appeals, enables the Appeals Officer in the interests of justice to request submissions or observations in relation to any matter which has arisen in relation to an appeal.

Section 13 requires the Appeals Officer to copy to the appellant or applicant for or holder of the licence any submissions or observations made under section 10, 11 or 12 of the Act in relation to the appeal and allows 14 days for comment thereon.

Section 14, modelled on section 47 of the Fisheries (Amendment) Act 1997, in relation to aquaculture licensing appeals, enables the Appeals Officer to request further documents, etc., from those persons who made submissions or observations, in order to allow the Appeals Officer to consider the appeals fully. *Subsection (2)* of the

section prescribes a fine of not more than €1,000 on summary conviction for obstructing the Appeals Officer by failure or refusal to respond without reasonable excuse.

Section 15 requires the Appeals Officer to copy to the appellant or applicant for or holder of the licence any documentation received from the licensing authority under section 9 of the Act or supplementary documentation, etc., supplied under section 14 of the Act, and allows 14 days for comment thereon.

Section 16 is designed to ensure the efficient dispatch of appeals business and is modelled on sections 51(1) [subsection (1)], 48 [subsection (2)], 54 [subsection (3)], 40(4) (5) (6) [subsection (4)], 52(1) [subsection (5)] and 40(8) [subsection (6)] of the Fisheries (Amendment) Act 1997, [as amended by the Fisheries (Amendment) Act 2001 (No. 40 of 2001)] in relation to aquaculture licensing appeals.

Section 17 is of importance in defining the time when appeals were made or documents, etc., submitted, by allowing for non-working days, and is modelled on section 55 of the Fisheries (Amendment) Act 1997, in relation to aquaculture licensing appeals.

Section 18, providing for referral by the Appeals Officer to the High Court of any question of law arising on an appeal, is necessary in order to settle quickly any questions of law arising in relation to appeals and is modelled on section 58 of the Fisheries (Amendment) Act 1997, in relation to aquaculture licensing appeals.

Section 19, providing for Judicial Review of appeal decisions, is modelled on section 73 of the Fisheries (Amendment) Act 1997, relating to aquaculture licensing appeals, and is necessary in order to bring finality to appeal decisions.

Section 20 empowers the Minister for Communications, Marine and Natural Resources to make Regulations (subject to standard powers of annulment by either House of the Oireachtas) in order to secure recoupment of a reasonable amount of the costs of appeals arrangements and to allow flexibility to adapt or flesh-out those arrangements as needs arise.

Section 21 makes it an offence for any person to knowingly make a false statement in writing in or in relation to an application for a sea-fishing boat licence or in relation to an appeal and prescribes a fine of not more than €3,000 and/or imprisonment of not more than 3 months on summary conviction for such an offence.

PART 3

CONSERVATION AND MANAGEMENT OF FISH STOCKS

Section 22 defines certain terms and references for the purposes of Part 3 of the Act which gives effect to the Agreement, the text of which is contained in Schedule 2 to the Act.

Section 23 empowers the Minister for Foreign Affairs, by Order, to declare from time to time what states are party states to the Agreement and authorities designated for enforcement purposes. Every such Order is required to be presented to each House of the Oireachtas as soon as may be after being made.

Section 24 empowers the Minister for Communications, Marine and Natural Resources, by Order, to declare from time to time “conservation areas”, that is the designated areas of the high seas (outside the exclusive fishery limits of the State) which are subject to the conservation and management measures taken pursuant to the Agreement. Every such Order is required to be presented to each House of the Oireachtas as soon as may be after being made.

Section 25 is designed to give detailed effect to the Agreement by empowering the Minister for Communications, Marine and Natural Resources by regulations to prohibit or otherwise regulate fishing of straddling fish stocks or highly migratory fish stocks protected by the Agreement. A breach of the regulations would entail on conviction on indictment a fine not exceeding €500,000 and, as a statutory consequence of the conviction, forfeiture of any fish or fishing gear on the sea-fishing boat concerned. Forfeiture of the sea-fishing boat concerned may also be ordered by the Court, as provided for in *section 28* of the Act.

