



ISSN: 1995 – 1124

**CRFM Technical & Advisory Document Series**

**Number 2013 / 10  
Volume 2**

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**PROSECUTION AND ENFORCEMENT MANUALS FOR  
CARIFORUM MEMBER STATES**

**Volume 2 - Fisheries Enforcement Standard Operating  
Procedures Manual**

**2013**

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**CRFM Secretariat  
Belize 2013**

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**PROSECUTION AND ENFORCEMENT MANUALS FOR  
CARIFORUM MEMBER STATES:**

**Volume 2 - Fisheries Enforcement Standard Operating  
Procedures Manual**

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# CRFM Technical & Advisory Document - Number 2013 / 10

## PROSECUTION AND ENFORCEMENT MANUALS FOR CARIFORUM MEMBER STATES:

### Volume 2 - Fisheries Enforcement Standard Operating Procedures Manual

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#### Correct Citation:

CRFM, 2014. Prosecution and Enforcement Manuals for CARIFORUM Member States: Volume 2 – Fisheries Enforcement Standard Operating Procedures Manual. CRFM Technical & Advisory Document, No. 2013 / 10. 89p.

**ISSN: 1995-1124**

**ISBN:**

Published by the Caribbean Regional Fisheries Mechanism Secretariat  
Belize and St. Vincent and the Grenadines

This document has been produced with financial assistance of the ACP Fish II Programme - Funded by the European Union. However, the views expressed herein can in no way be taken to reflect the official opinions of the EU.



## CONTENTS

CONTENTS .....	i
FOREWORD.....	iii
PREFACE.....	iv
CHAPTER 1 – INTRODUCTION .....	1
CHAPTER 2 – THE ENFORCEMENT OPERATION .....	4
CHAPTER 3 – THE PATROL .....	7
CHAPTER 4 – BOARDING .....	14
CHAPTER 5 – FOLLOW UP ACTIVITIES AND COURT PROCEEDINGS .....	24
APPENDIX 1 – INTERNATIONAL FISHERIES LAW .....	27
APPENDIX 2 – MCS TOOLS FOR MANAGEMENT .....	40
APPENDIX 3 – POSITION FIXING AND NAVIGATION AND LOGS .....	43
APPENDIX 4 – SUMMARY OF THE POWERS OF AN AUTHORIZED OFFICER.....	51
APPENDIX 5 – LANGUAGE CARDS.....	53
APPENDIX 6 – MODEL SITUATION REPORT (SITREP).....	56
APPENDIX 7 – MODEL SUMMARY REPORT FORMAT .....	59
APPENDIX 8 – BOARDING SIGNALS .....	62
APPENDIX 9 – SUMMARY OF ELEMENTS OF HOT PURSUIT FROM UNITED NATIONS CONVENTION ON THE LAW OF THE SEA.....	63
APPENDIX 10 – REVISED HARMONIZED OECS FISHERIES LAW .....	65
BIBLIOGRAPHY .....	88

## ACRONYMS AND ABBREVIATIONS

CARICOM	Caribbean Community
CBM	Community-based Management
CCRF	Code of Conduct for Responsible Fisheries
CRFM	Caribbean Regional Fisheries Mechanism
DWF	Distant Water Fishing
DWFN	Distant Water Fishing Nation
EEZ	Exclusive Economic Zone
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FFV	Foreign Fishing Vessel
GPS	Global Positioning System
ICCAT	International Commission for the Conservation of Atlantic Tunas
INTERCO	International Code of Signals
IPOA	International Plan of Action
ITLOS	International Tribunal for the Law of the Sea
IUU	Illegal, Unreported and Unregulated (Fishing)
MASCA	Maritime and Air Space Cooperation Agreement
MCS	Monitoring, Control and Surveillance
NPOA	National Plan of Action
OECS	Organisation of Eastern Caribbean States
OSPESCA	Organisation of Fishing and Aquaculture In Central America
PSC-MOU	Port State Control Memorandum of Understanding
PSM	Port State Measures
RFMO	Regional Fishery Management Organization
RSS	Regional Security System
SOP	Standard Operating Procedure
UNCLOS	United Nations Convention on the Law of the Sea
UNFSA	United Nations Fish Stocks Agreement
VMS	Vessel Monitoring System

## FOREWORD

Caribbean fisheries and marine ecosystems are threatened by several factors including climate change, pollution, irresponsible and illegal, unreported and unregulated fishing among other threats. Protection, conservation and management of the fisheries and marine ecosystems are important, not only for their preservation and long-term sustainability, but also, more critically, because the people of the region are highly dependent upon these resources for their livelihoods. It is vital, therefore, that policies, laws, and institutional arrangements are established and maintained to regulate and control access and usage of these fisheries and ecosystems.

Illegal, unreported and unregulated (IUU) fishing poses significant challenges for long-term sustainable use of these resources in the region. High-value species are often targeted by foreign poachers and local fishers who disregard and violate the laws and regulations governing access to, and conservation and sustainable management of the resources due to perceived low risk of being apprehended and sanctioned. An effective system for monitoring, controlling and surveillance (MCS) is therefore a vital part of the system for ensuring compliance with the rules developed to ensure long-term sustainable benefits from the fishery resources. But many CARICOM/CARIFORUM States have neither the required capacity to effectively monitor the activities of the industry, nor the hardware to conduct surveillance and enforcement at sea due to financial and human resource constraints.

However, in these difficult economic times, characterized by high levels of unemployment, under-employment, high food import bill, growing food and nutrition insecurity, rising crime and other social ills, Caribbean States cannot continue to neglect these important living marine resources which are capable of making significantly enhanced contribution to the region's social and economic development and food security, by allowing them to be plundered by IUU fishing.

The current initiative to combat IUU fishing in the region started in 2010 when the CRFM Ministerial Council approved the Castries Declaration built on regional cooperation to intensify the fight to prevent, deter and eliminate IUU fishing.

This manual containing Standard Operating Procedures for Fisheries and Enforcement further demonstrates the shared commitment of the States to strengthen their capacity to prevent, deter and eliminate IUU fishing and related activities. The manual provides enforcement personnel in the region with a set of modern procedural guidelines, based on international best practices, for successful and effective fisheries monitoring, surveillance and enforcement.

Milton Haughton  
Executive Director  
CRFM Secretariat

## PREFACE

In 1997, as part of an overall review of legal options for the strengthening of fisheries enforcement within the framework of its existing fisheries enforcement program, the OECS developed and adopted a set of Standard Operating Procedures for fisheries surveillance and enforcement and fisheries prosecution. These SOPs were produced in two manuals:

- the Fisheries Enforcement Standard Operating Procedures Manual
- the Fisheries Prosecution Manual.

Each Manual was designed as a handbook for fisheries enforcement officers, prosecutors and other actors for use when establishing, enhancing or enforcing monitoring, control and surveillance (MCS) systems in support of fisheries management initiatives. The manuals provided a “common foundation of knowledge” and procedural guidelines for Authorized Officers and support personnel with responsibilities for the enforcement of the OECS harmonized fisheries legislation and also for the effective prosecution of fisheries offenses.

Most of the operating procedures and core legal rules enunciated in the original Manuals remain as valid today as they were in 1997. Moreover, the basic principles and procedures (and many of the descriptions of the laws) set out in the OECS Manuals are valid for other parts of the CARICOM common law countries, and to some extent those with other legal systems. Nevertheless, over time some legal changes have arisen (at national, regional and international levels), and there are new and emerging issues connected to managing fishing activities, including developing management and MCS practices and responses to new technologies. The current versions of the Manuals seek to build on, extend and update the original Manuals in order to equip those involved in fisheries enforcement with a revised and up-to-date tool for carrying out their duties.

### **Context of Fisheries Enforcement in the CARIFORUM Region**

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) provided the basis whereby coastal States could claim an extended maritime jurisdictional area of up to 200 nautical miles, commonly known as the Exclusive Economic Zone (EEZ). Under the EEZ regime, CARIFORUM countries have claimed sovereign rights over the fisheries resources that are in this area. While realizing significant benefits from the use of the fisheries resources that are in their EEZs, the CARIFORUM countries also are aware of their national and international obligations to ensure the conservation and the effective management of the use of these resources.

The countries in the CARIFORUM region have long recognized that effective management of the fisheries resources in their respective EEZs was beyond their individual capabilities. In the early 1980s, the OECS countries agreed on a strategy of a harmonized regime for the management of the living resources of their EEZs. This decision led in 1983-1984 to the development of harmonized fisheries laws, which effectively provided the legal and administrative framework for the orderly development and management of fisheries resources in the member countries of the OECS. One of the management initiatives undertaken by the OECS was the establishment of common fisheries zones for the purpose of implementing strategically effective MCS program, although this initiative was never sustained.

In recent years, regional cooperation has been enhanced further, both within OECS and more widely, through institutions such as the Caribbean Regional Fisheries Mechanism (CRFM) and instruments such as the Castries Declaration on IUU Fishing and negotiations on the Caribbean Community Common

Fisheries Policy (and Regime). During this period, the global legal landscape has also changed fundamentally, with the development of fisheries instruments such as the UN Fish Stocks Agreement, the FAO Compliance and Port State Measures Agreements, the FAO Code of Conduct for Responsible Fisheries and the International Plan of Action on IUU Fishing (among others). The challenges have also grown, as both fishing technologies and fisheries enforcement technologies have advanced, and fish stocks continue to be subject to increasing pressure and development threats from illegal fishing.

The increasing number of local fishers and the steady increase in foreign fishing vessels operations in CARIFORUM countries' EEZs have resulted in significant fisheries management challenges that require an improvement in the quality and delivery of Monitoring, Control and Surveillance programs, of which enforcement operations and prosecutions are major components. Fisheries enforcement is of top priority at this time because of increasing IUU activities that are threatening the sustainable development of the fishing industries and the sustainable livelihoods of fishers themselves.

Officers that are responsible for implementing the fisheries surveillance and enforcement program must have effective tools and strategies in order to meet the surveillance and enforcement objectives. Programs require that those who are responsible for implementation are aware of the nature of the fisheries resources and management objectives of the fisheries with regards to these resources and the crucial role of enforcement in this regard.

### **Rationale for Updating the Manuals**

It has been generally accepted by CARIFORUM countries that expanded and updated versions of the two Manuals could be valuable tools in assisting them to combat IUU fishing. The basis for the review and update address three main issues:

1. The need for the Manuals to focus on national enforcement programs (as opposed to being focussed on reciprocal enforcement activities under the common fisheries zone system).
2. The expansion of the Manuals for use in all CARIFORUM countries.
3. The need for the Manuals to be updated to take account of various developments since 1997, including: (a) developments in the international legal framework for fisheries; (b) developments in national legislation and policy concerning fisheries; (c) developments in best practices and national rules concerning enforcement and prosecution activities; and (d) changes that have occurred in the CARIFORUM fisheries sectors.

### **How to Use the Manuals**

It is important to emphasise that the Manuals are not a substitute for national legislation, procedures or practices. Each country will have its own laws, procedures, practices, policies and approaches and general Manuals cannot reflect each national situation specifically. The Manuals must therefore be used **alongside** national laws, guidance and procedural manuals.

The purpose of the Manuals is to provide in an orderly, chronological and concise manner a set of procedural guidelines necessary (respectively) for a successful fisheries surveillance and enforcement operation and for a successful prosecution process that reflects the broad approaches in most CARIFORUM countries. Each Manual outlines the key actions to be taken or considered at each stage of the respective processes. Each Manual also provides detailed Appendices containing explanatory notes, legal documents and implementation examples in support of these guidelines.

All Authorized Officers – experienced or otherwise – are encouraged to use the Manuals when planning, preparing and executing a fisheries surveillance and enforcement operation, or when considering or preparing a case for prosecution. Their use as training tools for officers is also encouraged. Officers must take every opportunity to use the Manuals to practice the skills necessary to carry out successful operations or successful prosecutions.

### **Acknowledgements**

The revised Manuals have been produced with the assistance of funding from the European Union under the ACP Fish II Programme ([www.acpfish2-eu.org](http://www.acpfish2-eu.org)). Under the programme activity, *Technical Support to Update Prosecution and Enforcement Manuals for CARIFORUM States, No. CAR-2.2-B10*, a consulting firm with global experience and two regional technical consultants were engaged to redraft the manuals, and to organise a series of regional stakeholder consultations and a regional validation workshop. The assistance of the European Union is gratefully acknowledged.

In addition, the consultants express their thanks to the various government agencies in the countries visited, namely Belize, Bahamas, Barbados, Dominican Republic, Suriname, Saint Lucia and Saint Vincent and the Grenadines, as well as more widely to all other CARIFORUM countries as well as regional agencies that have participated in the process to revise and update the Manuals.

Finally, the assistance from CRFM and OECS Secretariats has been invaluable.

## CHAPTER 1 – INTRODUCTION

### A. Objectives of Surveillance and Enforcement

Surveillance (as it relates to fisheries) is the enforcement of a coastal State's sovereign rights over the resources in its Exclusive Economic Zone (EEZ) and (where jurisdiction can be exercised) beyond. Its broad goal is to ensure that all local and foreign fishing vessels obey the relevant laws and regulations (including treaties or agreements in force) of the State. An effective surveillance strategy must have the relevant laws and regulations and also adequate enforcement capabilities in support of its actions.

In this regard it is important that coastal States undertake periodic reviews of their national fisheries laws in consideration of their continued effectiveness in light of the increasing challenges of IUU fishing. This action is important to ensure the effectiveness of the monitoring control and surveillance program. Increasing IUU fishing also necessitates that CARIFORUM countries upgrade and improve their enforcement program through continuous assessments of their enforcement capabilities. The review and assessment process will allow the State to identify any gaps and deficiencies which might arise in the enforcement strategy as a result in changing fisheries management regulations at the national or international levels, fishing gear technology, fishing fleet composition and navigation equipment of the fishing fleet. Consideration must always be given to international best practice and also to new technologies that can be used to enhance the enforcement effort.

In most of the CARIFORUM countries, fisheries management programs currently employ a number of management measures that are dependent on the regulation of fishing gear mesh sizes, close seasons, gear restriction and minimum sizes and catch quota allocations.

Enforcement of these measures require in most part the surveillance and catch monitoring of fishing activities as they are taking place inside the EEZ and on the high seas. These countries require enforcement capabilities that include the use of patrol vessels that can carry enforcement personnel to the fishing grounds and can remain at sea with the fishing fleet. Surveillance and enforcement are also necessary for transboundary operations at the time when these vessels enter port and also over the side transactions in the EEZ.

Some surveillance and enforcement activities can also be expedited on land at the landing site, processing houses, customs and export departments, fish vendors market, hotels and supermarkets.

### B. MCS Challenges in CARIFORUM Countries

The growing importance of the fisheries sector in CARIFORUM countries, coupled with the open nature of the fisheries and the increasing importance given to fisheries means that monitoring, control and surveillance is critical in order to prevent the decimation of fisheries resources from threats such as overfishing and IUU fishing activities. The effectiveness of the MCS program is dependent on the ability to undertake successful enforcement exercises. It is absolutely imperative that thorough advance preparation be made for the proper execution of the duties of the relevant Authorized Officers and agencies that are responsible for the enforcement of the fisheries laws. Given also that the Authorized Officers may be called to conduct fisheries enforcement activities at short notice, the need for advanced preparation is heightened.

As severe penalties may be imposed for breaches of Member States' fisheries laws, cases brought to Court are likely to be vigorously defended. It is therefore vital that **Authorized Officers** involved in the boarding , inspection and evidence gathering process are totally aware of the laws, regulations and

agreements enforced, as well as their responsibilities, duties and powers and also that they conduct investigations and collect evidence in a manner that supports a potential future prosecution.

## **I. Who is an Authorized Officer?**

The exact definition of “Authorized Officer” (or equivalent term) will be determined in national legislation. In most CARIFORUM countries, an Authorized Officer for the enforcement of fisheries legislation is “any Fisheries Officer, Custom Officer or Police or coast guard Officer or any person or category of persons designated as an Authorized Officer” within the framework of the countries’ legal provisions.

## **II. Powers of the Authorized Officer**

Generally, the Authorized Officer is empowered to enforce the provisions of the fisheries legislation within the **fishery waters** of their respective Member State. All of the waters falling under Member States’ jurisdiction comprise their fishery waters. This includes **Internal Waters**, **Archipelagic Waters**, (where applicable), the **Territorial Sea**, the **Contiguous Zone** and the **Exclusive Economic Zone**. Inland waters such as rivers, dams, and creeks, etc. may also be included. In some instances, the powers of the Authorized Officer may be exercisable beyond the limits of the fishery waters.

Authorized Officers should ensure that they are clearly identifiable as Authorized Officers; typically, Officers are required to carry with them at all times their means of identification; one of which must be a badge displayed on their person at all times during the boarding and inspection operation. At least one other form of picture identification (a card) should also be available to be produced upon demand.

## **III. Know the Law**

It is of fundamental importance that all Authorized Officers are familiar with the law, including agreements and treaties and traditional customary rights. All actions of an Authorized Officer must be in accordance with the law, and must be undertaken within the framework of best international practices for fisheries enforcement. Actions must be capable of withstanding judicial scrutiny.

Enforcement officers should always have a working knowledge of the type of fisheries offences but it is good to refresh your memory at the time of boarding, to be sure that any arrest or order to port, is made on legitimate ground. Hence, a summary briefing of the offences that are possible under the fisheries regulations should be given to boarding officers once again prior to boarding.

To ensure the effectiveness of the enforcement program training and professional guidance of enforcement personnel is necessary. Authorized Officers should keep up-to-date, through regular training and briefing seminars, of any changes to Acts or regulations, fishing and fishing gear technology which may affect the discharge of their duties. Should any section or statement be unclear, the advice or interpretations of superior officers or legal officials should be sought.

## **IV. Know the Fishing Operation**

To conduct effective boarding and investigation of fishing vessels, the Authorized Officer must know all the elements involved in that operation. This includes fishing vessel type, the various fishing gears that are used in that country’s particular fisheries, types of fish processing likely to be taking place aboard the vessel, types of fishing and navigational equipment, size of crew and likely nationality. Covert intelligence information about fishing operations in the EEZ should be a priority.

A summary of the types of fishing operations (local and foreign) that are likely to be encountered is provided in the Fisheries Prosecution Manual.

## CHAPTER 2 – THE ENFORCEMENT OPERATION

For any patrol operation (dedicated or otherwise) where the surveillance and enforcement of the fisheries laws will be undertaken, at least one Authorized Officer from the fisheries administration must be a part of the planning process at least for the fisheries component of the operation. If the operation is a dedicated fisheries enforcement exercise all aspect of the operation must be undertaken with the full involvement of the national fisheries administration. This is important because of the need for specialized knowledge of national fisheries legislation, regional fisheries agreements and international treaty agreement relating to the management and exploitation of fisheries resources. The planning and execution of the patrol exercise must take into consideration the type of fishing operation that is likely to be in violation. This might include the following operations:

- I. Larger-scale commercial fishing
- II. Local fishing (small-scale/traditional)
- III. Sport / recreational fishing

### A. Planning the Operation

The planning of dedicated fisheries surveillance and enforcement operations should be undertaken in accordance with the following procedures:

Before undertaking the operation's planning process, the operation's planning committee must ascertain the following:

- Is there a violation or does it appear that a violation has been committed
- Can the actions or lack of actions of the suspect vessel be associated with a specific section of the Fisheries Act?
- Can the situation be handled with the resources currently at the disposal of the Officer

### B. Pre-Patrol Actions

On joining the patrol craft, the Authorized Officer who was part of the planning process or the Authorized Officers designated for this task, should arrange for a crew briefing at the Commanding Officer's earliest convenience.

### C. Navigation

All Boarding Officers should know the rudiments of marine navigation. This would involve the following skills:

- Being able to take position from a chart;
- Plotting courses;
- Operating and reading a SATNAV and GPS receiver;
- Operating and reading radar; and
- Plotting SATNAV and radar information on a chart and being familiar with other equipment found on a ship's bridge (gyro and magnetic compass).

Officers should receive training and practical experience in navigation.

**(i) Boarding Kit**

The Boarding Kit which should contain all of the equipment necessary for the Officer to carry out an efficient boarding must be examined and checked against a list of prescribed equipment and documents. The items of the boarding kit should be contained preferably in a waterproof knapsack with shoulder strap or strong handle for ease of carriage up and down ship sides. If a waterproof bag is not available the contents of the Kit should be wrapped in plastic bags and a flotation device placed in or around the Kit to ensure that it can be recovered if it is dropped in the water.

***Items for the Boarding Kit***

There are several items that are required for a boarding, including, but not limited to:

- Copies of relevant Acts and Regulations
- Boarding Report Form, Arrest Form and seizure tags (water proof)
- Translation Cards
- Radios and cellular phone (must be checked)
- Hard cover note books with numbered pages
- Mesh size gauges measuring gauges for lobster and conch and standard scale and weights
- Pens, pencils and high lighters (and spares of each)
- Cameras (electronic or with film)
- Gloves
- Weather gear, Flashlights
- Tape measure
- Safety equipment (lifejackets, flares etc.)
- A knife
- Plastic bags (medium, large strong garbage bags 20 of each)
- A laminated waterproof copy of the boarding precautions (optional)
- Receipt book to give receipts to the master if items are secured or seized, e.g. log books, gear, charts, samples etc.
- Cellular phone
- A small handbook with questions in various languages/Boarding interrogation questionnaire (laminated for safety)

Secondary items include:

- Rifle and hand guns
- Bullet proof and other protection gear
- Hand held vessel positioning equipment
- First aid kit
- Ballistic floating devices.

These should be in the kit in case there is a need for a hostile boarding.

**D. The Operation Checks and Briefings**

**(i) Pre-Patrol Briefing**

The following are some of the information to be discussed during the pre-patrol briefing.

- Current Status of patrol activities.
- Objective of the patrol.
- Tolerance level.
- Expected duration of the patrol.
- The level of threat (high, medium, low)
- Rules of USE OF FORCE (consistent with level of threat) / Rules of engagement (protection only)
- Expected boarding type- routine or otherwise (Stress safety and back-up)
- Communications - Call signs of participants; frequencies for monitoring and safety (HF 2182 Mhz and VHF 16)
- Special instructions for particular situations during patrol
- Questions from the patrol vessel crew.
- Route to the area.
- Number and type of vessel (including name if possible); expected to be seen and be boarded.
- The dates, time and intelligence information
- Known events (weather, health, customs immigration)
- Questions from the patrol team
- Motivational remarks.

**(ii) Pre-Patrol Check**

After the pre-patrol briefing a detailed check must be made of all equipment and personnel to go on the patrol. The following routine checks must be made:

- Boarding Boat and boarding Team.
- Navigation equipment-radar, GPS, eco sounder, charts,
- Other friendly vessels in the area
- Ship's logbook open and duly noted for the commencement of the patrol
- Life Jackets and Flares
- Radios for ship-to-shore
- Boarding kit (see above)
- Binoculars and boarding flags
- Rifle and handguns
- The relevant fisheries pennant (International and national) to be raised showing that you are on a fisheries patrol.

The following should also be available on board and used in the briefing as required:

- A list of vessels licensed to fish (and if applicable / available, persons licensed to fish)
- A copy of the register of authorised fishing vessels (national, regional and international)
- Copy of the relevant fisheries laws and regulations
- Charts on which are displayed
  - The latest fishing vessel positions
  - The patrol area and the patrol route
  - The boundaries with neighbouring States
  - The Common (OECS) Fisheries Surveillance Zones (if applicable)
  - The boundaries of any closed (fishery) areas.

## CHAPTER 3 – THE PATROL

The patrol is the most critical part of the surveillance exercise; it provides the physical presence which is fundamental to the entire enforcement and prosecution program. Patrols must always be preceded by extensive briefing of the patrol crew; everyone must know their specific tasks and the need for vigilance, efficiency, diligence and accuracy (VEDA). It is during the patrol that key observations are made that will provide the answers for the factors that will determine whether or not the vessel under surveillance should be treated as a suspect vessel requiring further investigation. Patrol officers must be on top alert observing recording and analysing all suspicious activities. Safety is also a critical factor that must be considered at all times during the patrol.

### **A. General**

When the patrol begins officers on board the patrol vessel must begin the following tasks:

- Be on the lookout for vessels of interest
- Sighting of vessels of interest
- Confirm sighting.
- Check position.
- Identify the vessel.
- Discuss with the vessel Commanding Officer the type of expected boarding.
- Call the boarding team for the boarding briefing.
- Ensure that the boarding team is prepared prior to moving close to the Target vessel.
- Move into a boarding position as soon as the boarding team is prepared to board.
- Call the vessel and notify her that you intend to board

#### **(i) Pre-Boarding Briefing**

Before boarding there must be a pre-boarding briefing providing the following information:

- Identification of vessel
- Weather and sea conditions
- Type of boarding:
  - (1) routine boarding
  - (2) resistance to expected boarding
- Boarding team composition and order of boarding.
- Boarding team tasks; (radio communication, security of crew, note taking on the patrol vessel and boarding boat, search of vessel, inspection of catch and fishing gear etc.)
- Communications; (call signs and frequencies)
- Security covers from the patrol vessel.
- Boarding position of patrol vessel and boarding craft for security.
- Boarding kit and Equipment checks.
- Special instructions as appropriate.

#### **(ii) Flags and Approach**

The pre-boarding procedure should also include the following steps:

- Check both sides of the fishing/target vessel for any unusual activities.
- Order the vessel captain to steer a course that provides a lee for boarding.
- Order the captain to declare the number of crew members.
- Order the fishing vessel captain to gather his crew in a designated open space before boarding.

- Position the patrol vessel for launching the boarding craft.
- Launch the boarding craft and approach from the leeward side the fishing/target vessel.
- For routine boarding, place the patrol vessel on the opposite quarter of the fishing vessel from the boarding craft to watch that side of the vessel for many on-toward activity.
- Place the boarding craft on the opposite quarter for security, and to facilitate disembarkation.
- Patrol vessel maintains security watch and regularly checks communication with the boarding party.

## **B. Routine Boarding**

For a routine boarding these are the procedures:

- Senior fisheries officer greets the captain and crew, identifies him / her.
- Ask the captain for identification.
- Explains the inspection process.
- One of the boarding team meets and talks with the observer (if one is on board the vessel) as soon as possible on boarding.
- The note-taker records time and all events and reports these (electronically if possible in addition to the hand written notes) to the patrol vessel where they must be entered in an appropriate logbook or diary records of event.
- The Captain is asked to give his fix of the position of the vessel.
- The position of the vessel must be fixed and recorded by an authorised navigating officer.
- Check must also be made of the vessel navigation equipment.
- Verify purpose of fishing operations by examining vessel documents; (validity of license validity licensing conditions pertaining to allowed species and fishing methods, vessel registration data, fish log, navigation log, engineering log, processing log, and other recorded information that can verify fishing operations)
- Order the captain to declare all fish on board.
- Inspect fish catch on deck.
- Inspect the fish catch in storage.
- Inspect fishing gear on deck.
- Inspect all fishing gear (including gear configuration) on board to verify legal requirements.
- Measure the net and check the mesh size if a net is on deck.
- Inspect the fish traps if any are on board to verify legal construction.
- Inspect the fish storage area (and processing plant if appropriate or applicable) to get packing weight and conversation rates.
- Take pictures where possible of all events-net measuring, storage, fish verification etc. return to the bridge and complete the inspection report.
- Draw a line under the last fishing logbook entry, sign and date the log.
- Explain the report to the vessel captain and seek his signature on form.
- Provide a copy of the inspection report to the captain including any comments from the boarding team and captain.
- If there are no major concerns thank the captain and disbar from the vessel. Always debrief the patrol and boarding team after the inspection, complete the documents and reports, and prepare for the next inspection.

### C. Boarding with Suspected Violation

*Note-taking is extremely important during these events for Court preparation and processing.*

- Tag and secure the evidence where it can be guarded from tampering.
- Complete the inspection report and note the infractions to the captain.
- Report the event on time to the patrol vessel.
- Request the captain to return to port for further investigation - if he/she refuses, order him/her to do so (the necessary authority to give this order must be set out in fisheries legislation).
- Bring additional crew to the vessel, conduct arrest procedure, remove the captain from the vessel and bring the vessel to port.
- ***(Remember upon removal of the captain the patrol vessel has immediately assumed full responsibility of the fishing vessel, equipment and crew safety)***
- Maintain security of vessel and crew during the trip to port.
- Notify the base of the incident and planned action.
- Ensure the appropriate persons are prepared to meet the vessel on landing to take charge of the captain and crew and secure the vessel, e.g. Legal, Police, Foreign Representation, etc.
- Secure the evidence on shore (including pictures), complete the document to charge the accused and to bring them to trial and those for the court case.
- Debrief the key superiors and arrange for witnesses for the court hearing.

### D. Order to Port

National fisheries legislation will usually contain a power for an authorized officer to order a vessel that is suspected to have been used in relation to an unlawful activity to go to the nearest convenient port. In some cases, this power must follow a formal act of seizure. The OECS harmonized fisheries legislation, for example, empowers an Authorized Officer to “seize any vessel (together with its gear, stores and cargo), with fishing gear, net or other fishing appliances which he has reason to believe has been used in the commission of an offence or in respect of which the offence has been committed.”

Further any vessel seized under this provision and the crew thereof “shall be taken to the nearest most convenient port and the vessel may be detained pending that outcome of any legal proceedings or its release on posting a bond or other form of security in the case of the CARIFORUM countries with the common law legal system.” Suriname, Haiti and the Dominican Republic will address the issue of seizure, detention and arrest as prescribed by law in their respective countries.

If the Master of the fishing vessels agrees to enter port voluntarily, it is his responsibility to make formal arrangements through his agents for port facilities.

If the vessel enters port under arrest and seizure, it is the responsibility of the arresting authority to make all arrangements. Officers should communicate all necessary information to shore based authorities at the earliest opportunity. For more detailed information refer to **Boarding in Port** below.

#### (i) Boarding in Port

An Officer who directs a fishing vessel to port should remember that the Master of that vessel is always responsible for the ship. A direction that leads a fishing vessel into danger may create a liability. Officers may have to agree to the navigation plans of a fishing vessel Master. Agreement should only be given if these plans are consistent with the instructions to proceed to port.

The Master should be warned that failure to follow the lawful instructions of an Officer to proceed to port may result in arrest and prosecution.

The Officer should enquire whether any of the crew is sick and the nature of the illness. The officer must warn the master that misinformation about the health of the crew can lead to arrest and possible imprisonment. If it is claimed that one or more crew member(s) are sick, the order and other procedures related to the apprehension are to proceed as usual.

The Officer should advise the Port's Health Officer of the Master's claim including all available details at the first opportunity. The Port's Health Officer will act as he sees fit under the circumstances.

## **(ii) Selection of a Port**

The vessel shall be taken to the nearest most convenient port. Officers must be aware of the ports and their facilities.

**The Patrol Craft Commanding Officer, in consultation with shore-based authorities, is responsible for the selection of a port.**

The following factors in selecting a final port of detention for any vessel ordered to port:

- Facilities for customs and quarantine clearance;
- Facilities for handling and securing the evidence;
- Berths and/or moorings to assure the safety and physical security of the crew and vessel at all times;
- Logistical considerations;
- Prosecution requirements (within close proximity of prosecutors, magistrate, court facilities, etc.);
- Access to Port for attendance of witness;
- Security facilities (that is, police or guards for the vessel and restriction of access to the vessel);
- Liaison with the Port Authority;
- Availability of supplies;
- Storage and freezer facilities for fish;
- Access and accommodation for visiting officials;
- Communications facilities;
- The need for and / or the availability of vessels suitable as pursuit craft in case of an attempted breakout / escape.

## **E. Preparation for Boarding**

As soon as the decision to board a vessel is made, or if you suspect that a boarding might be necessary, start taking notes in your notebook. This applies whether you are on land or at sea. Notes should include any orders and instructions you may receive before boarding the Patrol Craft or by radio while at sea. (See section – **Taking Notes**).

In addition to taking notes the following are some other actions a Boarding Officer should take before boarding:

- Fix the position of the suspect vessel;
- Confirm the identity of the suspect vessel and if it is licensed;
- Confirm if there is any apparent or obvious breach of the law;
- Post a lookout to watch (or in any case try to maintain observation) in case anything is thrown overboard from the suspect vessel;

- Check the boarding kit against the checklist;
- Check that batteries are working, film is in the camera and the portable radio is on the right frequency and is working ( that is, call the bridge for a radio check);
- Discuss the plan of operation with the Patrol Craft Commanding Officer so that he knows what you will be doing;
- Muster the boat crew and boarding party. Make sure that each person knows what they are supposed to do;
- Check that the boarding boat is ready for launching, this may include having it swung out and lowered, do not put in the water yet ( if necessary supervise this yourself);
- Just before getting into the boat and when you are alongside the fishing vessel take the position of the Patrol Craft. You may wish to also take a picture of the Patrol craft SATNAV and of the ship you are about to board (See section – **Photographs**);
- Check all that the boat crew and boarding party are wearing the prescribed uniform including overalls, life jacket or Personal Flotation Device (PFD, a small life vest like a waist-coat) workbooks/stores and bullet proof vest. These should not be taken off until they are back on board the Patrol Craft. This will be for personal protection and safety during the boarding operation;
- If you are taking weapons with you be sure that enough ammunition is on hand and that all weapons are safe during the passage to the fishing vessel;
- Stress safety and caution. Anything that can go wrong will go wrong. Avoid trouble, fix things before they break.

The boarding crew should avoid using too many persons who are essential to operating the Patrol Craft. Since a court usually requires a “live” witness, the Patrol Craft Commanding Officer and other essential crew should avoid being implicated as this could prevent at some future point the Patrol Craft from carrying out its duties due to the presence of its Officers in court. Foresight and planning are required by the Patrol Craft Commanding Officer in the selection of his witness.

## **F. Stopping a Vessel**

It is the duty of every Patrol Craft to identify itself clearly as such by all available means. The method of identification will depend on the size of the vessel being approached (and possibly the size of the Patrol Craft).

For larger scale operations, means of identification should include:

- Radio on VHF and HF international calling frequencies (2182 khz HF and 156.9 mhz VHF) and any frequencies know to be used by fishing vessels in the area;
- Flag hoists;
- Loud hailer; and
- Light signals on a Morse lamp.

Fly all appropriate flag signals taken from the International Code of Signals (INTERCO), particularly;

- **“L”- LIMA** “ You should stop your vessel instantly”, and
- **“K”- KILO** “I wish to communicate with you”.

A complete listing of all internationally recognized signals reference should be made to the latest edition of the International Code of Signals published by IMO. These signals should be made by light, radio, flag hoist and any other reasonable means.

All voice communications with the vessel (loud hailer or radio) should be in English and any other appropriate language where possible.

**(i) Pre-Boarding Observations and Questions**

Pre-boarding observations and questions will form a very important component of the evidence gathering process. Observations should commence as soon as the suspect vessel is sighted. Pre-boarding questions should follow the recording of observations. Pre-boarding questions should be posed after the Patrol Craft has closed or intercepted the suspect vessel.

**Pre-boarding observations should include:**

- The exact position (latitude and longitude) in which the suspect vessel was first sighted;
- Suspect vessel call sign, license number and nationality;
- Suspect vessel activities i.e. course and speed, any floating lines, buoys, flags or lights in the immediate vicinity; and
- Crew reaction to patrol craft presence, e.g. are they disposing of evidence overboard, suddenly starting engine, hurriedly taking in fishing gear including small boat, or moving away at all speed.

**Pre-boarding questions should include:**

- Master's name and address;
- Vessel's name and home port;
- Vessel documentation number(s);
- Vessel nationality (if different to home port);
- Number of persons on board and their nationalities;
- Last port of call;
- Next port of call;
- Number of days at sea;
- Vessel's license number;
- Whether there are any weapons on board.

**For local fishing vessels, pre-boarding questions should include:**

- Vessel registration and license number;
- Master name and address;
- Owners name and address;
- Social security, national insurance and medical benefits identification;
- Fishers license;
- Logbook;
- Inspection card;
- Number of days at sea (if appropriate)
- Vessel name and name of usual landing site;
- Number of crew / fishermen on board;
- Whether there are any weapons on board.

**(ii) Refusal to Stop**

A suspect may refuse to stop, especially if the vessel is larger than the Patrol Craft. If the vessel is a foreign-flagged vessel, the commanding officer of the Patrol Craft may exercise the right to Hot Pursuit in accordance with the provisions of international law. (A summary of the elements of Hot Pursuit under UNCLOS is provided at Appendix 9).

A Patrol Craft may take several steps to encourage a fishing vessel to stop. This is particularly true if the vessel is purpose designed. These steps might include:

- Displays of the speed of the patrol craft by rapidly circling the suspect. Caution should be taken to avoid any outlying gear,
- Coming close alongside the suspect at speed is also possible. The caution here is not to range too close. The Patrol Craft must avoid a collision or any attempt to ram by the suspect.
- The guns on the Patrol Craft could also be clearly displayed to the suspect. At night, they should be illuminated by the searchlight,
- Continual voice and light messages, along with flag hoists, should be made throughout these manoeuvres.

If all else fails, the Patrol Craft Commanding Officer may resort to use of force. Clearance for use of force will have to be obtained from the appropriate authorities ashore.

## CHAPTER 4 – BOARDING

When the suspect vessel has stopped or is proceeding at reduced speed and has shown willingness to accept the boarding party the following procedures should be taken:

- There should be a safe distance between the patrol vessel and the suspect fishing vessel.
- A distance of about one hundred meters is recommended.
- Boarding craft should be lowered on the side away from the suspect vessel;
- The boarding party should approach the fishing vessel and ranges alongside it;
- The boarding party should enter the fishing vessel (while the Patrol Craft is stopped);
- Unless the fishing vessel is stopped completely and the sea is fairly calm, it is not advisable to hook on to vessel. Painter lines should never be passed to the vessel;
- Once the boarding party has left the boarding craft, it should fall back and take up a position on the opposite quarter of the fishing vessel from the Patrol Craft. The fishing vessel should always remain in full view of the Patrol Craft;
- For open sloop fishing vessels, boarding can be conducted by two crew members and the coastal patrol craft could pull up alongside the open vessel for boarding;

Look-outs must be placed to watch the boarding party and the fishing vessel at all times during the operation.

### Boarding Party Procedures

- Boarding should be undertaken by at least three persons. Preferably there should be four to six persons for boarding of larger vessels.
- At least one person is required to operate the boarding craft, preferably two.
- The Boarding Officer should board first followed by the remainder of the boarding party.
- The Boarding Officer shall wait at the rail of the suspect vessel until all members of the party are aboard and the boarding craft is clear.
- The Boarding Officer shall introduce and identify himself and the rest of the boarding party to the crew of the suspect vessel.
- If there are sufficient persons in the boarding party the Boarding Officer **should** detail the second in command and half of the party to conduct a sweep search and secure the engine room.
- Unless extenuating circumstances dictate otherwise, the Boarding Officer should then ask to be taken to the bridge and the Master of the vessel. The purpose of the introduction is to determine who is Master or person in charge; identify himself by telling the Master what agency he represents; to tell the purpose of the boarding; and to enquire whether there are any weapons on board.  
**Example: “Good day Captain, my name is \_\_\_\_\_; The Coast Guard or Fisheries Division is here to determine the status of your vessel and ensure compliance with the laws and regulations. Captain, without reaching for them, are there any weapons on board?”**
- In the bridge, the Boarding Officer should once again identify himself to the Master.
- Members of the boarding party should all wear a prescribed uniform which should include overalls, work boots / shoes, bullet proof vests and life jackets.
- One person in the boarding party should be detailed to take notes and photographs.
- No member of the boarding party is to be alone at any time during the operation. Always have at least two persons together.
- Members of the boarding party are not to accept any drink of alcohol or alcoholic beverages. Any offers should be declined in a firm but courteous manner.

- Members of the boarding party should not get involved in personal discussions with persons on board the ship being boarded. An expression of one's own opinion on fisheries policies and regulations could prove embarrassing to both the Officer and his country.

## **Documentation**

The need for proper documentation can never be over emphasized. Documentation in whatever form must be orderly, clear and well detailed. The primary means of documentation is note taking. This can however, be supplemented with photographs, as well as audio and video recordings. Electronic notepads should also be encouraged as a means for note taking and illustrations.

**TAKING NOTES:** The ideal notebook is a bound, hardcover, lined book which could easily fit into the Officer's uniform pocket. Pages should be numbered and should never be removed.

Electronic note taking may be done in parallel with written notes making sure that the chain of custody is unbroken

### **Note taking serves the following purposes:**

- To assist in testifying in court as the time between the offence and the court action may be lengthy;
- To recall many small important details such as vessel license number, serial number, foreign names and words, as well as exact words spoken;
- To decide a course of action to be followed and ensuring no area of enquiry is overlooked in discussions with supervisors and fellow officers; and
- In preparing detailed reports and statements in chronological order.

### **General Rules Concerning Note and Notebooks**

- Notebook covers should be labelled to indicate the period covered by the book.
- Each entry should have the date, day, time and place of event noted.
- Entries concerning different events should be separated from previous entries by a bold line.
- Write on both sides of the page. Do not leave any blank pages.
- Write neatly and clearly in the book as it may be read by others and / or used in court.
- Write in a language you feel comfortable with. Use codes or shorthand, as long as you are consistent, neat and precise.
- Be sure of accurate entries. Include full names and addresses, accurate descriptions of vessels, etc. Note the scene as it is found.
- Record the facts only.
- Do not record opinions or speculate on the facts. This could cause embarrassment or lose the trial if you are questioned in court.
- Do not tear out pages. This could be interpreted mean that you have destroyed evidence or statements that may be helpful to the accused.
- Use the book for business only. Do not use it as an address book for your girlfriend's phone numbers or shopping lists.
- Diagrams and sketches will help in recalling measurements and location of objects found,
- Do not erase anything in the book. If you make a mistake, draw a single line through the error, initial it. Make the correction neither after the error nor above it.
- Make all entries at the time they happen or as soon as reasonably possible thereafter.
- Any person may take notes for another. These notes can then serve as the notes for all Officers in the boarding party provided they are:

- Read and checked for accuracy,
- Agreed upon,
- Changes initialled by all persons,
- Signed by all persons as being a true and accurate record of the events as they occurred
- Keep all your notebooks indefinitely.