Section 26 makes clear the powers of sea fisheries protection officers (namely, officers of the Minister for Communications, Marine and Natural Resources authorised by him, certain members of the Defence Forces, every member of the Garda Síochána and every customs and excise officer authorised by the Revenue Commissioners) to carry out enforcement activity on the high seas in relation to sea-fishing boats which carry the flag of other party states besides the State, for the purpose of the Agreement, subject to any procedures established pursuant to the Agreement by party states. Irish sea fisheries protection officers are already empowered to board and inspect Irish-registered sea-fishing boats wherever they may be and all sea-fishing boats within Irish exclusive fishery limits (200 nautical miles) and the section makes it clear that they can do so in relation to matters with which the Agreement is concerned. The section also provides for additional ranks of the Naval Service and ranks of the Air Corps to be sea fisheries protection officers, in the interests of greater enforcement efficiency and effectiveness (*subsection (1)*).

Section 27 imposes specific obligations required by the Agreement on the master or other person in charge of sea-fishing boats. *Subsection (1)*, modelled on Article 22(3) of the Agreement, clearly obliges masters or other persons in charge of sea-fishing boats in any conservation area to co-operate with boarding and inspection of sea-fishing boats in order to establish if detailed requirements to implement the Agreement are being complied with. *Subsection (2)*, modelled on Article 22(4) of the Agreement, is designed to make it clear that the master or other person in charge of the sea-fishing boat concerned may be directed by the sea fisheries protection officer to submit immediately to boarding and inspection. In the event of failure to comply, *subsection (3)* empowers the sea fisheries protection officer to order the sea-fishing boat to return to port immediately and provides that any sea-fishing boat licence granted under Irish legislation is suspended with immediate effect and must be delivered to the licensing authority as soon as practicable (*subsection (7)*), failure to do so entailing a fine of not more than €500 on summary conviction (*subsection (8)*). *Subsection (4)* makes it an offence to contravene *subsection (1)* or (2), entailing a fine not exceeding €3,000 on summary conviction. *Subsection (5)* prescribes a fine not exceeding €500,000 on conviction on indictment for failure to return a sea-fishing boat to port as directed by a sea fisheries protection officer and, as a statutory consequence of the conviction, to forfeiture of any fish or fishing gear on the sea-fishing boat concerned. Forfeiture of the sea-fishing boat concerned may also be ordered by the Court, as

provided for in *section 28* of the Act. *Subsection (6)* empowers the Court, on application to it, to order the return of the suspended sea-fishing boat licence to the licensee or to reduce the period of suspension, if it should see fit in the circumstances.

Section 28 adds *sections 25* and *27* of the Act to the list of sections providing for indictable offences for which the forfeiture of a sea-fishing boat involved in the commission of the offences may also be ordered by the Court in addition to any fines or other forfeitures so as to meet a specific obligation on party states to the Agreement (Article 19 (2)) to provide sufficient deterrent penalties against illegal fishing activities.

Section 29 provides for the suspension or cancellation by a Court of the Certificate of Competency [granted under section 3 of the Merchant Shipping (Certification of Seamen) Act 1979, (No. 37 of 1979)] to the master or other officer of the Irish sea-fishing boat concerned in addition to the penalties which may be imposed upon conviction on indictment for an offence under *section 25* of this Act (breach of conservation regulations) or *section 27* of this Act (breach of duty of master, etc., of a sea-fishing boat to accept and facilitate boarding, etc., by a sea fisheries protection officer in any area designated as a conservation area, under *section 24*, for the purposes of the Agreement) to meet the obligations of Article 19(2) of the Agreement. The suspension or cancellation of a Certificate of Competency granted to the master or other officer of the sea-fishing boat concerned may be ordered by a Court in the case of conviction on indictment for offences under Chapter II of Part XIII of the 1959 Act (as amended) in addition to any fines or other penalties it may impose. Such suspension or cancellation will be a separate procedure from that provided in section 9 of the Merchant Shipping (Certification of Seamen) Act 1979, for the Minister for Communications, Marine and Natural Resources to carry out. It is necessary therefore to specifically preclude restoration of a Certificate of Competency by the Minister where it has been suspended or cancelled by a Court.