Officers may find it useful to keep a copy of the warnings and other check lists fixed to the covers of the book.

In coordination with the Patrol Craft Commanding Officer and the Officer on watch, the Boarding Officer should begin and maintain a chronological record of all actions. This summary should be as complete as possible beginning with that time the violation was first suspected. The summary should be verified and signed by the Patrol Craft Commanding Officer and the Officer on watch. This summary may be later submitted or used for notes in court. Entries in the summary would include but are not limited to:

- Time vessel observed in violation,
- Distance from which vessel was observed,
- Time of flag hoists;
- Messages sent and received;
- Actions and reactions of vessels; and
- Course and engine changes.

## **Photographs**

### **(i) Purpose of Photographs**

Photographs can be a particularly strong tool of evidence in court. It often occurs that a judge or magistrate is unfamiliar with fishing, fishing vessels or fish. A picture can serve as a tool to compare the spoken or written testimony with actual scenes of the offence.

### **(ii) General Rules for Taking Photographs**

Photographs serve as both evidence and as notes of the Officer. The Officer you should take as much care in taking pictures as in taking notes. The following procedure should be used for taking photographs:

- The Officer should start taking pictures of the vessel as soon as you approach to a reasonable distance;
- It is better to take too many pictures rather than too few;
- Take pictures that may back up notes and other evidence (for example, of the position on the SATNAV, then of the vessel fishing, of a crew member biting into fresh fish, etc.);
- Try to make the photos complement the notes (that is, a pictorial record of the notes);
- Keep a record of each photograph taken
- Use of an electronic camera is permitted.

### **The Following listing must be done:**

- the subject
- the day, date, time and place
- The photographer
- When the film is finished (if the Camera uses film), label the film canister with the date, time and place where the photographs were taken
- For an electronic camera the procedure for the production of the picture must be in accordance with the electronic evidence act of the respective country

- Get a receipt for the film when handed over for processing
- If possible, the Officer should watch processing being done
- When the film is processed mark the information from the canister on the film and be sure that it matches with the record made while the pictures were been taken
- Each print should be marked with the information recorded at the time the picture was taken
- Each print should be signed by the photographer to confirm the record
- Try to arrange for the person taking notes to include when the pictures were taken. In this fashion both a written and photographic record are available

### **Video Recording**

A video camera is perhaps an even better method of recording a boarding. This is particularly true if sound is recorded. Once again, detailed written records of the time beginning and ending of each section of the recording should be made.

**Picture is not substitute for notes:** Pictures and video film are NOT a replacement for notes. Notes should be taken of all events and supplemented by pictures whenever possible.

### **The Investigation**

The process of gathering evidence must be a logical one. Interviews should be done first. A search of the vessel should follow starting (in the case of larger vessels) at the bridge, going through the accommodation to the work deck and then to the engine room.

When investigating whether an offence has been committed, the Authorized Officer should be guided by the Judges Rules or appropriate national guidelines. All or any information obtained from any person, whether orally or in writing is only admissible as evidence if it is voluntary, in the sense that it has not been obtained from the witness by way of prejudice or hope of advantage, exercised or held out to him by a person in authority, or by oppression.

As soon as an Authorized Officer has evidence which would afford reasonable grounds for suspecting that an offence has been committed he shall caution that person or caused him to be cautioned (warned) before putting him to any questions or further questions, relating to that offence.

The caution (warning) should be given in keeping with the relevant rules of 'caution' in the respective CARIFORUM countries.

When after being cautioned (or warned), a person is being questioned, or elects to make a Statement, a record **shall** be kept of the time and place at which any such questioning and statement began and ended and of the persons present.

Further information pertaining to the Judges Rules is given at Appendix I of the Fisheries Prosecution Manual. Other guidelines follow similar principles with regard to cautioning and the like.

Having identified himself to the Master, the Boarding Officer should proceed with the following:

- Arrest or detain the Master or chief fisherman if warranted;
- Caution ( warn) the Master or the chief fisherman if warranted or if in doubt;
- For a local fishing vessel ask for names of the crew and write them down on a form and have each fisherman sign next to their name.
- Examine local fishermen's licenses and vessel registration and inspection certificates.

- If the vessel is a foreign fishing vessel and the Master does not speak English or pretends not to, read the warning to a member of the crew to translate and show them the language cards if necessary;
- Ask for a copy of the crew list duly signed by the master;
- Muster all non-essential personnel on an open deck area under guard if necessary;
- Compare the position taken on the patrol craft with the position shown on the fishing vessel's equipment (a photograph may also help). Confirm this with the Master or chief fisherman. Ask him if he agrees with it. If he does not agree, get an explanation why. Have the Master fix the position of the vessel while you watch the procedure and output; and
- Examine and note the reading setting of all bridge equipment. This process could be greatly aided by photographing the reading of bridge equipment;
- Interview the Master or the chief fisherman further to determine the authenticity of the responses given to the pre-boarding questions. A list of the pertinent questions in Spanish, French and Creole are given at [Appendix IX].

As part of the investigation, a search of the vessel should be conducted even if there is a statement of guilt by the Master or crew. (The Court may rule this Statement inadmissible as evidence. In such an instance, the Case will depend on other evidence gathered.)

The search should be conducted by two or more persons so that each can guard the other against possible attack. The Master should also be invited to accompany the search team. This will prevent later accusations of theft of personal or ship belongings and allow for further questioning concerning further evidence found. For larger vessels, it is recommended that the search starts in the bridge goes through the accommodation to the work deck then the engine room.

- Examine and note the reading and settings of all Bridge equipment, make and model, such as: depth sounder; fish finder; radar (note range and bearing present) SATNAV; radio direction finder and note the turned frequency.
- Check for transponders, it may correspond with buoys associated with fish traps and other fishing gear or FAD's nearby,
- Check all tuned radio frequencies; auto pilot; and course record.
- Check the charts in use for recently erased course lines and positions and/or positions not consent with facts, (for example, a fishing vessel doing 30 knots).
- Check charts in drawer(s). Charts are usually in the order of most recent one used on top with the ones used earliest beneath.
- Ask for a look at the Ship's logs; deck logs or rough log; fishing log (if separate from deck log); freezer log; engine room log; and radio log. Ask if there are any other logs.

Repeat this question from time to time. The possibility exists that false logs could be provided. Keep an eye out for official logs, especially in the Master's cabin.

- Begin a search of the other areas of the vessel only when the whereabouts of the crew are known. Check the condition of the fishing gear. Ascertain whether there is:
  - Gear still wet;
  - Fish is nets or on hooks;
  - Gear not stowed;
  - Check winches and long line storage area to see if floating long lines are deployed;
  - For local vessels using traps and nets check the traps and net identification number as issued by the fisheries authority.
- Boat wet, engine hot, water in boat;

- Fresh fish in freezer, including galley ( i.e. eyes clear, gill colour good, skin rebounds after pressure and do not stay indented, no rank “fishy” smell)
  - Storage of live or dead small bait fish;
  - Presence of small vessels that could be potentially deployed for fishing purposes (look for fishing equipment suited to smaller vessel operations, etc);
- Check winches for recent use;
- Crew with recent cuts, scratches or abrasions;
- Crew with wet hair or bodies, or appearance of recent diving;
- Make a written record of:
  - (i) the amount, kind and freshness of any fish on board;
  - (ii) the position, condition and state of readiness of nets and lines, skiffs and boats, and other fishing gear;
  - (iii) any statements made by any person
- Check engine room.
- Engines still hot;
- Consistent engine temperatures in logs or variations;
- Any signs of malfunction or recent repair;
- Auxiliary engines, generators, pumps, refrigerators compressors working

If the decision is taken to escort the vessel to port during the passage check:

- If the engines operated normally;
- If the Master can navigate without any problems;
- The accuracy and efficient operation of all navigation equipment and cross check them with other machines like radar and with visual bearings;
- If the crew tidy up the fishing gear and stow it away (this can be compared with photographs, notes and sketches of the deck made at time of boarding).

Maintain a rough custody log during the transit of the vessel to Port. Do not make any further notes in the vessel’s log after you have noted your inspection and / or arrest / detention.

When fixing the position of the vessel the Officer must be prepared to substantiate the fix in Court if necessary. The use of new charts (that is, no erasures) for plotting violations is recommended. This may avoid any challenges in Court about the validity of the plotted positions.

At the point the Authorized Officer is a detective. He should overlook nothing, accept nothing said and suspect everything and everybody until he is convinced or crew statements by physical facts. He must however be courteous and polite. He must not accuse anyone needlessly.

### **Seizing Evidence**

Evidence should be assembled to prove three main elements:

- That the person or vessel was in an area under the jurisdiction of CARIFORUM Member State;
- That when in the area, the person or vessel violated the fisheries Act or Regulations of that Member State; or national legislation for the implementation of international agreements
- That probable cause to arrest existed at the time of arrest;

If a decision is made to detain or arrest the ship immediately advise and caution the Master or the chief fisherman. It will also be necessary to secure the relevant evidence such as logs, charts and fish samples, illegal gear, navigation equipment, video, photograph films and cameras, notes and signed written.

Appoint one person to be in charge of collecting and retaining evidence. This person should take the following steps:

- Issue a receipt to the Master or chief fisherman for each piece of evidence taken;
- The receipt must contain the following instructions
- Description of the object
- Name of the vessel
- Day, time and place seized
- Name and signature of the person seizing the evidence
- The receipt may also act as the inventory of items seized
- Fish or other samples should be wrapped as follows
- Place the sample in a plastic bag;
- Place this bag in a second bag;
- Twist the neck of the second bag and tape the twisted portion completely ( for at least 30cm);
- Where the top and the bottom are taped together, write your initials, the date and the number of the exhibit;
- Put a tag through the handle with the nature of the sample, the day, date, time and place, the number of the exhibit, your name and signature.

## **Communication**

### **(i) Communication with Shore**

The detention or arrest of a FFV is likely to have a significant impact on the immediate activities of the Ministry of Fisheries, the Ministry of Foreign Affairs and the Ministry of National Security. Many Ministries of Government could be involved during initial phases when the vessel is brought to Port. For this reason, shore-based authorities must be always kept advised. The detention of a local fishing vessel will also have significant impact on the activities of a number of ministries and national fishers' organizations. If the vessel is a local fishing vessel, the ministries to be involved will depend on the offense committed.

- A meeting must be immediately arranged for the Commanding Officer, the arresting Officer, CFO, the Permanent Secretary, officer from the Prosecutor's Office .
- If the offence is an environmental offence, the relevant authority of the Ministry of Environment must be notified.
- A meeting must be immediately scheduled between the Commanding Officer, the Arresting Officer, Fisheries Authorities and Environment Authorities.
- Patrol officers should maintain a written log in chronological order, of all communications and decisions made by both shore and sea personnel.
- This log should be separate from any log maintained by the ship.
- The log must be treated like any other official log or notebook.

### **Shore-based authorities should be notified of the following circumstances**

- Upon initial sighting of a suspect;
- Upon closer sighting of the suspect when additional information is available;
- When the decision is made or permission is sought to board;
- If the suspect attempts to escape or run
- Concerning the boarding and evidence gathered;
- If the decision is made or permission is sought to detain, order to port or arrest vessel;

Periodic reports on progress to port

**Officers should maintain detailed notes of all communication about an incident.** These would include the:

- Times and persons contacted;
- The results of the contacts;
- The precise communication with the Patrol Craft.

**(ii) Communication between Boarding Party and Patrol Craft**

Any boarding situation may put the Boarding Party in danger from assault and/or abduction. The Patrol Craft should call the Boarding Party and the Boarding Boat not less than every 15 minutes during the boarding operation. This need only be a short call to be sure of their safety.

It is advisable that a simple code be developed to be sure that the Party is not being forced to respond that they are safe when the opposite is true, for example:

- A response of **“Boarding Party, OPS normal”** means no problem, whereas;
- A response of **“Boarding Party, everything is OK”** means some sort of trouble that cannot be communicated by the speaker.

**(iii) Communications by the Vessel’s Master or Chief Fisherman and Crew**

After detention or arrest the Master or the chief fisherman and crew have the right to communicate with legal representation and with their consular officials. These rights must not be withheld. All reasonable efforts must be made to ease such communication and get legal representation for the Master at his expense if he requests it.

Caution should be taken when radio messages are sent from sea. The Master may be arranging for help from other vessels. All communications while at sea should be controlled and monitored.

**Boarding in Port**

**Procedures to be taken in port**

The following actions are to be taken when a fishing vessel arrives in Port:

- Advise Fisheries, Customs, Health/Quarantine, Immigration and Port Authorities;
- Meet the vessel with a boarding team of at least a Fisheries Officer, Customs official, Health official, a member of the Police, an interpreter, and a representative of the Prosecutor’s Office;
- Proceed with the boarding as if at sea, but take more time and be more thorough;
- Written instructions should be given to the Master informing him to remain in charge of the vessel and not to move the vessel or try to leave until advised to do so by an Authorized official;
- If the vessel is a FFV, after the vessel has been cleared, the Master and crew must be advised of their rights under Article 36 of the Vienna Convention of Consular Relations. These involve the rights of the Master and crew makes such to communicate with or have access to their Consular representative. If the Master or crew request, all reasonable steps shall be taken to communicate their request, through the proper authority of the country, to the Consular Representative. If no Consular official exists, the Master must be told this fact;
- The Master or the chief fisherman should be reminded that he is always responsible for the vessel until that responsibility is removed. This includes being sure that the vessel does not become a hazard to navigation and keeping enough crew on board in case of an emergency.

**The Boarding Officer should prepare a report on the following matters after the arrival of the vessel:**

- Fuel, food and water supplies on board (this report will be the basis for decisions concerning additional supplies to be provided, if necessary);
- Full description of the vessel (to form the basis for disposal action subsequent to any forfeiture order);
- Estimated size and composition and when possible of catch;
- Full crew list, compiled from identity documents and indicating the capacity of each person on board;
- Name of vessel owner;
- Nationality of vessel owner.

The following are the criteria for selection of a suitable long-term berth:

- Safe in all weathers;
- In the view of a responsible authority that provides 24 hour service or has routine patrols of the area;
- Capable of being illuminated sufficiently to see unauthorized visitors or better;
- Capable of access by a supervised landing point;
- Given the probable poor condition of the vessel's own anchors, those should be used only as a last resort;
- Long-term Caretakers should be used (these should be the Police);
- If the caretakers do not have nautical skills, frequent periodic inspections of the vessel should be made;
- A careful record must be maintained of the results of such inspections.

Other steps to deter unauthorized departure would include:

- Removal of navigation equipment, chart etc.
- Control of food and fresh water so that quantities for a sustained voyage are not on board at any time.

After forfeiture of the vessel last minute sabotage by the crew is highly possible. Be sure that before the repatriation of the remaining crew, the main engines are started. All machinery which operated when the vessel was arrested should still operate correctly.

### **Publicity**

The detention/arrest of a foreign fishing vessel is likely to cause great interest on both local and foreign media. Officers are cautioned that they must adhere to the local regulations governing press releases. Press releases should be made by authorized personnel only. They should state only the facts of the case, that is:

- Name of the Patrol Vessel;
- Position of the detention / arrest;
- Details of the vessel detained / arrested;
- A statement that further investigation will occur.

No statements must be made before the start of legal proceedings that could give the media any information that may be given as evidence in the trial. Such statements could be held as prejudicial and cause the case to be dismissed.

The media will be interested in any difference of opinion between authorities on any aspect of the case. To avoid this, any request to an Officer to voice an opinion of the facts or circumstances should be politely refused.

A single media relations officer should be appointed or set up. All inquiries should be referred to that authority. Officers must not allow themselves to be drawn into any “off the record” discussions.

Media representatives should not be allowed on board the vessel without the approval of Senior Authority, in any case, they must never be allowed before the required customs, health and other clearances have been obtained.

## CHAPTER 5 – FOLLOW UP ACTIVITIES AND COURT PROCEEDINGS

### A. Follow-up Actions

#### I. Court Proceedings

- (i) Conduct and Department in court. Officers who are to appear in court to give evidence must be properly attired; if possible officers should wear their dress uniform. This is an import professional impression to portray, it also shows respect to the Judge and Court; gives the impression of an Officer who is proud of and neat in his work.

*Officers must be sure that they are well dressed, clean and neat during every Court appearance. This is When giving evidence, the Officer should stand or sit (it is the custom of the Court) in an alert and confident manner. Do not chew gum or anything else and do not slouch.*

*The taking of the Oath is a solemn ceremony. You are swearing to tell the truth on the Bible let the Court see that you are fully aware that the Oath is something that you regard as binding before God.*

*Speak clearly, at a normal speed. Nothing frustrates a Judge (and jury) more than having to strain to hear testimony and ask for repetitions.*

*Below are ten “Commandments” for an Enforcement Officer. These should be studied and adhere to by all Officers when testifying.*

**Tell the Truth**

*No case is important enough to your Minister, your Country or its people, or to you as an individual to say anything but the truth. The court may be very severe (that is, a fine or jail term) if you do not.*

*Your self-respect and peace of mind are worth more than the comments of another Officer, defence counsel, or anyone else.*

**Tell the story in your own words**

*At the first opportunity ask the Court if you may use your notes. Do not lecture, like a Professor, or preach, like a minister. Speak clearly and loudly to be heard.*

**Correct any mistakes or errors as soon as possible**

*Officers have the tendency to defend slight slips on details or facts. They sometimes feel that a small error will reflect on their whole testimony. It does not matter what the prosecuting or defence lawyers think of you. It matters that the Judge gets the impression that you are telling the truth.*

**Be respectful to all persons**

*Say “Yes Sir or Ma’am” or “No Sir or Ma’am” to the Defence Counsel and Prosecutor and “Yes or No your Worship, Honour, Lordship or Ladyship” when questioned by the Magistrate or Judge. This is particularly important when addressing a Defence Counsel. The Defence might often try to harass you verbally. Politeness will enhance his / her respect for you and can often take the sting from his / her attack.*

The Defence Counsel is not your enemy

*You are in Court to tell the truth of the case. You are not there to serve the Prosecutor, the Defendant, or anyone else. If you get mad at a defence Counsel's questions and try to get back at him / her, he / she will have achieved much of what he / she desires. He / She now have you off balance and will twist you around his / her finger. Stick to the facts, stay calm and control your temper.*

Do not look as though you are trying to convict

*If you appear that you are trying hard to convict, the Court will start to question your impartiality and, perhaps the rest of your evidence. This may lead to an acquittal rather than a conviction.*

Do not hurry

*Make sure you understand each other question and ask for it to be repeated if you do not. Ask for an explanation of the question if necessary. The Court wants to hear your information. It will give the time necessary to be sure that all impression you give is correct.*

Do not volunteer information

*The Prosecutor should be familiar with the case and will seek the information he requires. Surprise evidence from you will give the impression that you are anxious to convict.*

Answer only the question asked

*Confine your answer to the facts of the question.*

*No conviction is important enough to justify either hiding or twisting the facts*

*If you can say something good about the accused, say it*

*This gives the impression of impartiality and truthfulness to the Court and proves that you are not trying to conceal anything. By doing this, you give strength and weight to all of your evidence.*

Maintain your credibility at all times

*Do not be afraid to admit you don't know an answer. If you make up a story or try to bluff, the defence will rapidly pick holes in your testimony. If the Prosecutor wants evidence on areas you are unclear about he will call another witness who has that information.*

## **(ii) Relationship with the Prosecutor**

The prosecutor should be familiar with your evidence from his study of the case. If you have any doubt or worries about your court appearance ask the Prosecutor or a Senior Officer for advice.

While the prosecutors will most likely mention your statement in Court, you should remind him that you will want to consult them before giving evidence. This will get the procedures out of the way and allow you to give your evidence uninterrupted.

If possible, attend a court session, preferably during a fisheries prosecution, and watch how the Prosecutor, Defence and Judge conduct themselves. This is not the same as being on the stand yourself, but the experience will be good for you when you have to appear.

After having given your evidence do not be surprised if you are re-called to testify again. This is not because you have not given your evidence properly. The Prosecutor may want to expand upon or emphasize a point that counters or clarifies previous testimony.

## APPENDIX 1 – INTERNATIONAL FISHERIES LAW

### A. International Law

International law is the system of rules governing the relationship among States (and between States and international organizations). The rules of international law are reflected primarily in treaties, which generally create obligations only for those States party to the treaty. Other rules of international law arise from general international practice accepted as law (so-called “customary international law”), although it is sometimes difficult to determine whether a particular practice has become accepted as law by States.

The most important rules of international law relating to Monitoring, Control and Surveillance (MCS) are those contained in treaties, such as UNCLOS and related agreements. Customary international law plays a relatively minor role in governing MCS activities.

Fisheries administrators should be aware of at least the following three characteristics of international law:

- (a) The “subjects” of international law (i.e. the parties who are bound by it) are States and international organizations. Generally speaking, a rule of international law cannot be enforced directly against individuals or companies unless there is some provision in the domestic law that authorizes its application as a matter of domestic law. In many States (notably those which follow the common law tradition originally derived from English law) it is necessary for Parliament to pass an Act implementing a rule of international law before it applies at the domestic level. In other States (notably those following the civil law tradition), this is not always necessary.
- (b) Treaties do not bind non-parties. A treaty only applies to the parties to it. States that are not parties to a treaty are not bound by its provisions unless they have consented to be bound by those provisions through some other means (or if the provisions reflect customary international law, in which case they will be bound as a matter of customary international law rather than under the treaty).

However, a number of recent international fisheries agreements, including the UN Fish Stocks Agreement and the FAO Compliance Agreement, require parties to ensure that their flag vessels comply with, and do not undermine the effectiveness of, conservation and management measures adopted pursuant to other international agreements (particularly those establishing regional fisheries bodies), even if the State is not a party to those other agreements.

- (c) Not all international instruments contain binding rules. Some international instruments contain political rather than legally binding commitments. Over time, such political commitments may become binding by “hardening” into customary international law or through inclusion in subsequent treaties. However, one should not underestimate the significance of non-binding instruments, particularly in the field of international fisheries. Some non-binding instruments have radically changed the behaviour of some States and the conduct of some fisheries.

### UN CONVENTION ON THE LAW OF THE SEA (1982)

#### (i) General

The third United Nations Conference on the Law of the Sea spent over ten years in formulating the Convention on the Law of the Sea. It was opened for signature on 10th December 1982 in

Jamaica. The Convention entered into force in 1994, but by then many provisions of the Convention (including the majority of those concerning fisheries) were considered to be customary international law, and as such applicable to all States.

The purpose of this Convention is to establish a comprehensive regime dealing with all matters relating to the law of the sea, bearing in mind that the problems of ocean space are closely interrelated and need to be considered as a whole. The elaboration of the Convention represents an attempt to establish true universality in the effort to achieve a “just and equitable international economic order” governing ocean space.

The Convention provides principles and rules for:-

- (i) The limits of the territorial sea and innocent passage
- (ii) Straits used for international navigation
- (iii) Archipelagic states
- (iv) The exclusive economic zone
- (v) The continental shelf
- (vi) The high seas
- (vii) Rights of land-locked states
- (viii) The sea-bed, ocean floor and subsoil beyond national jurisdiction – control, exploitation, dispute settlement
- (ix) Protection and preservation of the marine environment
- (x) Pollution
- (xi) Marine scientific research and technology
- (xii) Settlement of disputes
- (xiii) Other matters

All fisheries administrators should have a good understanding of the basic provisions of UNCLOS relating to the management of living marine resources.

## **(ii) Maritime Zones**

Whilst for most purposes related to fisheries management, UNCLOS divides the oceans into two basic areas:

- (a) areas under the jurisdiction of coastal States (in which the coastal State has exclusive authority to manage fisheries); and
- (b) the high seas, in which all States have the right for their nationals to fish, subject to certain important qualifications,

There are in fact (at least) six maritime zones or jurisdictional regimes relevant to fisheries described in the Convention.

The Convention establishes rules for the fixing of ‘baselines’ along the coastlines of or around countries from which the breadth of the territorial sea and other maritime zones are measured. It then sets out the rights and duties of countries in and over those maritime zones. “The normal baseline ... is the low-water line along the coast ...” (Article 5). If there are reefs then the baseline is the seaward low-water line of the reef (Article 6). If the coast is deeply indented, or there are bays of a certain size or mouths of rivers then the baselines will (subject to certain rules) go straight across and not follow the exact line of the coast (Articles 7, 9 and 10).

### **Internal Waters**

This includes all waters to the landward side of the territorial sea baselines. The State has full sovereignty over these waters.

### **Territorial Sea**

Every state has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles from the baseline (Article 3). A State may adopt laws respecting, among other things, conservation, fisheries, immigration and customs in the territorial sea. A State has complete sovereignty over this area but must allow the innocent passage of vessels.

### **Archipelagic Waters**

An archipelago, under the Convention, is a group of islands that are so closely interrelated that they form an intrinsic geographical, economic and political entity. Baselines are formed by joining the outermost parts of the low water marks of the islands or such other points as the State may enact. The measurements of the Territorial Sea, Contiguous Zone and Exclusive Economic Zone are measured from these baselines, and the waters landward of archipelagic baselines (the “archipelagic waters”) have the same status as Internal Waters except for designated shipping channels and Innocent Passage. (Articles 47 - 54 provide detailed rules for the drawing of archipelagic baselines and their legal status).

### **Contiguous Zone**

This is an area not more than 24 nautical miles (nm), drawn from the baselines from which the Territorial Sea is measured (or in the case of archipelagic States, the archipelagic baselines). A State may exercise the control necessary to prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations (including those which also concern fisheries) within its territory or territorial sea. The State may also punish infringements of the above laws and regulations (Article 33).

### **Exclusive Economic Zone (EEZ)**

The exclusive economic zone (EEZ) is an area beyond and adjacent to the territorial sea and shall not extend beyond 200 nautical miles from the baselines. Within this zone a country has sovereign rights over the resources and the exclusive right to explore, exploit, conserve and manage the (living and non-living) resources. The country may make laws and regulations concerning, among other things, licensing, fees, equipment used, species caught, quotas, information required from vessels, the placement of observers and enforcement procedures. (See Article 55 and Part V generally for full details).

Note that some States claim an “exclusive fishing zone” (although this is not a concept expressly contained in UNCLOS). In practice, this is the same as an Exclusive Economic Zone, except that sovereign rights for the exploration, exploitation, conservation and management are confined to the living resources **only**.

### **Continental Shelf**

The Continental Shelf comprises the seabed and sub-soil of the sub-marine areas but extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin to a distance of 350 nautical miles (nm) maximum (but normally 200 nautical miles). The State exercises over the Continental Shelf, sovereign rights for the purpose of exploring it and exploiting the mineral and other non-living resources of the sea-bed and sub-soil together with living organisms on or

under the sea-bed , which are unable to move except in constant physical contact with the sea-bed or sub-soil. (See Article 76 and Part VI generally for full details).

### **(iii) Coastal State Rights and Responsibilities in the EEZ**

In the EEZ, the coastal state has sovereign rights to explore and exploit, conserve and manage all the natural resources in accordance with the Convention. This covers the living and non-living resources of the seabed, the subsoil and the waters above. In particular, jurisdiction is given over matters of marine scientific research and the protection and preservation of the marine environment (Article 56).

The coastal state must determine the allowable catch of the living resources in its EEZ. It must make sure that no resource is endangered by over-exploitation and that populations of harvested species are maintained at or restored to levels which can produce the maximum sustainable yield (Article 61).

The coastal state must promote the objective of optimum utilization of the living resources. This is done by the coastal state first determining its own capacity to harvest the living resources of its EEZ. If it does not have the capacity to harvest the entire allowable catch then it must by agreement give access to the surplus to other states. When this is done a number of factors must be taken into account including the requirements of developing states and the need to minimize economic dislocation in states whose nationals have habitually fished in the zone or have done much research.

In turn the other states fishing in the EEZ must comply with conservation measures and other laws and regulations of the coastal state. Those laws and regulations must be consistent with the Convention and may include provisions:-

- (i) for licensing systems;
- (ii) determining species and quotas which may be caught;
- (iii) regulating seasons, areas, gear type, size and numbers of vessels;
- (iv) requiring catch, effort and location information;
- (v) for the placing of observers;
- (vi) for the regulation of joint ventures; and
- (vii) for enforcement procedures.

Due notice must be given of conservation and management laws and regulations (Article 62).

Provision is also made for highly migratory species and other kinds of aquatic life (Articles 64 - 68).

### **Enforcement powers**

A coastal state has broad enforcement powers within its EEZ in relation to foreign fishing vessels. Article 73(1) of UNCLOS provides that a coastal State may “in the exercise of its sovereign rights to exploit, conserve or manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings as it considers necessary to ensure compliance with laws and regulations adopted by it”. Enforcement powers of the coastal state are subject to some limitations. States are required to:

- promptly release arrested vessels and their crews upon the posting of a reasonable bond or other security (Articles 72(2), 291);
- not to imprison foreign nationals in the absence of agreement to the contrary by the states concerned or to apply any other form of corporal punishment;
- promptly notify the flag State of an arrested or detained foreign vessel and the penalties imposed (Article 73(4)).

The Convention also provides for the right of hot pursuit. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State (applicable to the maritime zone in which the vessel was located at the relevant time). Such pursuit must be commenced when the foreign ship or one of its boats is within the jurisdiction of the pursuing State, and may only be continued outside that jurisdiction if the pursuit has not been interrupted. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State. It is debatable whether hot pursuit may be undertaken into a neighbouring EEZ or onto the high seas and thence into another EEZ. Prosecutors should check the law carefully if any question of hot pursuit arises. Assistance and advice may also be sought from national legal advisers.

### **FAO COMPLIANCE AGREEMENT (1993)**

The 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement) seeks to strengthen the provisions in UNCLOS relating to high seas fishing. This treaty has two primary objectives. The first is to require all States whose vessels fish on the high seas to take a range of steps to ensure that those vessels do not undermine measures to conserve and manage the living resources of the high seas. The second objective is to increase the transparency of all high seas fishing operations through the collection and dissemination of data.

Article III of the Compliance Agreement contains its most significant provisions for purposes of MCS, including three fundamental responsibilities of flag States:

- (a) Flag States should ensure that their vessels do not undermine fishery conservation and management measures that apply in any high seas area.
- (b) Vessels should not fish on the high seas except pursuant to express authorization to do so issued by the flag State.
- (c) A flag State should not grant such authorization to a vessel unless it can ensure that the vessel will not undermine fishery conservation and management measures that apply in a high seas area in which the vessel will operate.

Article III of the Compliance Agreement also requires each flag State to ensure that its fishing vessels are marked to be readily identifiable in accordance with generally accepted standards (such as the FAO vessel marking scheme), to obtain information on the operations of their vessels, and to impose sanctions for non-compliance that are sufficiently severe to deter further non-compliance.

### **UN FISH STOCKS AGREEMENT (1995)**

The United Nations Agreement for 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 (UN Fish Stocks Agreement) was adopted in August 1995, and entered into force on 11 December 2001, following the deposit of instruments of ratification or accession by 30 States. This treaty builds on several general provisions of UNCLOS in an effort to strengthen cooperation in the conservation and management of certain fish stocks that occur both within EEZs and on the high seas:

- (a) “straddling” fish stocks, which are stocks whose natural ranges straddle the line dividing areas under the fisheries jurisdiction of one or more coastal States and the adjacent high seas areas. Examples of such stocks include cod in the Northwest Atlantic Ocean and pollock in the Bering Sea; and
- (b) “highly migratory” fish stocks, which are stocks that migrate extensively across the high seas and

through areas under the fisheries jurisdiction of many coastal States. Examples of such stocks include tuna and swordfish.

The Fish Stocks Agreement contains provisions on coastal State, port State and flag State controls and responsibility, elaborates the duty of cooperation contained in UNCLOS with respect to straddling and highly migratory fish stocks and provides for the peaceful settlement of disputes. It contains provisions on flag State responsibility that are very similar to those in the FAO Compliance Agreement. In the area of MCS, the 1995 UN Fish Stocks Agreement also includes rules under which States other than the flag State may board and inspect fishing vessels on the high seas:

- (a) under certain circumstances, States other than the flag State may board and inspect vessels fishing on the high seas to ensure compliance with conservation and management measures established by regional fishery bodies;
- (b) further enforcement action, including ordering a fishing vessel to port, may be taken in the case of serious violations by vessels whose flag State either cannot or will not exercise proper control over them;
- (c) serious violations include fishing without a license; failing to maintain accurate records; fishing in a closed area or for stocks subject to a moratorium; using prohibited gear; falsifying markings or other identification; concealing, hampering with, or disposing of evidence; and multiple violations which together constitute a serious disregard for conservation and management measures; and
- (d) States should act through regional fishery bodies to establish procedures for boarding and inspection and to implement the other provisions involving cooperative enforcement. If they have not done so by now, or have not established an alternative enforcement mechanism, then boardings and inspections may occur in accordance with procedures found in the Agreement.

The Fish Stocks Agreement also requires a precautionary approach to be taken to fisheries management and encourages States to adopt compatible measures in relation to stocks within areas under the jurisdiction of coastal States and in the high seas. It specifies mechanisms to achieve cooperation between States, requires strict fisheries enforcement and the collection and exchange of fisheries data.

While the Agreement applies mainly to fishing on the high seas, some provisions – such as the duties of cooperation, the adoption of compatible measures and the precautionary approach – also apply within the EEZ (and so would apply, for example, to the national management of migratory tuna resources).

### **FAO CODE OF CONDUCT FOR RESPONSIBLE FISHERIES (1995)**

The FAO Code of Conduct for Responsible Fisheries (CCRF) is a broad and comprehensive but non-binding document. It prescribes principles and standards for the conservation and management of all fisheries, as well as for fish processing, trade in fish and fishery products, fishing operations, aquaculture, fisheries research and the integration of fisheries into coastal area management. A fundamental objective of CCRF is “to serve as an instrument of reference to help States to establish or to improve the legal and institutional framework required for the exercise of responsible fisheries and in the formulation and implementation of appropriate measures.”

Other pertinent provisions, principles or approaches in the CCRF include the following:

- (a) If world fisheries are to be sustainable in the long term, structural adjustment within the fisheries sector is required. Although policy decisions in this regard must be made by national governments, effective implementation of the Code requires the participation and cooperation of a wide range of stakeholders, including fishers, processors, NGOs and consumers.
- (b) The Code is intended to be a dynamic or "living" document to be adapted by FAO, working through its governing bodies, to meet new fisheries developments and situations.

- (c) The Code is intended to function as part of a package of international instruments (including the FAO Compliance Agreement, the UN Fish Stocks Agreement and the various international plans of action (IPOAs) discussed below), which are designed to work together to address the management and conservation of fisheries throughout the world.
- (d) Implementation of the Code is primarily the responsibility of States. However, FAO has an important role to play in encouraging and facilitating the implementation of the Code and to provide technical support to national and regional initiatives in this regard.
- (e) The Code will require regional and sectoral implementation in order to address the particular needs of fisheries in different regions or sub-sectors.

FAO has developed several Technical Guidelines in support of the implementation of the Code of Conduct for Responsible Fisheries. Several of these are relevant to MCS and fisheries enforcement, although specific attention may be drawn to: *Implementation of the International Plan of Action to deter, prevent and eliminate, illegal, unreported and unregulated fishing* (FAO Technical Guidelines for Responsible Fisheries No. 9, 2002) and *Fishing operations. 1. Vessel monitoring systems* (FAO Technical Guidelines for Responsible Fisheries No. 1 Supplement 1, 1998). These are available on the FAO Fisheries Department website ([www.fao.org/fishery/publications/technical-guidelines](http://www.fao.org/fishery/publications/technical-guidelines)).

### **INTERNATIONAL PLANS OF ACTION (1999 / 2001)**

To date, four International Plans of Action (IPOAs) on responsible fisheries have been developed within the framework of the CCRF. FAO adopted three of these instruments in 1999 to deal with the incidental catch of sea birds in longline fisheries, the conservation and management of sharks and the management of fishing capacity. The fourth IPOA, and the one which is of the greatest relevance to MCS, is designed to prevent, deter and eliminate IUU fishing. According to the *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (IPOA-IUU):

Illegal fishing refers to activities:

- conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;
- conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or
- in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant fisheries management organization.

Unreported fishing refers to activities:

- which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or
- undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.

Unregulated fishing refers to activities:

- in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or
- in areas or for fish stocks in relation to which there are no applicable conservation or management

measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for conservation of living marine resources under international law.

The IPOA on IUU fishing offers many tools for States to use to combat IUU fishing, individually and in collaboration with other States. Some of the tools are designed for use by all States. Others tools are tailored for use by flag States, coastal States and port States. The IPOA-IUU also calls for the use of “internationally agreed market-related measures.” These are tools designed to keep fish that have been harvested by IUU fishers from being sold or traded.

The IPOA on IUU fishing calls upon all States to develop and adopt national plans of action to further achieve the objectives of the IPOA. To the extent possible, each State’s national plan of action should consider how each of the basic tools in the IPOA could be put to use in the fisheries in which it is involved. States are encouraged to report to FAO on steps they have taken to implement their national plans and the IPOA itself.

### **FAO PORT STATE MEASURES AGREEMENT (2009)**

The FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (the PSM Agreement) was adopted by the FAO Conference in 2009, but (at the time of writing) has yet to enter into force. The main purpose of the Agreement is to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing through the implementation of stipulated minimum port States measures. Under the terms of the Agreement, foreign vessels must provide advance notice and request permission for port entry, countries must conduct regular inspections in accordance with universal minimum standards, offending vessels should be denied use of port or certain port services and information sharing networks should be created. The application of the measures set out in the Agreement are designed to contribute to harmonized port State measures, enhanced regional and international cooperation and to block the flow of IUU-caught fish into national and international markets.

The Agreement builds on an earlier voluntary instrument, adopted by the FAO Committee on Fisheries (COFI) in 2005: the Model Scheme on Port State Measures to Combat IUU Fishing. The Model Scheme which recommends international minimum standards for PSM, and all States are encouraged to apply it. National PSM would typically include requirements related to prior notification of port entry, use of designated ports, restrictions on port entry and landing / transshipment of fish, restrictions on supplies and services, documentation requirements and port inspections, as well as related measures, such as IUU vessel listing, trade-related measures and sanctions.

### **REGIONAL FISHERIES INSTRUMENTS**

#### **(i) OECS Common Fisheries Surveillance Zones Agreement**

In 1991, the OECS member States signed the *Agreement Establishing Common Fisheries Surveillance Zones* aimed at establishing a common fisheries surveillance zone to enable mutual support and cooperation in enforcing the fisheries laws of the participating states. A key function of the agreement is to allow “Authorized Officers” from the member states to exercise enforcement powers in each other’s waters. The agreement repeats the powers of Authorized Officers which are found in the Harmonised Fisheries Legislation, but makes specific provision that it can be exercised anywhere within the member States’ fisheries waters.

Joint air and sea surveillance exercises were conducted annually (in the case of Antigua and Barbuda typically with St. Christopher & Nevis and Montserrat). These missions were coordinated by the now

defunct OECS Fisheries Unit. While the missions led to several arrests of illegal foreign fishing vessels, limitations in the endurance of surveillance due to high cost and the geographical composition of the region, hindered the long term sustainability of the joint air and sea surveillance exercises and ultimately the success of the sub-regional initiative, for these reasons, the activities pursuant to the agreement have not continued, although the agreement is still in force.

## **(ii) Caribbean Regional Fisheries Mechanism**

In 2002, the Caribbean Regional Fisheries Mechanism (CRFM) was established, under a legal agreement (Agreement establishing the Caribbean Regional Fisheries Mechanism). The objectives of the CRFM include:

- the efficient management and sustainable development of marine and other aquatic resources within the jurisdiction of member States;
- the promotion and establishment of cooperative arrangements among interested States for the efficient management of shared, straddling or highly migratory marine and other aquatic resources; and
- the provision of technical advisory and consultative services to fisheries divisions of member States in the development, management and conservation of their marine and other aquatic resources.

The Agreement Establishing the CRFM recognizes a number of factors, including that:

- certain of the living marine resources which are of interest to the peoples of the Caribbean region are highly migratory, straddle national boundaries and are harvested by third states;
- there are international institutions, bodies and competent organizations, the policies and programmes of which may be relevant to the living marine and other aquatic resources of interest to member States;
- there is a need for cooperation and consultation among all CRFM members, third states, interested international institutions and bodies involved in fisheries in the Caribbean region;
- the Agreement will serve to enhance cooperation in the area of fisheries among CRFM members and interested third parties, thereby contributing to the general well-being of the peoples of the Caribbean region; and that
- the relevant provisions UNCLOS, UNFSA, CCRF and other instruments should be applied.

## **(iii) Castries Declaration on IUU Fishing**

The Castries Declaration on IUU Fishing was endorsed by the Ministerial Council of the CRFM in July 2010. The Declaration, which is non-binding, seeks to provide a holistic and integrative approach for addressing IUU fishing in the region and establishes the following guidelines for its signatories:

- increased commitment to fulfilling duties and responsibilities as a flag, port and coastal State;
- the need to become signatory to applicable international agreements;
- establishing laws and regulations that promote integrative and transboundary management, control and surveillance of fish resources in the region and information sharing; and
- the need to create and implement a National Plan of Action (NPOA) for IUU.

## **(iv) Eastern Caribbean Regional Ocean Policy and Strategic Action Plan**

OECS Countries have recognised that ocean areas contribute significantly to the economies of all OECS Member States and are fundamental to the wellbeing of their citizens through direct economic activities as well as provision of environmental services. While emerging opportunities exist to enhance the contribution made by the oceans to the sustainable development of OECS Member States, it is unlikely

that any one resource is sufficient to sustain development goals. Additionally, they are under increasing pressure from many uses (such as tourism, mining, petroleum exploration and the like) and face a range of threats. The OECS also agreed that the impacts of climate change and variability (as well as general environmental variability) may also lead to an increase in the cumulative impacts of traditional stressors (such as pollution or habitat destruction) on ecosystems.