Section 30 increases to €500,000 (from €253,948), in line with *sections 25* and *27* of the Act, the maximum fine for breaching a Ministerial Order under section 223A of the Fisheries (Consolidation) Act 1959, (conservation of fish stocks and rational exploitation of fisheries), inserted by section 9 of the Fisheries (Amendment) Act 1978 (No. 18 of 1978) and amended by section 4 of the Fisheries (Amendment) Act 1983 (No. 27 of 1983) or for breach of Ministerial Regulations under section 222C of the 1959 Act (regulations requiring sea-fishing to comply with certain conditions) inserted by section 3 of the Fisheries (Amendment) Act 1983. It also increases current summary penalties for obstruction of any sea fisheries protection officer up to a maximum of €3,000 and/or 6 months' imprisonment, in line with the maximum summary penalties proposed for new offences under the Act (*subsection (3)*).

Section 31 enables the Minister for Communications, Marine and Natural Resources by order to amend *Schedule 3* to the Act to take account of any amendments duly made from time to time to the list of highly migratory fish species in Annex 1 to the United Nations Convention on the Law of the Sea. Every such Order is required to be presented to each House of the Oireachtas as soon as may be after it is made.

PART 5

FORESHORE APPLICATION AND OTHER FEES

Section 32 fills a gap in the Foreshore Acts 1933 to 1998 so as to enable the Minister for Communications, Marine and Natural Resources to make Regulations, with the consent of the Minister for Finance, to charge fees for applications for foreshore leases, licences, approvals or consents, or for foreshore approvals or consents. The types of applications, approvals or consents to be subjected to fees have yet to be decided, as have the levels of fees to be charged and the operative date(s) therefor.

SCHEDULES

Schedule 1 contains detailed provisions on standard lines in relation to the terms and conditions of appointment, duties, etc., of any Appeals Officer appointed under *section 6* of the Act when enacted.

Schedule 2 sets out, for ease of reference, the text of the United Nations Agreement on the implementation of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks.

Schedule 3 sets out, for ease of reference, the present list of highly migratory fish species for protection, which is contained in Annex 1 to the United Nations Convention on the Law of the Sea. Any subsequent amendments duly made to that list will be the subject of a Ministerial Order under *section 31* of the Act. Every such Order is required to be presented to each House of the Oireachtas as soon as may be after it is made.

Exchequer and Financial Implications

It is estimated that the Appeals arrangements proposed in the Act (including necessary clerical, etc., back-up) could cost of the order of €50,000 p.a. and would be funded by fees payable by appellants.

The Act is not expected to give rise to additional Exchequer expenditure on sea fisheries enforcement work; on the contrary, it, and the cooperative international implementation of the Agreement, should serve as a strong deterrent to illegal fishing activity and so help to minimise enforcement costs for the State. Moreover, it is not envisaged that any enforcement activity by Irish sea fisheries protection officers would be unlawful or disproportionate so as to give rise to compensation under Article 21(18) of the Agreement.

It is not possible to predict fees receipts under *Part 2* or *Part 5* of the Act pending decisions as to what fees are to be charged.

*An Roinn Cumarsáide, Mara agus Acmhainní Nádurtha,
Iúil 2003.*

***SECTION 222B of Fisheries (Consolidation) Act 1959 (No. 14)
(inserted by section 2 of Fisheries (Amendment) Act 1983 (No. 27)
and amended by sections 5, 6, 7 of the Fisheries (Amendment) Act
1994 (No. 23))**

Fishing by Certain Sea-Fishing Boats Restricted

222B. (1) This section applies to any sea-fishing boat which is—

(a) a fishing boat within the meaning of Part IV of the Act of 1894 and which—

- (i) is entered in the fishing boat register, or
- (ii) is required by section 373, as amended by the Act of 1983, of the Act of 1894 to be so entered, or
- (iii) but for the passing of the Act of 1983 would, by the said section 373, be required to be so entered, or

(b) a ship which—

- (i) is registered under the Act of 1955, or
- (ii) is required by section 18, as amended by the Act of 1983, of the Act of 1955 to be so registered, or
- (iii) but for *section 8(1)* of the Act of 1983 would be required to be or might be so registered, or
- (iv) may be so registered.

(2) Subject to subsection (4)(b) of this section, a sea-fishing boat to which this section applies shall not be used for sea-fishing (whether within the exclusive fishery limits of the State or otherwise) nor shall a person on board such a boat fish for sea-fish or attempt so to fish, save under and in accordance with a licence granted for the purposes of this section and in relation to the boat by the Minister.

(3) (a) The Minister may grant licences for the purposes of this section.

(b) An application for a licence shall be made to the Minister and shall be in such form and contain such particulars as the Minister may prescribe, and be made by or on behalf of the owner of the boat in respect of which the application is made.