An approach was therefore developed that coordinates management across sectors and resources and integrates environmental management directly with economic development, fiscal policy and social goals. At its 54th Session, the OECS Authority agreed *inter alia* on the establishment of an OECS-wide approach to commence work on the development of a regional integrated ocean governance framework, inclusive of the development of a draft ocean policy framework and action. The Authority further called for establishment of an OECS Ocean Governance Team to work, in conjunction with Member State lead agencies and the Secretariat, on “an OECS-wide approach to commence work on the development of a regional integrated ocean governance framework, inclusive of the development of a draft ocean policy framework and action.” The Eastern Caribbean Regional Ocean Policy (ECROP) will promote and guide the future sustainable use and development of the region’s marine waters and resources.

#### **(v) Draft Agreement Establishing the Caribbean Community Common Fisheries Policy**

In 2011, the CRFM Ministerial Council unanimously approved the text of the Draft Agreement Establishing the Caribbean Common Fisheries Policy. The Agreement has yet to be opened for signature, and is not in force (at the time of writing). According to the Draft Agreement, the objectives of the Caribbean Community Common Fisheries Policy are to:

- (a) promote the sustainable development of fishing and aquaculture industries in the Caribbean region as a means of, *inter alia*, increasing trade and export earnings, protecting food and nutrition security, assuring supply to Caribbean markets and improving income and employment opportunities;
- (b) develop harmonised measures and operating procedures for sustainable fisheries management, post-harvest practices, fisheries research and fisheries trade and the administration of the fishing industry;
- (c) improve the welfare and livelihoods of fishers and fishing communities;
- (d) prevent, deter and eliminate illegal, unreported and unregulated fishing, including by promoting the establishment and maintenance of effective monitoring, control, and surveillance systems;
- (e) build the institutional capabilities of Participating Parties, *inter alia*, to conduct research, collect and analyse data, improve networking and collaboration among Participating Parties, formulate and implement policies and make decisions;
- (f) integrate environmental, coastal and marine management considerations into fisheries policy so as to safeguard fisheries and associated ecosystems from anthropogenic threats and to mitigate the impacts of climate change and natural disasters;
- (g) transform the fisheries sector towards being market-oriented, internationally competitive and environmentally-sustainable, based on the highest international standards of quality assurance and sanitary and phytosanitary (SPS) systems;
- (h) strengthen, upgrade and modernise fisheries legislation; and
- (i) facilitate the establishment of a regime for SPS for the fisheries sector.

The Draft Agreement deals with a wide range of matters, including:

- access to fisheries resources;
- fisheries development;
- research and statistics;
- conservation and management of fisheries resources;

- registration and licensing;
- inspection, enforcement and sanctions;
- confidentiality and intellectual property rights;
- dissemination of information;
- public awareness; and
- marketing and trade of fisheries resources.

It is envisaged that the detailed implementation of the Policy will be developed through a “Common Fisheries Regime”, and to this end, the Draft Agreement envisages the adoption of various implementing Protocols.

## **FISHERIES AGREEMENTS**

The term Fisheries Agreement refers to an international treaty between two or more states, which extends certain rights and obligations with respect to fisheries management, exploitation and enforcement. These Agreements or treaties may be bilateral, between two countries, or multilateral, between several countries (such as UNCLOS, UNFSA, etc.). The Agreements themselves represent the promises that the respective signing states make on how they will behave with respect to a particular fisheries. It will then be their responsibility to transform these promises into national law so that they will be carried out. This is done by passing statutes, regulations or other legal instruments to give them effect.

This section explains some forms of agreement which are typically concluded bilaterally.

### **(i) Access Agreements**

Under UNCLOS states have an obligation to manage and conserve the fisheries resources of their EEZ. In addition, they must allow other nations access to any fish which are surplus to their own requirements. The EEZ state is permitted to licence and charge for this fishing, and to exercise direct control over any vessels engaged in this activity. There are two main ways in which another state can gain access to fishing rights in the EEZ of another State: by joint venture or bilateral access agreement. (Multilateral access agreements also exist, but are less common).

### **(ii) Joint Venture**

A joint venture is a commercial enterprise, usually a company, which is jointly owned and managed by the two countries involved. Participation may be direct, in that the countries may directly participate in the funding and management of the enterprise. It may be indirect, in that private companies from each state may be the participants. Either way, the operation of the joint venture will usually be governed by the commercial laws of the hosting state. However, the agreement between the states concerned may also be a factor in determining how the venture is governed, and how problems are solved.

For enforcement purposes, however, the vessels of a joint-venture may be given special status by the terms of the agreement. Foreign vessels might be deemed to be local vessels, or similar provisions.

### **(iii) Bilateral Access Agreements**

The terms of the access agreement will normally outline how each of the parties is to operate in respect of the fisheries. The agreement will normally be for a fixed period of time, and may cover a number of specific issues including:

1. Issuing of licences
2. Payment of fees
3. Catch restriction
4. Gear requirements
5. Reporting and record keeping requirements
6. Boarding and inspection requirements
7. Area limitations
8. Dispute settlement
9. Markings and identification
10. Arrest and release provision

One condition which may be included might be the right to board and inspect vessels on the high seas or outside the normal jurisdiction of the enforcing state.

### **NATIONAL IMPLEMENTATION OF INTERNATIONAL FISHERIES LAW**

International agreements impose obligations on States that must be translated into specific enforceable legal rules backed up by sanctions in national laws. Thus, an essential part of implementing international agreements is for each State to pass legislation to give effect to the obligations contained in treaties to which it is bound. In practice, MCS is primarily concerned with ensuring compliance with these Domestic law rules rather than with the provisions of treaties.

UNCLOS provides the basis of principle upon which territorial seas and exclusive economic zone acts are founded. Most national Fisheries Acts are generally in accord with the concepts embodied in the Convention. They turn it to practical every day use - the assessment of allowable catches, licensing of foreign fishing vessels, fees, regulation of seasons, areas, the requirement to supply information, etc.

In order for a state to have jurisdiction over resources off its coast two actions are necessary. First, the state must proclaim its ownership and jurisdiction over the ocean territory. It does this by proclaiming a "Marine Territorial Act" or similar legislation, by which it gives notice both internally and internationally that it intends to exert its sovereignty and control at sea. The Act usually repeats the exact words and phrasing found in UNCLOS. This is done to demonstrate that it is acting in accordance with international law. The Act also serves to extend the jurisdiction of the state's courts, to deal with matters arising at sea.

The National Fisheries Act is the second pillar of fisheries enforcement. It provides the specific legal basis for the management framework, and for the enforcement mechanisms. This may include the powers of inspection, search, seizure of vessels, arrest of persons and disposal of property. One clear distinction should be made here. International law, such as UNCLOS establishes the right of a state to manage its fisheries. It does not give the police or courts the power of enforcement. These come only from the national laws. If a state's laws do not include a specific provision, then even though it may be permissible under international law, it cannot be exercised. It follows therefore that in strengthening an MCS system it is essential to review the existing domestic legislation to ensure that it prescribes norms that are appropriate to achieve the desired fisheries management objectives and contains provisions that facilitate effective enforcement. In practice, the effectiveness of an MCS system in ensuring compliance with the law will depend very heavily on whether or not domestic laws provide appropriate mechanisms to facilitate this task.

Broadly speaking strengthening a national MCS regime will involve addressing the following key issues:

- (a) ensuring that fisheries administrators and enforcement officers can exercise all powers available to coastal, port and flag States under international law (this will usually require reviewing the powers of enforcement officers under domestic law and strengthening procedures under which

- the States grants authorization to fish);
- (b) increasing regional and international cooperation in order to reduce the incidence of IUU fishing, including measures to support the enforcement of fisheries conservation and management measures on the high seas and in areas under the jurisdiction of other States;
- (c) increasing the transparency of fishing efforts by improving monitoring programs (particularly by requiring the use of VMS);
- (d) facilitating the use of information derived from monitoring and surveillance (particularly from new VMS technologies) to promote compliance; and
- (e) strengthening existing sanctions and extending the range of compliance mechanisms available to enforcement officers.

## APPENDIX 2 – MCS TOOLS FOR MANAGEMENT

Key tools for MCS as the executive arm of fisheries management include:

- (a) an appropriate participatory management plan developed with stakeholder input;
- (b) Enforceable legislation and control mechanisms (licences etc.);
- (c) data collection systems - dockside monitoring, observers, sea and port inspections, etc.;
- (d) supporting communications system;
- (e) patrol vessels capable of extended operating to remain at sea with the fishing fleets;
- (f) aircraft available for rapid deployment to efficiently search large areas;
- (g) Use, where appropriate, of new technology (VMS, satellite, video, infra-red tracking, etc.);
- (h) linked, land-based monitoring;
- (i) support of the industry and fishers;
- (j) bilateral, sub-regional and regional cooperation with other MCS components; and
- (k) Professional staff.

Fisheries are critical to the development of a State's plan to conserve and utilise marine resources, as fish and their habitat are significant renewable resources in the territorial sea and exclusive economic zone. The goal of fisheries management, including MCS, is to maximise the economic opportunities and benefits from the State's waters within sustainable harvesting limits. Fisheries MCS needs to be defined in light of this goal.

- (a) monitoring - the continuous requirement for the measurement of fishing effort characteristics and resource yields;
- (b) control - the regulatory conditions under which the exploitation of the resource may be conducted; and
- (c) Surveillance - the degree and types of observations required to maintain compliance with the regulatory controls imposed on fishing activities.

Simply stated, MCS is the mechanism for implementation of agreed policies, plans or strategies for oceans and fisheries management. MCS is an aspect of oceans and fisheries management that is often undervalued. In reality, it is important to the successful implementation of any planning strategy. The absence of MCS operations renders a fisheries management scheme incomplete and ineffective.

It has long been understood that the definition of MCS has been enhanced to promote the concept that MCS covers more than just fisheries enforcement - it is an integral and key component for the implementation of fisheries management plans. It encompasses not only traditional enforcement activities but also the development and establishment of both data collection systems, the enactment of legislative instruments and the implementation of the

management plan through participatory techniques and strategies.

- (a) *Monitoring* includes the collection, measurement and analysis of fishing activity including, but not limited to: catch, species composition, fishing effort, bycatch, discards, area of operations, etc. This information is primary data that fisheries managers use to arrive at management decisions. If this information is unavailable, inaccurate or incomplete, managers will be handicapped in developing and implementing management measures.
- (b) *Control* involves the specification of the terms and conditions under which resources can be harvested. These specifications are normally contained in national fisheries legislation and other arrangements that might be nationally, sub regionally or regionally agreed. The legislation provides the basis for which fisheries management arrangements, via MCS, are implemented. For maximum effect, framework legislation should clearly state the management measures being implemented and define the requirements and prohibitions that will be enforced.
- (c) *Surveillance* involves the regulation and supervision of fishing activity to ensure that national legislation and terms, conditions of access and management measures are observed. This activity is critical to ensure that resources are not over exploited, poaching is minimized and management arrangements are implemented.

These wider definitions amplify the importance of all aspects of MCS.

### **Role of MCS in Fisheries Management**

Fisheries management in its simplest terms comprise the following activities:

1. Data collection and analysis - data for management planning and operations from socio-economic studies, rural development studies, fisheries population studies, fisheries research cruises, licensing (national, provincial and district), catch and effort/logbooks, on-board observers (if established as a program), dockside monitoring/landings, VMS, satellite imaging, inspections at sea and in port, etc.
2. Participatory management planning - planning of fisheries management policies and strategies at the national level, and detailed planning for management zones or areas with input from stakeholders (provinces, districts and fishers).
3. Establishing a regulatory framework - The management plans need to be supported by appropriate legal instruments by means of which the plans are implemented. These legal instruments detail all the control mechanisms available for fisheries management including, but not limited to:
  - (i) Input controls - such as access (number of fishers, number of vessels by fishery), licences, closed seasons, gear restrictions, vessel limitations, area restrictions (Protected Areas), VMS requirements, and vessel identification.
  - (ii) Operational and output controls - such as species and catch limits, by-catch limits, reporting requirements, air surveillance, sea patrols / inspections, boarding, logbooks, dockside monitoring, observers, port inspections, and catch documentation schemes.
4. Implementation - this includes such measures as:

- (i) participatory community-based management (CBM);
- (ii) “preventive” MCS activities to encourage voluntary compliance;
- (iii) public awareness and education campaigns;
- (iv) assistance to small scale fishers for supplemental livelihood development to reduce coastal area pressures;
- (v) Full enforcement to ensure compliance by those minority of fishers that persist in ignoring the law.

## APPENDIX 3 – POSITION FIXING AND NAVIGATION AND LOGS

The position of a vessel at the time of fishing is crucial - was it inside or outside the EEZ, the territorial waters, the closed area?

It is vitally important that the position of the defendant's vessel has been fixed accurately. Even if a vessel is apprehended fishing say fifty miles inside an EEZ the defence may attack the overall reliability of an Authorized Officer by testing his navigation expertise, in particular the exact location of the vessel when boarded.

When an apprehension is made near a borderline the defence will strongly attack the accuracy and reliability of the prosecution evidence on position. The master might also allege that he didn't know his exact position because his various navigation instruments were not working. The more astute master will assert he was outside the forbidden area.

Fishing must be carried out in the forbidden area for an offence to be committed. For example, if a long liner is apprehended outside or on the border of a forbidden area but its line runs well into it that would constitute illegal fishing.

### A. POSITION FIXING AND NAVIGATION

Listed below are the principal instruments and other aids used in the fixing of position and navigation of a vessel.

#### 1. Compass

##### (a) Magnetic

Every vessel will carry a magnetic compass. It can be used for fixing position by taking bearings off two or more points of land or for running a course.

There are two principal sources of error:-

**Variation -** the earth's magnetic poles do not coincide with the actual poles. The difference between the magnetic pole and the real pole is called the angle of variation. It varies according to position and time. Charts are marked with this angle in degrees east or west, the date on which such angle was calculated and the amount it increases or decrease by each year. Thus by a simple calculation this error can be eliminated.

**Deviation -** the vessel on which a magnetic compass is situated will have its own magnetic field which will affect the magnetic compass. The amount by which this field puts the magnetic compass out is known as the angle of deviation. This angle can be ascertained by a procedure called swinging the ship. It should be done approximately once a year. If the vessel is swung a deviation card recording the reading may be posted near the chart table. In the case of many fishing vessels this is not so, and thus the master will not accurately know his angle of deviation. It is generally only a few degrees, but could be as much as 20 or 30 degrees.

(b) Gyro

This type of compass relies upon gyroscopes (like very fast spinning tops) and not the magnetic field of the earth. When properly set up dials are adjusted for the latitude and speed of operation. Every vessel will carry a gyrocompass.

Every vessel when leaving port should check its gyrocompass. Near most ports two large white triangles are permanently set up some distance apart in a prominent place. When the two objects, as viewed from the sea, are directly in line then the gyro compass bearing is noted. The chart for the port in question will show the true bearing of the two objects. Thus any error in the gyrocompass can be simply calculated and corrected. This check can be carried out wherever two such triangles are placed - or even by the use of any two suitably placed objects or sharply defined pieces of land which are marked on a chart.

If a gyrocompass breaks down out of sight of land then a bearing of the sun called an azimuth can allow it to be set up again with the same accuracy as with land checks. A book of bearings taken to check the gyro might be kept.

The gyrocompass can be used for fixing position by taking bearings and will be used for running a course.

## **2. Radar**

In simple terms radar works by sending out an impulse or wave which is reflected when it hits an object. The reflected wave appears as a dot on a screen and shows the relative bearing and distance of the object.

The impulse is emitted by the scanner. This is either a curved, roughly rectangular metal dish or lattice which is placed near the top of the main mast or a one to two meter beam placed in the same area. It rotates and thus "scans" as it goes around and receives reflections. These reflections are relayed to the radar screen, which is found on the bridge or in the chart room. The radar screen is usually circular but may look like a television. A faint line from the centre to the edge rotates as the scanner rotates. Reflections are "painted" as it rotates and gradually fade until the line passes again. An object appearing on the screen is referred to as a "paint" or a "blip". Coastline will appear as a line matching the shape of the coast. The size of the paint will depend upon the distance of the object and its size, although the usual paint is about the size of a pinhead. Some small objects will not paint up or only paint when very close. Metallic objects will generally paint up more easily than non-metallic ones.

The range of the radar can be varied so that the distance from the centre of the screen (i.e. where the ship with the radar is) to the edge is 1, 3, 6, 12, 24, or 40 miles etc. depending upon the capability of the radar. "Range rings" can be switched on - these will display on the screen concentric circles at set distances apart from the centre. A "strobe" can be turned on. This is a screen-displayed dot which goes around. By turning a knob it can be moved outward or inward and its distance from the centre read off from a dial. Thus if the distance away of an object must be ascertained the strobe is turned outward or inward until it passes over the object; the distance on the dial is then read off.

Radar will show the movements of the radar vessel and any objects painted relatively to each other. Most vessels will use a "grease" pencil to write or mark on the screen objects they wish to track. Thus the course and speed of another vessel might be determined.

Radar can be used to detect vessels, land and objects in the water when visibility is not good. It can be used to monitor the course and speed of another vessel. Heavy seas and heavy rain will interfere with radar by producing fuzziness on the screen. If another ship is operating its radar in the vicinity it will appear as a “white shadow” passing regularly across a radar screen, or like the “spokes” of a bicycle wheel moving around the screen.

Radar reflectors can be fitted to small boats and buoys. These are simple diamond-shaped metal objects about half metres across which are fitted to masts. They will show up clearly on a radar screen. A fishing vessel might well use a radar reflector on a buoy attached to a log or at the end of a longline.

### **3. Satellite Navigation Machine (SATNAV)**

Most fishing vessels will carry a SATNAV machine. This machine displays the latitude and longitude of the vessel on a screen.

A series of satellites orbiting the earth each emit signals. The signal of a satellite as it passes over a vessel is received, identified, the Doppler shift measured and the vessel’s position displayed. (Doppler shift can crudely be described as the compression or expansion of a wave caused when a wave-emitting object is moving towards or away or relative to a wave receiving object. The amount of shift depends upon the relative speed of movement). The receiver is generally a short cylindrical looking object placed on a mast. It is about two-thirds of metre in diameter.

The accuracy of a position given by a SATNAV machine upon a satellite pass is generally within 100 meters. Satellites will pass over a vessel on average about every 90 minutes, although it can be more or less frequent. The largest gap between satellite passes is approximately 3 hours. Sometimes two or three satellites might pass within the space of an hour.

If a vessel is moving then its position must be ascertained by DRing (dead reckoning). This means the vessel’s speed and course and any tidal or current set are calculated and plotted on from the known position. Clearly the longer the time lapse from a SATNAV fix the less accurate will be the calculated position. A vessel’s course and speed and tidal and current set can be fed directly or indirectly into the SATNAV machine and it will, in the light of that data, continuously update and display the vessel’s position. The SATNAV machine itself will over a period calculate any set from current and tide.

SATNAV machines are generally very reliable and can withstand temperatures up to 40-45<sup>0</sup>C. Suggestions of SATNAV malfunction should be examined closely and treated with some scepticism.

The most likely source of error is in the initial setting up of the machine, when a voyage is commenced. However the error will probably place the vessel in the wrong ocean rather than merely a few miles away.

### **4. Global Positioning System (GPS)**

GPS or Global Positioning System is another satellite navigational system which is rapidly displacing SATNAV, especially for small vessels. The GPS receiver can be as small as a large hand held calculator, and may be available at a cost of several hundred dollars, making it easily affordable by local fishers, charter boat operators and yachtsmen.

GPS is simple to use and extremely accurate. A position or fix should be obtainable with an error of less than 100 meters. Most GPS receivers have a digital readout or LCD screen which displays the position by latitude and longitude. The receiver also has a memory function which can store information about the voyage and location of points such as nets in the water or fishing areas. The GPS may also be hooked into a PC computer system for navigational assistance. There may or may not be a printer attached to provide hard copy of the navigational information.

When inspecting a suspect vessel, it is important to ensure that the GPS is not “accidentally turned off” by the master, thus wiping all evidence of the past voyage from its memory. GPS receivers should be left on until a competent member of the boarding team can recall any information from its memory. This can then be noted down for future reference or use as evidence.

A newer, much more expensive version of GPS, called DGPS or Differential Global Positioning System, is also available with considerably increased accuracy. Positions to within several meters or less are possible. Because of their cost, these are usually only found on scientific research or mapping vessels, however drug smugglers are reported to be using them pinpoint drop-off positions.

## **5. Omega**

Omega is commonly referred to as VLF-OMEGA, meaning Very Low Frequency. Like a SATNAV machine, Omega receives transmissions and converts them into a position. These transmissions come from nine specially constructed stations worldwide and some communication stations. The vessel navigator selects the best stations for the area, using the machine itself to determine signal strength, and the machine will then automatically display the position.

Unlike SATNAV, Omega gives a continuous position read-out. Omega is more suited to the higher speed operations of aircraft than surface vessels. Omega tends to be very accurate, and when coupled with GPS, will have an accuracy of within 60 metres.

## **6. Sextant**

This instrument is almost as old as navigation itself. Short of being hurled against a bulkhead it will not break down. The master of every vessel knows how to use a sextant and calculate his position with it, even if he hasn't done so for several years. It is a fairly accurate method of position fixing. The degree of accuracy depends upon the competence of the user. A good operator can expect accuracy within two nautical miles. By use of a split mirror the angle between the horizon and the sun is measured (the moon, stars or planets can be used). The exact moment of doing this in Greenwich Mean Time is noted. This will usually be done at dawn, noon and dusk. By use of tables and formulae the vessel's position can be ascertained.

**Note** - A master who alleges he didn't know where he was when he was fishing because his SATNAV had broken down should be asked what other methods he used to fix his position - particularly by sextant. A denial of knowledge of how to fix by sextant should be treated with extreme scepticism.

## **7. Direction Finding (DF)**

All vessels carry DF equipment. Radio stations or beacons which emit radio signals on set frequencies are maintained in many places. They are located by tuning the DF equipment on

board a vessel to the frequency of a beacon. The equipment will then show the actual direction of the beacon from the vessel.

In mid-ocean DF is of no use for position fixing and running a course. Its primary use is for running directly to or from the position of a beacon, for example a beacon attached to a fishing buoy or net or line marker.

## **8. Echo Sounders / Fish Finders / Sonars / Speed Log**

An echo sounder is used for measuring the depths of water beneath a vessel. Recordings are made by a sensitive nib on a continuously rolling paper. An echo sounder emits a sound wave which is reflected and received. It is essentially downwards pointing.

Fish finders are basically the same as echo sounders save that they are more sensitive and are capable of detecting and tracing out fish.

The fish finder will show when there is a great aggregation of fish beneath the vessel. It might also indicate the depth of the thermocline by displaying two distinct groupings of fish at different depths.

Sonar also relies on a sound wave, but is generally directed horizontally beneath the surface. It is used for detecting fish and assessing concentrations of fish. Sonar is very expensive and will probably only be found on some United States vessels.

This type of equipment can be used for position fixing purposes if, while running on a known course, the defined edge of a seamount or trench is encountered.

A speed Log is used for determining vessel speed and can be used with time to obtain distance from the relationship;

Distance = speed X time

### **Note:**

The temperature of seawater decreases very little if at all from the surface to a particular depth. From there the temperature will drop quickly over a relatively small increase in depth. This is called the thermocline. Below that the temperature will again remain relatively steady for great increases in depth. The depth of the thermocline is seasonal in temperature zones but generally steadier in tropical ones.

## **9. Inertial Navigation System**

This system is only fitted in aircraft. The exact latitude and longitude of the aircraft is entered at a known point (usually the airport of origin of the flight). The system will detect and measure all movement of the aircraft whether along, side to side or up and down. This information is continually plotted on from the aircraft's known starting point. Thus the position of the aircraft during its journey can be read at all times. It is accurate to within a few miles after many hours of flight. This is one of the systems used on the United States Navy P3 Orion surveillance flights

## B. NAVIGATIONAL PUBLICATIONS

- (a) **Charts** are, in effect, maps of the sea and coastlines. They show depths of water, shapes of coastlines, reefs, angles of variation, location of navigational lights and what they flash, lines of latitude and longitude and other information.

Courses are drawn and fixes marked on charts. A fishing vessel will mark the position of a log or floating object to which a buoy has been attached. Sometimes its latitude and longitude will just be noted on a piece of paper if illegal fishing is in progress. A longline master or fishing master will generally mark the position of his line when it has been set.

- (b) **Tide Tables** supply the heights of tides and directions of tidal flows, and also the general set of the current in different regions.
- (c) **Pilot books** give a complete range of information for specific ports and restricted areas of waters, (e.g. currents, prevailing winds, hazardous conditions, sunken objects, local navigation rules, port regulations, principal port personnel).
- (d) **Notices to Mariners** (NOTAMS) These are issued at intervals to ensure that mariners are kept informed of changes to charts and other official publications, temporary hazards (e.g. military exercises), new facilities, amended rules and regulations, etc.

## C. LOGS

A vessel will keep “logs” or records of its positions, courses and activities. Listed below are the main logs that will be maintained:-

- (a) **Vessel Log** This is, in effect, the boat’s diary. Recorded in the log will be a day by day and hour by hour record of the boat’s activities, e.g. dates and times of leaving and entering port, courses run, positions fixed at regular intervals, watch officers, weather, fishing activities, unusual events or observations, general activities.

A vessel log will be used trip after trip until it is full. Occasionally masters will maintain a trip log. This is a log for each trip which is handed in to the vessel owners at the end of the trip and a new one commenced for the next trip.

### Note:

When illegal fishing is being undertaken a dummy log is sometimes maintained. This purports to show legal fishing, whilst the real log, which is hidden, shows the places where fishing did in fact take place. Authorized Officers should always be aware of this possibility. A good *prima facie* indication that a log is a dummy is its condition, e.g. trip of fishing activity starts on page 1, fresh unthumbbed condition. The real log will be dog-eared, slightly grubby and probably bear coffee stains.

If a log is suspected to be a dummy, but the real one was not found by the authorised officer, cross examination should be directed towards testing its authenticity: e.g. Why does this log commence 11 days after leaving port? Where is the previous one? Why are all the entries in one coloured ink? Check the alleged distances run. Are they all possible? (One Taiwanese dummy log showed positions which meant the vessel was running at 38

knots for 10 hours. The average fishing boat will run at 8 to 12 knots).

- (b) **Fishing Logs** are maintained to record all fishing activity: e.g. all positions where fishing was attempted, time, catch by species and weight, weather, method used etc. This information will be later analysed by the boat's company and fishing master for future use. Not all vessels maintain a fishing log, the information being recorded in the vessel log.
- (c) **Engine Logs** are used to record the workings of the engines: e.g. temperatures, pressures, settings for running, breakdown, running maintenance. They are usually kept in the engine room.

An Authorized Officer should always take possession of the engine log as quickly as possible.

- (d) **Freezer logs** are used to record the workings of freezers: e.g. when turned on, temperatures at set times, weight of fish held. An Authorized Officer should take possession of these logs for investigative purposes.
- (e) **Radio Logs** record radio messages sent and received (and overheard). They will often be no more than an exercise book ruled into columns. These logs should be checked carefully. Often a boat will radio its position at regular intervals to a mother ship. The notes of these positions should be examined and also compared with positions entered in the vessel log.

#### **D. EVIDENCE FROM INSTRUMENTS OF NAVIGATION AND LOGS**

Useful evidence can often be acquired from instruments of navigation, their settings and associated records.

For example:

- (a) **Compass** When a vessel is running, the course to steer might be chalked up for the helmsman on a board near the wheel. Was this the course she was steering when approached? Was this the course she was steering when first picked up on the radar - but subsequently turned to another e.g. to suggest transiting a zone as opposed to running straight into it. The autopilot (device for keeping the vessel on a particular course automatically) might reveal the course a vessel was recently following.
- (b) **Radar** set on 1-mile range when vessel boarded a long way from land. Vessels will usually leave radar on 12-mile range for collision avoidance purposes when steaming. A 1-mile setting suggests a small object is being sought for retrieval e.g. fishing buoy. Any plotting marks on the radar must be examined to ascertain what they refer to.
- (c) **Satellite Navigation Machines or GPS** A few vessels carry a printer attached to their SATNAV to record positions. The printouts will show where the vessel has been and when. This can be compared with the master's version of events. Periods when the vessel remained in a particular area for a long time can be examined. GPS systems may have track information as well as way-points stored in internal memory.

The SATNAV should always be checked as soon as possible upon boarding, and notes made of all readings. Care should be taken that GPS receivers are not switched off as this may wipe out any navigational information stored in their memory.

- (d) **Sextant** If a sextant is located then it should be checked for signs of recent use. A stiff sextant

with a dust film on the mirrors suggests it has not been used recently.

A stopwatch by a sextant or on a chart table will tend to suggest recent use of the sextant. The moment the sun is shot the stopwatch is started so the exact time of the shot can be ascertained after returning to the chart room and looking at the chronometer or accurate clock.

- (e) **Direction Finding** The frequency settings of the DF should be noted upon boarding. Is it indications of fishing from other sources? Does the trace show the vessel has searched for and found a seamount? Fish are often to be found around seamounts (steep rising up of the sea floor) and fishing vessels will seek them out.
- (f) **Echo Sounder / Fish Finder** Does the trace show fish? If so, does the time correspond with indications of fishing from other sources? Does the trace show the vessel has searched for and found a seamount? Fish are often to be found around seamounts (steep rising up of the sea floor) and fishing vessels will seek them out.

Occasionally, and after much work, the trace of the bottom on an echo sounder or fish finder can be matched with the depth markings on a chart to give an exact location of a course the vessel has run.

- (g) **Charts** may reveal all kinds of useful evidence e.g. rubbed-out lines, EEZ boundaries faintly drawn in, position of long-line set marked. Deductions might be made from which chart is out on the table. A master will often put charts as he uses them in the top chart drawer, intending to put them properly away later. The order of charts in the drawer working from the top downwards might give some idea of where the vessel has been.
- (h) **Vessel Log** This document should always be scrutinised carefully. Is it genuine? Is it consistent with the charts and other logs? Try to read all crossings out. Does it read consistently: e.g. fixes every few hours generally marked then a period of 2 or 3 days when only a few dubious ones are entered?
- (i) **Engine Room Log** This log might reveal or corroborate by the nature of the entries when a vessel has been fishing e.g. steady speed for a long time, slow speed and then manoeuvring using engines. It might rebut a master's suggestion of engine breakdown.
- (j) **Freezer Log** A steady temperature of say  $-18^{\circ}\text{C}$  followed by a quick rise in temperature and gradual return to  $-18^{\circ}\text{C}$  is an indicator that fresh fish might have been placed in the freezer.
- (k) **Other Indicators** Authorized Officers should always be alert to and record other navigational indicators: e.g. one side of a vessel is wet from spray and the other relatively dry. Yet on boarding the sea is coming from the dry side. This suggests a recent change of course.

## APPENDIX 4 – SUMMARY OF THE POWERS OF AN AUTHORIZED OFFICER

(Extract from the OECS Harmonized Fisheries Act)

*This summary is provided as a guide, and is **not** a substitute for knowledge of, or familiarity with, the specific national legislation, which in many cases will be different.*

- A. For the purpose of enforcing this Act, any Authorized Officer may, without a warrant stop board and search any foreign fishing vessel in the fishery waters and any local fishing vessel in or outside the fishery waters and stop and search any vehicle. Vendors at the public market or public landing site, also hotel and restaurant establishments and fish processing facilities.
  - (a) Require to be produced examine and take copies of any license or other document required under this Act;
  - (b) Require to be produced and examine any fishing net or other fishing gear and fishing devices whether at sea or on land.
  
- B. Any Authorized Officer, who has reasonable grounds to believe that an offence has been committed under this Act, may without a warrant:
  - (a) Enter and search any premises, other than premises used exclusively as a dwelling house, in which he has reason to believe that the offence has been committed or where he has reason to believe that fish illegally taken are being stored.
  - (b) Take sample of any fish found in any vessel, vehicle or premises search under this section;
  - (c) Seize or detain any vessel (together with its gear, stores and cargo), vehicle, fishing gear net or other fishing appliance which he has reason to believe has been used in the commission of the offence or in respect of which the offence has been committed.
  - (d) Seize any fish which he has reason to believe has been caught in the Commission of the offence, or is being possessed in contravention of this Act;
  - (e) Seize any explosive or poison/chemical materials which he has reason to believe has been used or is being possessed in contravention if this Act.
  - (f) Suspend the operation at any fish processing establishment while inspection surveillance and enforcement is ongoing.
  
- C. Any vessel seized under subsection (2) and the crew thereof shall be taken to the nearest or most convenient port and the vessel may be detained pending the outcome of any legal proceedings under this Act or its release on bond or other form of security.
  - (a) Where, following the commission of an offence under this Act, by any foreign fishing vessel such foreign fishing vessel is pursued beyond the limits of the fishery waters, the powers conferred on Authorized Officers under this Section shall be exercisable beyond the limits of the fishery waters, in the circumstances and to the extent recognized by international law.

- (b) After a vessel has been stopped under the provision of this Section Any Authorized Officer may, concerning it or in relation to any fish or Fish products therein, exercise any of the powers conferred by this section.
- (c) Any Authorized Officer in exercising any of the powers conferred on him by this Section shall on demand, produce such means of Identification as may be necessary to show that he is an Authorized officer for the purpose of this Act.

## APPENDIX 5 – LANGUAGE CARDS

The following language card should be translated into the language understood by local or foreign fishing personnel, and the translation written on the appropriate card immediately under the English version of the question. When questioning a foreign language speaking person, give them the card with the translation (i.e. in French, Spanish, Creole, Japanese etc.) and then point to the appropriate number on the translated card.

### LANGUAGE CARDS

1. In most case language cards will be needed to establish certain basic information and to give instructions to FFV (or other non-English speaking) Captains.
2. When using cards care must be taken to accurately record the response to each question. The best method of doing this is to record the first number of the question and then details of the response. This method allows the Boarding Officer more time to concentrate on the answer rather than wasting his time copying out the question. If the answer to any question is neither 'yes or no' the FFV Captain should be asked to write his answer down.
3. **Questionnaire**
  - I am an Authorized Fisheries Officer. I am going to ask you some questions.
  - Are you the Captain of this ship?
  - Do you have a fishing master on board?
  - Who is the fishing master?
  - What is your full name and address?
  - Does this ship belong to you?
  - What is the name and address of the owner?
  - What is the name of this ship?
  - Please show me your ship's papers and crew list.
  - Please show me all your catch records.
  - How long have you been at sea for this trip?
  - What is your last port of call?
  - Can you navigate with accuracy?
  - By what means do you do this? Show me your navigation equipment.
  - Please show me your chart and mark on it your present position.
  - Who is the Radio Operator?
  - Please show me your satellite navigation receiver and position print out.
  - Please show me your Radio Room.
  - How many miles is this from land?
  - I think your position is ..... and this means that you are inside controlled fishing waters. Do you agree?
  - Have you a license to fish in Island Waters?
  - Please produce it.
  - I now wish to inspect your ship.
  - Why is your fishing gear not stored away?
  - Show me your freezer rooms.
  - Why are the fishes in this freezer not frozen hard?
  - How long has the fish been there?

- Who is your Chief Engineer?
- Show me your engine room.
- Show me your drinking water tanks.
- Show me your fuel tanks.
- Show me your broken down engine.
- Show me what is wrong with it.
- How soon do you think you can repair and start it?
- What is your draught?
- What is the best speed you can make good?
- Please write down your answer.

### **ORDERS TO CAPTAINS**

- As I am an authorized fisheries inspector of (country) and I am of the opinion that you have been fishing illegally in (country) EEZ. I am now ordering you to make for
- )
- ) port in (Country)
- )
- You are to follow the Patrol Boat now.
- You are advised to start your engine at once. If you cannot proceed by yourself, I will arrange a towing boat for you and that could be very expensive under International marine salvage laws.
- As you cannot proceed, I will now arrange for your boat to be towed into .....  
Where I am going to make further investigations.
- I am remaining on your ship.
- I am leaving a boarding party on your ship.
- Before we go please recover your fishing gear.
- You must remain here until tomorrow morning when we will then proceed to port –
- We have arrived at –
- Your ship must remain tied up here until further orders.

### **FOREIGN FISHING VESSEL**

#### **Harbour Question Sheet (For routine inspection of FFV's visiting national ports)**

- Are you the Fishing Master?
- Please show me your Catch records.
- Do you have a permit to fish in Island Waters?
- Please show it to me.
- Are you aware of your permit conditions?
- When does your permit expire?
- What is your activation number and when does your activation expire?
- Please show me your navigation equipment.
- Is it all in working order?
- Does your radar work?
- Does your satellite navigation equipment work?

- Please show me your charts.
- Please show me your ship logbooks.
- Please show me your ships track on the chart since entering the fishing zone.
- When did you enter your fishing zone?
- What is your maximum speed?
- What is your average speed for one day's streaming?
- What is the capacity of your freezers/fish holds?
- Please show me your freezers and fish holds.
- When your fuel tanks are empty can you use them as freezers?
- How much fish do you have on board?
- What is the composition of your fish?
- Please show me your fishing gear.

**APPENDIX 6 – MODEL SITUATION REPORT (SITREP)**

**REFERENCE**

A. Patrol Vessel: \_\_\_\_\_

B. DTG: \_\_\_\_\_

**SUSPECT VESSEL AND IRREGULARITY**

C. Name: \_\_\_\_\_

D. Side Number: \_\_\_\_\_

E. Nationality: \_\_\_\_\_

F. Port of Reg : \_\_\_\_\_

G. Description of Vessel: \_\_\_\_\_

\_\_\_\_\_

H. Position and Time of Irregularity: \_\_\_\_\_

I. Methods of Fixing: \_\_\_\_\_

\_\_\_\_\_

J. National Jurisdiction (Country Waters): \_\_\_\_\_

K. Description of Irregularity: \_\_\_\_\_

\_\_\_\_\_

L. Vessel Activity Observed: \_\_\_\_\_

\_\_\_\_\_

**ENFORCEMENT ACTION & SUSPECT VESSEL RESPONSE**

M. Patrol Craft Action (&Times): \_\_\_\_\_

\_\_\_\_\_

N. Suspect Vessel Response: \_\_\_\_\_

\_\_\_\_\_

O. Additional Information / Comments (e.g. weather, #crew estimated, etc.):

\_\_\_\_\_

P. Recommendations: \_\_\_\_\_

\_\_\_\_\_

Q. Signed PCCO: \_\_\_\_\_

R. Transmitted to: \_\_\_\_\_

DTG: \_\_\_\_\_

**SITUATION REPORT UPDATE NO.**

Patrol vessel: \_\_\_\_\_

A. DTG: \_\_\_\_\_

B. Situation Update (e.g. time of Level 2, deployment of Boarding Party efforts to stop suspect vessel, suspects vessel's response and present location)

C. Recommendations: \_\_\_\_\_

\_\_\_\_\_

D. Enforcement Request (Debate those not applicable)  
Request to go to Level 3 Enforcement  
Request to do to Level 4 Enforcement

E. Signed PCCO: \_\_\_\_\_

F. Transmitted to: \_\_\_\_\_

G. DTG: \_\_\_\_\_

**APPROVAL / NON-APPROVAL**

H. Level 3 – Mount. 50 calibre or 20mm weapon

**Approved / Not Approved**

OCCG: \_\_\_\_\_

DTG: \_\_\_\_\_

Time sent to PCCO: \_\_\_\_\_

By Whom Rec'd: \_\_\_\_\_

Signed OTC: \_\_\_\_\_

**I. Level 4** – Stop suspect vessel by fouling propellers with rope or stalling engine(s) with water into funnel

**Recommended / Not Recommended**

OCCG: \_\_\_\_\_

DTG: \_\_\_\_\_

**Approved / Not Approved**

COP: \_\_\_\_\_

DTG: \_\_\_\_\_

Time sent to PCCO: \_\_\_\_\_

Signed OTC: \_\_\_\_\_

**APPENDIX 7 – MODEL SUMMARY REPORT FORMAT**

1. Operation No:
2. Date:
3. Units and Assigned Patrol Areas:
4. Coverage Achieved:
5. Sightings and Boarding:

Sighting:

<u>Time</u>	<u>Vessel Name</u>	<u>Location</u>	<u>Activity</u>
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Boarding:

<u>Time</u>	<u>Vessel Name</u>	<u>Location</u>	<u>Activity</u>
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6. Comments
7. Recommendations:

Signature:

Name:

Title:

## ANNEX A

### **STATEMENT OF THE NATIONAL LINES OF AUTHORITY FOR THE PURPOSE OF THE POLICY AND PROCEDURES OF FISHERIES ENFORCEMENTS IN (country) EEZ.**

This statement shows the lines of authority and individual responsibilities when Coastguards / Marine Units are involved in fisheries enforcement national jurisdiction areas.

#### **PCCO**

- Pursues foreign vessel using appropriate signal and tactics to establish and maintain hot pursuit.
- Initiates boarding and search, and if necessary arrest of vessel master and crew.
- Recommends Level 3 enforcement action.
- Initiates recommendation for Level 4 enforcement action
- Ensures documentation of Patrol Craft's enforcement activities.

#### **OTC**

- Establishes and maintains communication with patrol craft,.
- Keeps OCCG and CFO informed of current events.
- Relays request for Level 3 and Level 4 enforcement to OCCG.
- Relays approval/non-approval for Level 3 and Level 4 enforcement to Patrol Craft CO.
- Relays advice to PCCO.
- Maintains a record of all enforcement activities and decision.

#### **OCCG**

- Approves or does not approve Level 2 enforcement request.
- Recommends or does not recommend Level 4 enforcement to COP
- Keeps COP abreast of current events
- Keep OCCG in Patrol's Craft in parent State advice of Patrol Craft's enforcement activities as appropriate.