(c) Where an application is made for a licence, the Minister may, subject to subsection (4)(a) of this section, allow or refuse the application.

(d) In deciding on the grant or refusal of a licence or the attachment of conditions to licences the Minister may take account of economic benefits which the operation of

Note: Section 4 of the Fisheries (Amendment) Act 2003 (No. 21) restates section 222B with amendments.

a boat would be likely to contribute to the coastal communities and regions which the quotas within the meaning of Council Regulation No. 3760/92 (EEC) of 20 December, 1992¹ are designed to benefit, including—

- (i) the projected annual number of landings at Irish ports;
- (ii) the projected annual tonnage and value of fish landed in the State;
- (iii) the projected annual level of expenditure in the State on wages, fuel, supplies, equipment and services; and
- (iv) the projected annual level of social security and tax payments in the State in respect of employees and the operation of the boat;

and the general sea-worthiness of the boat, the protection, conservation and rational exploitation of fish stocks, and requirements of the common fisheries policy of the European Union.

- (e) Licences may, subject to paragraph (f) of this subsection, be granted by an officer of the Minister authorised for that purpose by the Minister and references to the Minister in paragraphs (a), (c) and (d) of this subsection and subsections (2), (4)(a) and (5) of this section shall be construed as including references to such officer.
 - (f) Where an officer is authorised in accordance with paragraph (e) of this subsection to grant a licence the officer shall, in the discharge of this function, have regard to such considerations of policy as the Minister may direct.
- (4) (a) The Minister shall not grant a licence for the purposes of this section unless the sea-fishing boat in relation to which the licence is granted is wholly-owned by a national of a Member State or a body corporate established under and subject to the law of a Member State and having its principal place of business in a Member State.
- (b) The Minister may by regulations provide that sea-fishing boats which are of a class or description specified in the regulations shall be exempt from the provisions of *subsection (2)* of this section, and in case regulations under this subsection are for the time being in force, *subsection (2)* of this section shall be construed and have effect subject to the terms of the regulations.
- (5) (a) The Minister may attach to a licence granted for the purposes of this section such terms (including terms specifying the period during which the licence is to remain in force or an event or other circumstance on the occurrence of which the licence is to come into force) and conditions (including conditions precedent to the licence's becoming operative) as he shall think fit and he may also attach further conditions to or vary the conditions already attached to such a licence or remove any such condition.

¹ OJ No. L389, 31.12.1992, p.1.

- (b) Without prejudice to the generality of *paragraph (a)* of this subsection, a condition attached to a licence granted for the purposes of this section may—
- (i) restrict sea-fishing by the boat to which the licence relates in a manner specified in the condition,
 - (ii) require that for so long as the licence is in force the members of the crew of such boat, or of any proportion of such members specified in the condition, shall be of a nationality specified in the condition,
 - (iii) specify an event or other circumstance on the occurrence of which the licence shall cease to be in force.
- (c) Where the Minister is satisfied that a person has fished in contravention of a condition attached to a licence granted for the purposes of this section or that a person has attempted so to fish, he may, if he thinks fit, revoke the licence.

(6) Without prejudice to the generality of subsection (3)(c) of this section, where the Minister receives an application for a licence for the purposes of this section and—

- (a) the application relates to a sea-fishing boat which is owned by a body corporate and the Minister (or an officer authorised in accordance with subsection (3)(e) of this section) is not satisfied that the body corporate is under the control of, beneficially owned by or under the control of and beneficially owned by a person or persons who, or, as may be appropriate, each of whom, is either a qualified individual or a qualified body, or
- (b) the Minister (or an officer authorised in accordance with subsection (3)(e) of this section) is satisfied that the applicant has previously used or attempted to use a sea-fishing boat for sea-fishing in contravention of, or that he has fished for sea-fish or has attempted so to fish contrary to subsection (2) of this section,

he may refuse the application.

- (7) (a) A person who uses or attempts to use a sea-fishing boat in contravention of *subsection (2)* of this section shall be guilty of an offence.
- (b) A person who, while on board a sea-fishing boat, fishes for sea-fish or attempts so to fish in contravention of *subsection (2)* of this section shall be guilty of an offence.

(8) In this section—

“the Act of 1983” means the Fisheries (Amendment) Act 1983;

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

“a qualified individual” means an individual person who is a national of a Member State.