#### **CFO**

- Keeps PS with responsibilities for Fisheries abreast of current events.

#### **COP**

- Approves or does not approve Level 3 enforcement action.
- Keep Permanent Secretary, Foreign / External Affairs and Permanent Secretary, Prime Minister / Chief Minister abreast of current activities.

#### **PS RESPONSIBLE FOR FISHERIES**

- Keep Minister abreast of current events,.
- Calls and chairs meeting of Fisheries Advisory Committee.

**PS PRIME MINISTER CHIEF MINISTER**

- Keep Prime Minister / Chief Minister abreast of events.

**PS FOREIGN / EXTERNAL AFFAIRS**

- Inform foreign consulates / embassies / missions of enforcement decisions as appropriate.
- Obtains clearance for continuation of hot pursuit into waters of neighbouring Caricom Countries.

## APPENDIX 8 – BOARDING SIGNALS

The following signals have been extracted from the International Code of Signals and may be of use during boarding operations. For additional signals respecting towing, navigation, fishing, etc., reference should be made to the Code.

<u>Code</u>	<u>Meaning</u>
QN	You should come alongside my starboard side.
QN1	You should come alongside my port side.
QO	You should come alongside
QP	I will come alongside
RS	No-one is allowed on board
SN	You should stop your vessel instantly. Do not scuttle. Do not lower boats. Do not use wireless. If you disobey, I shall open fire.
SP	Take all way off your vessel.
SQ	
SQ1	You should stop or heave to, otherwise I shall open a fire on you.
SQ2	You should stop or heave to; I am going to send a boat.
SQ3	You should stop or heave to; I am going to board you.
ZA	I wish to communicate with you in (Language indicated by the following complements)
1.	Dutch
2.	English
3.	French
4.	German
5.	Greek
6.	Italian
7.	Japanese
8.	Norwegian
9.	Russian
10.	Spanish

**APPENDIX 9 – SUMMARY OF ELEMENTS OF HOT PURSUIT FROM UNITED NATIONS  
CONVENTION ON THE LAW OF THE SEA**

**United Nations Convention on the Law of the Sea  
Article 111 - Right of hot pursuit**

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.
2. The right of hot pursuit shall apply mutatis mutandis to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones.
3. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State.
4. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship is within the limits of the territorial sea, or, as the case may be, within the contiguous zone or the exclusive economic zone or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.
5. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.
6. Where hot pursuit is effected by an aircraft:
  - (a) the provisions of paragraphs 1 to 4 shall apply mutatis mutandis;
  - (b) the aircraft giving the order to stop must itself actively pursue the ship until a ship or another aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest outside the territorial sea that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.
7. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the exclusive economic zone or the high seas, if the circumstances rendered this necessary.
8. Where a ship has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

## Summary

The right of hot pursuit enables coastal States to seek to enforce their laws upon the suspected commission of an offence and to continue to pursue the suspect vessel beyond coastal State maritime zones. There are a number of procedural conditions to be satisfied in the valid exercise of hot pursuit, and these conditions are cumulative: each of them has to be satisfied for the pursuit to be legitimate under UNCLOS.

The conditions for the valid exercise of the right of hot pursuit set out in Article 111 are:

- the pursuit be “hot” or immediate (that is, the pursuit commences immediately upon the suspected commission of an offence)
- the coastal State must have “good reason to believe”<sup>1</sup> that the vessel has violated the laws and regulations of that State
- the hot pursuit must be commenced when the foreign vessel is within the internal waters, archipelagic waters, territorial sea, EEZ or contiguous zone of that coastal State;
- the hot pursuit must not be interrupted;
- the right of hot pursuit ceases upon the vessel entering the territorial sea of its own State or of a third State;
- hot pursuit can only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship;
- hot pursuit can only be exercised by warships or authorised government vessel, which are clearly marked and identifiable.

There can be challenges for the Patrol Craft in fulfilling each of these conditions, and the question of whether or not any condition was fulfilled (should it be raised in court proceedings) will essentially be one of fact. It is therefore essential that all actions, reactions, events and observations are carefully recorded and supported with all obtainable evidence.

It is important to ensure that communication and cooperation is maintained with neighbouring coastal States if the pursuit takes the Patrol Craft into the EEZ such States. Attention should also be paid to any bilateral cooperative arrangements or multilateral agreements or systems (such as the Regional Security System (RSS), or the future Maritime and Air Space Cooperation Agreement (MASCA)) which set out specific modalities in this regard (and may also provide for extended rights for pursuing Patrol Craft).

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<sup>1</sup> Note, ITLOS has said that “good reason to believe” does not mean “beyond reasonable doubt” but does mean “more than a suspicion”: *M/V Saiga Case (No.2)* (St Vincent and the Grenadines v Guinea) ITLOS Case No. 2, 1 July 1999.

## APPENDIX 10 – REVISED HARMONIZED OECS FISHERIES LAW

### *REVISED HARMONIZED OECS FISHERIES LAW*

*No. of 1993.*

*The Fisheries Act, 1993.*

(Country)

#### Arrangement of Sections

#### **PART I PRELIMINARY**

- Short title
- Interpretation
- Designation of authorized bodies corporate

#### **PART II FISHERIES MANAGEMENT AND DEVELOPMENT**

- Promotion of fisheries
- Fisheries management and development plan
- Fishery Advisory Committee
- Regional cooperation in fisheries management

#### **PART III REGISTRATION AND SEAWORTHINESS OF LOCAL FISHING VESSELS**

- Registration of local fishing vessels and certificates of seaworthiness
- Register of local fishing vessels
- Change of ownership to be notified
- Mortgage of local fishing vessels
- Mortgagees not deemed to be owner
- Rights of mortgages
- Transfer of mortgages
- Regulations relating to procedure
- De-registration of local fishing vessels
- Inspection of local fishing vessels
- Offences

#### **PART IV AUTHORIZATION OF FISHING AND PROCESSING OPERATIONS**

- Fisheries access agreements
- Foreign fishing licenses
- Stowage of fishing gear
- Observation on laws
- Local fishing licenses
- Validity of fishing licenses
- Conditions of fishing licenses
- Fees, royalties and other changes
- Cancellation or suspension of fishing licenses
- Notices

- Appeals
- Fisheries research
- Fish processing establishments
- Leasing of land for aquaculture

#### **PART V FISHING PRIORITY AREAS, MARINE RESERVES AND CONSERVATION MEASURES**

- Local fisheries management areas
- By-laws
- Fishing priority areas
- Marine reserves
- Prohibited fishing methods
- Possession of prohibited fishing gear
- Stealing of fish pots etc.

#### **PART VI ENFORCEMENT**

- Designation of authorized officers
- Powers of authorized officers
- Sale of perishable goods seized
- Immunity of authorized officers
- Assaulting or obstructing authorized officer
- Master liable of offences committed on board his vessel
- Release of vessel etc. on bond
- Court's power of forfeiture
- Presumptions
- Onus of Proof
- Disposal of vessels etc. forfeited
- Offences triable as if committed within local jurisdiction
- Minister's powers to compound offences

#### **PART VII GENERAL**

- Regulations
- Exemptions
- Savings
- Repeals

(Country)

No. of 1993

AN ACT to provide an institutional framework for the management, planning, development and conservation of fishery resources in (country), to provide for the registration of local fishing vessels, to confer upon the Minister the power to enter into arrangements or agreements dealing with access or otherwise in regard to fishery matters; and for connected matters.

(By notice to be published in the Gazette)

### **Commencement**

Be it enacted by the Queen's Most Excellent Majesty, by and with advice and consent of the National Assembly of (country) and by the authority of the same as follows:-

## **PART I PRELIMINARY**

This Act may be cited as the Fisheries Act, 1993 and

**Short Title  
And Commencement**

The provision of this Act shall come into operation on such date or dates as the Minister may specify by order published in the Gazette.

**Interpretation**

- In this Act unless the context otherwise requires:

“access agreement” means an agreement under Section 19;

“aquaculture” includes Mari -culture;

“authorized officer” means any fisheries officer, any customs officer or police officer and any other person designated as an authorized officer by the Minister under Section 40;

“court” means a magistrate's court;

“Chief Fisheries Officer” means the person appointed as Chief Fisheries Officer under Section 4(2) (a);

“fish” means any aquatic animal, whether piscine or not and includes shellfish, turtles, mollusk, crustacean, coral, sponge echinoderms, their young and their eggs;

“fish aggregating device” means any man-made or partly man-made floating or submerged device, whether anchored or not, intended for the purpose of aggregating fish, and includes any natural floating object on which a device has been placed to facilitate its location;

“fisheries officer” means Chief Fisheries Officer, Fisheries Officer, or Superintendent of Fisheries and such other officers appointed under Section 4(2);

“fisheries plan” means the plan for the management and development of fisheries prepared under Section 5;

“fishery” means one or more stocks of fish or fishing operations based on such stocks which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical scientific, technical, recreational and economic characteristics.

“fishery waters” means the waters of the exclusive economic zones territorial sea and internal waters as defined in any legislation dealing with demarcation of maritime areas and any other waters over which (country) claims fisheries jurisdiction.

“fishing” means fishing for or catching or taking or killing fish by any method or placing any fish aggregation device and includes searching for fish.

“fishing license” means a foreign fishing license or a local fishing license;

“fishing vessel” includes any vessel used for commercial fishing or related activities or sport fishing;

“foreign fishing license” means a license issued in respect of a foreign fishing vessel under Section 20;

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

“local fishing license” means a license issued in respect of a local fishing vessel under Section 23;

“local fishing vessel” means any fishing vessel that is –

Wholly owned by one or more persons who are citizens of (country);

Wholly owned by the Government of (country) or by a statutory cooperation established by or under any law of (country);

Wholly owned by a body corporate, society or association of persons incorporated or established under the laws of (country), in which all the shares are held and all the voting rights held and controlled by persons who are citizens of (country); or

Wholly owned by a body corporate designated as an authorized body corporate by the Minister under Section 3;

“locally based” foreign fishing vessel” means any foreign fishing vessel based in (country) which lands all its catch in (country);

“master” means the person or persons having control of a fishing vessel at any given time, and includes a fishing master, fleet commander or pilot having control of such vessel;

“Minister” means the Minister to whom matters relating to fisheries have been assigned;

“related activities” in relation to fishing means

- Trans-shipping fish to or from any vessel; or
  - Storing, processing or transporting fish taken from the fishery waters up to the time it is first landed; or
  - Refueling or supplying fishing vessels or performing other activities in support of fishing operations; or
  - Attempting or preparing to do any of the above:
- (1) The Minister may, by notice published in the Gazette, designate a body corporate as an authorized body corporate for the purpose of Section 2 (definition of “local fishing vessel”) if -

**Designation of  
authorized bodies  
corporate**

- It is established under and subject to the laws of (country) and has principal place of business in (country);
  - At least two-thirds of its voting share capital is held and controlled by citizens of (country), or in the case of a body corporate, not less than two-thirds of its members are citizens of (country);
  - The majority of the directors, the chairman of the board and the managing director are citizens of, and ordinarily resident in, (country); and
  - He is satisfied that the body corporate is contributing, or is likely to contribute substantially to the economic development of the country that the body corporate be so designated.
- (2) Any person applying for the designation of a body corporate as an authorized body corporate for the purpose of Section 2 (definition of “local fishing vessel”), shall declare any agreement or arrangement under which any legal or equitable interest in the vessel, the company or its shares are held directly or indirectly, or the voting shares are controlled, by any person who is not a citizen of (country).
- (3) Any person who knowingly contravenes the preceding subsection shall be guilty of an offence and shall be liable on summary conviction to a fine of ..... and to imprisonment for a term of .....years.

**PART II FISHERIES MANAGEMENT AND DEVELOPMENT**

- (4) The Minister shall take such measures as he thinks fit under this Act to promote the management and development of fisheries, so as to ensure the optimum utilization of the fisheries resources in the fishery waters for the benefit of (country).
- (5) There may be appointed:
- A Chief Fisheries Officer; and
  - Such other Fisheries Officer and other officers may be necessary to give effect to this Act.
- (6) The Chief Fisheries Officer shall prepare and keep under review a plan for the management and development of fisheries in the fishery waters.
- (7) The fisheries plan shall:
- Identify each fishery and assess the present state of its exploitation;
  - Specify the objectives to be achieved in the management of each fishery;
  - Specify the management and development measures to be taken; and
  - Specify the licensing programs to be followed for each fishery, the limitations, if any, to be applied to local fishing operations and the amount of fishing, if any, to be allocated to foreign fishing vessels.
- (8) In the preparation and review of the fisheries plan the Chief Fisheries Officer shall consult with the local fishermen, local authorities, other persons affected by the appointed under Section 6.
- (9) The fishery plan and each review thereof shall be submitted to the Minister for approval.
- (i) The Minister may appoint a Fisheries Advisory Committee to advice on management and development of fisheries.
- (ii) Any Fisheries Advisory Committee appointed under this Section shall include the Chief Fisheries Officer and such other persons as the Minister may consider capable of advising on the management and development of fisheries.

**Promotion  
of  
Fisheries**

**Fisheries  
Management  
And  
Development  
Plan**

**Fisheries  
Advisory  
Committee**

- The Minister may enter into arrangements with other countries in the region or with any competent regional organization, providing for:
  - The harmonization of systems for the collecting of statistics and then carrying out of surveys for assessing the state of the fisheries resources;
  - The harmonization of licensing procedures and conditions in respect of foreign fishing vessels;
  - Schemes for the issuance of fishing licenses in respect of foreign fishing vessels by a competent regional organization on behalf of the Minister and the recognition of regional licenses issued by such organization , subject to such conditions as may be specified in the agreement or arrangement and to such additional conditions as the Minister may specify from time to time;
  - The taking of joint or harmonized enforcement measures in respect of foreign fishing vessels contravening fisheries laws in the region;
  - The establishment and operation of joint or regional fisheries management bodies where appropriate;
  - Where appropriate, the establishment of a regional register of fishing vessels;
  - Such other cooperative measures as appropriate including such measures for promoting the welfare of fishermen and matters relating to insurance of fishing vessels and gear;
- (iii) For the purpose of giving effect to any arrangement or agreement entered into under this Section, the Minister may by Order published in the Gazette and thereafter obtain the approval of Parliament by the way of a Resolution to:
- Authorize any competent regional organization designated in the Order to issue fishing licenses in respect of foreign fishing vessels on behalf of the Minister, within the limits set out in the Order;
  - Exempt from the requirements of Section 20 any foreign fishing vessel or class of foreign fishing vessels holding valid regional fishing licenses issued by a competent regional organization designated in the Order ; and
  - Prescribe the conditions to be observed by foreign fishing vessels exempted under paragraph (b) while fishing or navigating in the fishery waters.
- (iv) Any Order made under Subsection (2) shall be subject to a negative resolution of the National Assembly.

**Regional  
Cooperation  
in  
Fisheries**

**PART III REGISTRATION AND SEAWORTHINESS OF  
LOCAL FISHING VESSELS**

- (10) No local fishing vessel shall be used for fishing or related activities in .... Waters unless such vessel is registered under this Act and there is in existence a valid certificate of registration of seaworthiness issued in respect of that vessel.
- (11) Application for the registration of a local fishing vessel and the issuance of a certificate of registration and a certificate of seaworthiness shall be made by on behalf of the owner to the Chief Fisheries Officer and shall be accompanied by the prescribed application fee.
- (12) Upon receipt of an application made under Sub-section (2), the Chief Fisheries Officer shall as soon as possible thereafter inspect the fishing vessel to which the application refer and if satisfied that the vessel is seaworthy and fit for the purpose of fishing, shall
- Issue to the owner a certificate of seaworthiness in respect of that vessel;
  - Register the vessel; and
  - Assign identification markings in respect of their vessel.
- (13) Upon completion of the registration of a local fishing vessel, and upon payment of the prescribed registration fee, the Chief Fisheries Officer shall grant a certificate of registration in respect of that vessel.
- (14) The owner of a local fishing vessel registered under this section, shall mark or cause to be marked on the vessel the identification markings assigned to the vessel in the prescribed manner.
- (15) The owner shall maintain or cause to be maintained the assigned identification markings in the prescribed manner.
- (1) The Chief Fisheries Officer shall keep a Register of local fishing vessels registered under Section 8 and shall cause to be entered from time to time in the Register the name and identification number if the vessel, the name and address of the owner, the place of mooring or beaching of the vessel and such other particulars as may be prescribed.
- (2) The Chief Fisheries Officer may also, on written application by the owner of any local fishing vessel registered under Section 8 or other person holding a mortgage or other lien over such vessel, cause to be entered in the Register of local fishing vessels in respect of such vessel details of any mortgage or other lien over the vessel.
- (3) On the scale or other change of ownership of a local fishing vessel registered under Section 8, the previous owner and the new owner shall, within seven days of the sale or other change in ownership, notify the Chief Fisheries Officer of the change in ownership (stating the name and address of the new owners) and return to the Chief Fisheries Officer for cancellation the certificate of registration issued in respect of the vessel.
- (4) The Chief Fisheries Officer shall issue to the now owner of the local fishing vessel a new certificate of registration.
- (5) A registered local fishing vessel may be made a security for a loan or other valuable consideration by means of a mortgage to be executed in the prescribed form in the prescribed manner.

- (6) If there are more mortgages recorded in respect of the same fishing vessel, the mortgages shall notwithstanding any express, implied or constructive notice, have priority according to the date on which each mortgage is recorded in the register and not according to the date of each mortgage itself.
- Except in so far as may be necessary for making a mortgaged fishing vessel available as a security for the mortgage debt, the mortgagee shall not, by reason of his mortgage, be deemed to be the owner of the vessel, nor shall the mortgager be deemed to have ceased to be the owner of the vessel.
  - A registered mortgagee of a fishing vessel shall be entitled to sell or otherwise dispose of the mortgaged vessel in order to recover the amount due under the mortgage and if he sells the vessel, he shall hold the proceeds of the sale in excess of the amount due to him in trust for later mortgagees, if any, and the owner, but where there is more than one registered mortgagees shall not, except under the order of a court of competent jurisdiction sell the vessel without the concurrence of every prior mortgagee.

**Mortgagees not  
deemed to be owner  
Rights of Mortgagees**

- (16) A registered mortgage of a fishing vessel may be transferred to any person and the instrument affecting the transfer shall be in the prescribed form or as near thereto as circumstances permit, and on the production of such instrument, the Chief Fisheries Officer shall record it by entering in the register the name of the transferee as the mortgagee of the fishing vessel and shall by memorandum under his hand, notify on the instrument of transfer that it has been recorded by him stating the day and hour of record.
- (17) The person to whom any such mortgage has been transferred shall enjoy the same right of preference as was enjoyed by the transferor.

**Transfer of Mortgagees**

- The Minister may take regulations establishing the procedure for registration, transfer of ownership, transmission of property in the fishing vessel, execution of mortgages and other connected matters.
- (18) The owner of a registered local fishing vessel shall report the loss or destruction of the fishing vessel, or decommissioning as a local fishing vessel as soon as practicable after such loss, destruction or decommissioning and in any case within a period of 30 days from the event, and shall at that time return the certificate of registration in respect of that vessel.

**Regulations relating to procedures**

- (19) The Chief Fisheries officer, on the receipt of a report under subsection (1) and receipt of the certificate of registration, shall cause the details of the vessel to be removed from the register.

### **De-Registration of local fishing vessels**

- (20) The Chief Fisheries Officer shall not permit the registration of a local fishing vessel without the written consent of all the holders of mortgages in the vessel registered under this Act.
- (1) The Chief Fisheries Officer or any fisheries officer designated by the Chief Fisheries Officer for this purpose of determining whether the vessel is sea-worthy and fit for the purpose to fishing.
- (2) Where on any inspection under subsection (1), the Chief Fisheries Officer, or any fisheries officer designated by the Chief Fisheries Officer for the purpose of carrying out inspections under this Section, is satisfied that the vessel is not sea-worthy or is unfit for the purpose of fishing, he may cancel the certificate of seaworthiness in respect of that vessel.
- (3) Where a local fishing vessel is used in contravention of section 21 910, the master, owner and charterer of that vessel is each guilty of an offence and shall each be liable upon summary conviction to a fine not exceeding dollars.

### **Inspection of local fishing vessels**

- (21) Any person who contravenes the provisions of section 8 (5) or (6), section 10(1) or section 16(1) is guilty of an offence and shall be liable upon summary conviction to a fine not exceeding dollars.

## **PART IV AUTHORIZATION OF FISHING AND PROCESSING OPERATIONS**

- (22) The Minister may enter into access agreements with other states and with associations representing foreign fishing vessel owners to charterers, providing for the allocation of fishing right to vessels from those states or associations. **Offences**
- (23) The fishing rights allocated under access agreements entered into under this section shall not exceed the total resources or amount of fishing allowed to the appropriate category of foreign fishing vessels under the fisheries plan.
- (24) Any agreement entered into under this section shall include a provision establishing the responsibility of the foreign state or association to take necessary measures to ensure compliance by its vessels with the terms and conditions of the agreement and with the laws relating to fishing in the fishery waters.

### **Fisheries access agreements**

- (25) For the purposes of this section and section 20 the term ‘State’ shall include any regional organization which is empowered to negotiate access agreements in regard to fisheries development on behalf of the member states.
- (26) For the purposes of this section, ‘‘association’’ means an organization which, in the opinion of the Minister, is capable of undertaking the responsibility of ensuring compliance by its members with the terms and conditions of an access agreement and does not include any body corporate with

limited liability which owns fishing vessels on its own account, whether directly or indirectly.”

- (1) No foreign vessel of any state shall be used for fishing or related activities in the fishery waters without a valid foreign fishing license issued under this Section.
- (2) An application for a foreign fishing license shall be made, in the prescribed form, to the Minister or to a competent regional organization authorized to issue fishing licenses under Section 7(2) (a).
- (3) Subject to the provisions of this Act and any regulations made under this Act, the Minister may issue a foreign fishing license authorizing a foreign fishing vessel to be used in the fishery waters for such fishing or related activities as may be specified in the license.
- (4) Subject to subsection (5), no foreign fishing license shall be issued to any foreign fishing vessel unless there is in force with the Government of the flag state of the vessel or with an association of which the owner or charterer is a member, an agreement entered into under Section 19 to which the Government of (country) is a party.

#### **Foreign fishing license**

- (27) Subsection (4) shall not apply to a license issued in respect of :
  - Test fishing operations; or
  - A locally based foreign fishing vessel.
- (28) For the purpose of this section, “test fishing operations” means any fishing vessel or vessels over a limited period of time which are in the opinion of the Chief Fisheries Officer bonafide test fishing operations undertaken for the purpose of testing the feasibility of commercial fishing operations with a view to the establishment of locally based fishery operations.
- (29) Subject to subsection (5), a person undertaking test fishing operations under this section shall not thereby be exempted from the provisions of this Act relating to licensing the payment of fees, royalties or other charges and other requirements of this Act.
- (30) Where a fishing vessel is used in contravention of subsection (1) or of any condition of the foreign fishing license the master, owner and charterer of that vessel is each guilty of an offence and shall be liable on summary conviction to a fine not exceeding three hundred thousand of this Act.
  - The fishing gear of any foreign fishing vessel which is prohibited by section 20 from fishing within the fishery waters shall be stowed in such manner as may be prescribed while within the fishery waters.
  - No license shall relive any foreign fishing vessel or its master or crew of any obligation or requirements imposed by law concerning navigation, customs, immigration, health or other matters.
- (31) No local fishing vessel shall be used for fishing or related activities in the fishery waters without a valid license issued under this section in respect of that vessel.

- (32) An application for a local fishing license shall be made in the prescribed form to the Chief Fisheries Officer. **Stowage of gear**
- (33) Subject to subsection (4) of this section, the Chief Fisheries Officer may issue a local fishing license in the prescribed form.
- (34) No application for a local fishing license shall be refused except on any of the following grounds namely, **Observation of laws**
- That is necessary to do so in order to give effect to any licensing programme specified in the fisheries plan; or **Registration of local fishing vessels**
  - That the Chief Fisheries Officer has a reason to believe that the applicant will not comply with the conditions of the license.
  - That the vessel in respect of which the application is made does not have a valid certificate of inspection where so required under the laws governing merchant shipping, or is not in compliance with regulations prescribed under section 53 relating to the safety of the vessel; or
  - Such other grounds as are specified in this Act or any regulations made under this Act.
- (35) Where a local fishing vessel is used in contravention of any condition of the local fishing license, the master, owner or character of that vessel as the case may be, is each guilty of an offence and shall each be liable upon summary conviction to a fine not exceeding two hundred dollars.
- (1) Unless earlier cancelled in accordance with section 27, a fishing license shall be valid for a period of not more than twelve months.
  - (2) Where a vessel licensed as a local fishing vessel becomes a foreign fishing vessel, the license shall automatically terminate.
  - (3) The term of a foreign fishing license shall not extend beyond the term of validity of the applicable access agreement.
  - (4) No license shall be transferable except with the written permission of the Civil Fisheries Officer or, in the case of a foreign fishing license, the Minister.
- (36) Every fishing license shall be in the prescribed form and shall be subject:
- To such general conditions as may be prescribed;
  - To such general conditions as may be specified under subsection (2) ; and
  - To such special conditions as may be specified under subsection (3).
- (37) The Minister may, by Order published in the Gazette, specify general conditions additional to those prescribed to which all fishing licenses, or any category of fishing licenses shall be subject including conditions relating to open and closed seasons, prohibited fishing areas, minimum mesh sizes and minimum species sizes.

- (38) The Chief Fisheries Officer, or in the case of a foreign fishing license, the Minister, may attach to any fishing license special conditions as he may think fit.
- (39) The Chief Fisheries Officer, or in the case of a foreign fishing license, the Minister, may from time to time where he is satisfied that it is expedient for the proper management of fisheries in the fishery waters, vary any special conditions attached to any fishing license.
- (40) Where the Minister of the Chief Fisheries Officer varies any special conditions attached to any fishing license he shall notify the license holder of such variation as soon as practicable.
- There shall be payable in respect of every fishing license such fees as may be prescribed and such royalties or other charges as the Minister may determine.
- (41) The Minister may cancel or suspend a foreign fishing license on any of the grounds set out in subsection (2).
- (42) A fishing license may be cancelled or suspended where the Minister is satisfied that;
- It is necessary to do so in order to allow for the proper management of any particular fishery; or
  - The vessel in respect of which the license has been issued had been used in contravention of this Act or of any regulations made thereunder, or of any condition of the license or in breach of any applicable access agreement; or
  - He is required or authorized to do so in accordance with the provisions of any arrangement or agreement entered into under Section 7.
- Fees royalties and other charges cancellation or suspension of fishing licenses**
- (43) Before the Minister cancels or suspends a fishing license, the holder of such license or a person representing him shall be entitled to be heard by the Minister whenever it is possible to do so.
- (44) Where a fishing license has been cancelled or suspended under subsection (1), notification of the cancellation or suspension shall be given to the person to whom the license was issued.
- (45) Where a fishing license has been suspended or cancelled on the grounds specified in Section 27 (2) (a), a proportion of any fees paid for the fishing license representing the unexpired period of that license of the period of suspension, as the case may be, shall be reimbursed to the licensee at his request.
- (46) (1) Any notification given under section 25 (5) or 27 (3) shall be in writing, except as otherwise specified in Subsection (2).
- (2) In the case of a foreign fishing vessel, a notification referred to in Subsection (1) may be in writing or by telex, radio or such other form as the Minister deems appropriate.
- (47) Any person aggrieved by any decision of the Chief Fisheries Officer under section 23, may in 21 days of the receipt of notification of that decision appeal against it to the Minister, whose decision shall be final.

- (48) (1) The Minister may, on the submission of a fisheries research plan, approved by the Chief Fisheries Officer, grant permission for any vessel or person to undertake research into fisheries in the fishery water and in doing so may exempt such vessel or person from any of the provisions of this Act.
- (2) The Minister may attach such conditions as he deems fit to any permission granted under subsection (1).

#### **Notices**

- (3) Any person who undertakes fisheries research in the fishery waters:
- Without permission under subsection (1) or,
  - In contravention of any condition or conditions attached to the permission under subsection (2),

#### **Appeals**

Is guilty of an offence and shall be liable on summary conviction to a fine not exceeding one thousand dollars.

- (4) Any permission or exemption granted under this Section shall be in writing.

#### **Fish Processing Establishments**

- (49) Fish processing establishments
- (1) The Minister may grant to any person a license to operate a fish processing establishment on payment of such fees and subject to such conditions as may be prescribed from time to time.
- (2) Any person who operates or allows to be operated any fish processing establishment except under a license granted under this Section and in accordance with the conditions of such license is guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding one thousand dollars.
- (3) In this Section “fish processing establishment” means any establishment on any land, premises or other place on or in which fish are canned, dried, gutted, salted, iced, chilled, frozen or otherwise processed for sale by wholesale in or outside (country).
- (50) (1) The Governor- General on the advice of the Minister may lease any land including areas of the foreshore and sea-bed for purposes of aquaculture, if he is satisfied after such enquiry as he may deem necessary that such lease will not substantially prejudice the rights of the members of the public thereto and such lease shall be in conformity with any regulations made under section 53 relating to the leasing of land for aquaculture.
- (2) The provisions of the [Title by Registration Act (cap.279)] shall apply, **mutatis mutandis**, to the leasing lands including foreshore and sea-bed for purposes of aquaculture under this section.

- (3) Notwithstanding any provisions if the [ Title by registration Act (Cap 279) ] the Minister shall, by notice published in the gazette give particulars of any lease granted under subsection (1) giving the boundaries of the area leased and the Minister may restrict and control by regulations made under section 53, the use of such land including foreshore or sea-bed by members of the public.

**PART V FISHING PRIORITY AREAS, MARINE RESERVES  
AND CONSERVATION MEASURES**

**Leasing of land for  
aquaculture**

- (51) (1) The Minister may by notice published in the Gazette:
- Designate an area as a local fisheries management area
  - Designate any fishermen's cooperative or fishermen's association or other appropriate body representing fishermen in the area as the Local Fisheries Management Authority for that area.
  - Where there is no appropriate body representing fishermen in the area, the Minister may promote the formation of such a body.
  - The Chief Fisheries Officer shall to the extent he deems it practicable, provide to any Local Fisheries Management Authority, such assistance as may be reasonably necessary for the performance of its functions.
- (52) (1) A Local Fisheries Management Authority established under section 33 may recommend by-laws to the Minister in regard to the conduct of fishing operations in the designated area.
- (2) Any by-laws so recommended under sub-section (1) may be approved by the Minister and published in the Gazette.
- Such by-laws may provide that a breach of any by-laws made under this Section shall constitute an offence and may provide for penalties on summary convictions of a fine not exceeding one hundred dollars.
- (53) The Minister may, by Order published in the Gazette, declare any area of the fishery waters, to be a fishing priority area, where he considers that special measures are necessary to ensure that authorized fishing within the area is not impeded or otherwise interfered with.
- (54) (1) The Minister may, by Order published in the Gazette, declare any area of the fishery waters and, as appropriate, any adjacent or surrounding land, to be a marine reserve where he considers that special measures are necessary:

**By laws**

- To afford special protection to the flora and fauna of such areas and to protect and preserve the natural breeding grounds and habitats of aquatic life, with particular regard to flora and fauna in danger of extinction;

- To allow for the natural regeneration of aquatic life in areas where such life has been depleted;
  - To promote scientific study and research in respect of such areas; or
  - To preserve and enhance the natural beauty of such areas.
- (2) Any person who, in any marine reserve, without granted permission granted under Sub-section (3);
- Fishes or attempts to fish;
  - Takes or destroys any flora and fauna other than fish;
  - Dredges, extracts, sand or gravel discharges or deposits waste or any other polluting matter, or in any way disturbs, alters or destroys the natural environment; or
  - Constructs or erects any buildings or other structures on or over any land or waters within such a reserve;

Is guilty of an offence and shall be liable on summary conviction to a fine not exceeding one thousand dollars.

- (3) The Minister, or any person authorized by him in writing, may give written permission to do any of the things prohibited under this Section where the doing of such things may be required for the proper management of the reserve or for any of the purpose referred to in Sub-section (1);

(1) Any person who:

- Permits to be used, uses or attempts to use any explosive, poison or other noxious substance for the purpose of killing, stunning, disabling or catching fish, or in any way rendering fish more easily caught; or
- Carries or has in his possession or control any explosive, poison or other nervous substance in circumstances indicating an intention of using such explosive, poison or other noxious substance for any of the purposes referred to in the preceding paragraph.

Is guilty of an offence and shall be liable on summary conviction to a fine not exceeding one thousand dollars.

(2) Any explosive, poison or other noxious substance found on board any fishing vessel shall be presumed, unless the contrary is proved, to be intended for the purpose referred to in subsection (1) (a).

(3) Any person who lands, sells, receives or is found in possession of any fish taken in contravention of subsection (1) (a), knowing or having reasonable cause to believe them to have been so taken, is guilty of an offence and shall be liable on summary conviction to a fine not exceeding one thousand dollars.

- For the purposes of this Section, a certificate as to cause and manner of death or injury of any fish signed by Chief Fisheries Officer or by any person authorized by him in writing shall be accepted as prima facie evidence in a court without proof of the signature of the person appearing to have signed the certificate or his official character.
- For the purposes of Subsection (4), the defendant to proceedings brought under this Section is entitled to 14 days notice in writing of the prosecution's intention to adduce the said certificate.
- Any person who within the fishery waters, uses for fishing or has on board any fishing vessel, in circumstances which indicate an intention to use for fishing in the fishery waters:
- Any net the mesh size of which does not conform to the prescribed minimum mesh size for that type of net; or
- Any type or other fishing gear which does not conform to any standards prescribed for that type of trap or other fishing gear; or
- Any other net or fishing gear which is prohibited by the Act.

Is guilty of an offence and shall be liable on summary conviction to a fine not exceeding one thousand dollar.

(1) No person shall unlawfully –

- Remove, haul, take away, empty, cast adrift or otherwise interfere with any fishing net, fish pot or trap, gear, tackle or other person, without consent of that other person;
- Place any object in the water, or promote or undertake any activities so as to obstruct a fishing operation being carried out by another person unless authorized in writing by the Chief Fisheries Officer.
- Destroy, damage, displace or alter the position of any fishing net, fish pot or trap, gear, tackle or other fishing equipment, or any buoy, float or other marker connected to it.
- Remove fish from the fishing net, fish pot or trap, gear, tackle or other fishing equipment belonging to some other person, without the consent of that other person;
- Obliterate etc. set or take place any fish pot or trap without identifying mark issued or approved in respect of it by the Chief Fisheries Officer.

**Stealing of fish pots etc**

(2) Any fish in a fishing net or fish pot or trap shall be deemed to be private property belonging to the owner of such fishing net or fish pot or trap.

**PART VI ENFORCEMENT**

- The Minister may designate from time to time by notice published in the Gazette such persons as he deems fit, including members of the enforcement authority of any country or of any regional or sub-regional marine enforcement entity, to be authorized officers for the purpose of this Act.

- (1) For the purposes of enforcing this Act, any authorized officer may, without a warrant:
- Stop, board and search any foreign fishing vessel in the fishery vessel in the fishery waters and any local fishing vessel in or outside the fishery waters and stop and search any vehicle;
  - Require to be produced, examine and take copies of any license or other document required under this Act;
  - Require to be produced and examine any fishing net or other fishing gear whether at sea or on land.

(2) Any authorized officer may, without warrant –

- Enter and search any premises, other than premises used exclusively as a dwelling house, in which he has reason to believe that an offence has been committed under this Act or where he has reason to believe that fish illegally taken are being stored;

**Designation of  
authorized officers**

- Take samples of any fish found in any vessel, vehicle or premises searched under this section;
- Seize any vessel (together with its gear, stores and cargo), vehicle, fishing gear, net or other fishing appliance which he has reason to believe has been used in commission of an offence under this Act or in respect of which the offence has been committed;

**Powers of authorized  
officers**

- Where he has reason to believe that any fishing vessel has been used in the commission of such offence :
- Seize any fish found on board that fishing vessel;
- Seize any explosive, poison or other noxious substance found on board that fishing vessel
- Seize any fish, explosive, poison or other noxious substance which he has reason to believe is being possessed in contravention of this Act;
- Arrest the master, owner or charterer of any vessel seized where he has reason to believe that the vessel has been used in the commission on an offence under this Act, and any other person whom he has reason to believe has committed an offence under this Act.

(3) Any vessel seized under subsection (2) and the crew thereof shall be taken to the nearest or most convenient port and the vessel may be detained pending the outcome of any legal proceedings under this Act or its release on bond or other forms of security in accordance with the provisions of Section 46.

- Where, following the commission of an offence under this Act by any foreign fishing vessel, such foreign fishing vessel is pursued beyond the limits of the fishery waters, the powers conferred on authorized officers under this Section shall be exercisable beyond the limits of the fishery waters, in the circumstances and to the extent recognized by international law.
  - After a vessel has been stopped under the provisions of this section any authorized officer may concerning it or in relation to any fish or fish products therein exercise any of the powers conferred by this Section.
  - An authorized officer in exercising any of the powers conferred on him by this section shall on demand produce such means of identification as may be necessary to show that he is an authorized officer for his purposes of this Act.
- (1) Any fish or either articles of perishable nature seized under the Act may, at the direction of the Chief Fisheries Officer, be sold and the proceeds of sale shall be held and dealt with in accordance with the provisions of this Act.
- (2) Where, after making all reasonable efforts, the Chief Fisheries Officer is unable to sell the fish or other articles referred to in Subsection (1), or where such fish or other articles are unfit for sale, he may dispose of them in such other manner as he thinks fit.
- No action shall be brought against any authorized officer in respect of anything done or omitted to be done by him in good faith in the execution or purported execution of his powers and duties under this Act.
  - Any person who obstructs, assaults or threatens with violence an authorized officer in the exercise of the powers conferred on him under this Act is guilty of an offence and shall be liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding two years or to both.
  - Where an offence against this Act has been committed by any person on board or employed on a fishing vessel, the master of such vessel shall be also guilty of the offence.
  - The court may, on application thereof, order the release of any fishing vessel(together with its gear, stores and cargo), vehicle, fish, fishing gear, net or other fishing appliance seized under this Act on receipt of a satisfactory bond or other form of security from the owner or other person claiming such property.
  - Where any person is convicted of an offence against this Act, the court, in addition to any other penalty imposed:
 

**Sale of perishable  
goods seized**
  - May order that any fishing vessel (together with its fishing gear, stores and cargo) any vehicle, fishing gear, net or other fishing appliance, used in the commission of the offence be forfeited.

- Shall order that where any fishing vessel has been used in the commission of such offence, any fish found on board that fishing vessel or the proceeds of sale of such fish, and any explosive, poison or other noxious substance found on board such vessel shall be forfeited.

**Immunity of  
authorized officers**

- Where in any legal proceedings instituted under this Act following the seizure of a foreign fishing vessel by an enforcement vessel, the place in which an event is alleged to have taken place is and issue, the place stated in a certified copy of the relevant entry in the logbook or other official record of the enforcement vessel as bring the place in which the event took place shall be presumed, until the contrary is proved, to be the place in which such even took place.

**Assaulting etc  
authorized officers  
Liability of master**

- In any legal proceeding under this Act where the defendant is charged with having committed an offence under which a license authority or the permission of any person is required for the doing of any act, the ones shall be on the defendant to prove that at the time to which the charge related, the requisite license, authority or permission was duly held.

**On bond**

- Any vessel (together with its gear, stores and cargo), and any vehicle, fishing gear, net or other fishing appliance, explosive or poison ordered to be forfeited under this Act shall be disposed of in such manner as the Minister may direct.

**Court's powers of  
forfeiture**

- Any offence against any of the provisions of this Act or any regulations made under this Act committed within the fishery waters by any person, or any such offence committed outside such waters by any citizen of, or person, ordinarily resident in (country) or by any person on board any local fishing vessel, shall be triable in any court of law as if such offence had been committed in any place in (country) within local limits of the jurisdiction of the court.

- (1) Subject to subsection (4) the Minister may where he is satisfied that any person has committed an offence against this Act or any regulations made under this Act compound such offence by accepting on behalf of the Government from such person a sum of money not exceeding the maximum fine specified for that offence and such sum shall forthwith be paid into the Consolidated Fund.

**Presumptions**

- (3) On compounding an offense under this section the Minister may forfeit any article seized under section 41 or the proceeds of sale such article under section 42, or order the release of any such additional sums of money not exceeding the value of the article seized, as he may think fit.

- (4) No offence shall be compounded under this section unless the person who has committed the offence has expressed his willingness in a prescribed form that the offence is so dealt with.

**Onus of proof**

- (5) The compounding of an offence under this section shall be notified in writing under the signature of both parties to the appropriate Magistrate's Court.

- In any proceedings brought against any person for an offence against this Act or any regulation made under this Act, it shall be a defense if such person proves that the offence with which he is charged has been compounded under this section.

**Disposal of vessel etc  
forfeited**

- This section does not apply to any offence against section 37 or section 44 of this Act.

**Offences triable as if committed within local  
jurisdiction**

**PART VII GENERAL**

- (1) The Minister may make regulations generally for the management and development of fisheries in the fishery waters.

**Minister's powers  
compound offences**

- (2) In particular, without limiting the generality of subsection (1), the Minister may make regulations for all or any of the following purposes:

- Providing for the licensing, regulation and management of any particular fishery;
- Prescribing fisheries management and conservation measures including prescribed mesh sized, gear standards, minimum species sizes, closed seasons, closed areas, prohibited methods in fishing or fishing gear and schemes for limiting entry into all any specified fisheries.
- Prescribing the constitution, functions and duties of Fisheries Advisory Committee appointed under Section 6;
- Regulating the catching and utilization of fish taken incidentally when fishing for a species for which license has been issued.
- Providing for the registration and licensing of fishermen, fishing gear and other fishing appliances;
- Organizing and regulating sport fishing in the fishery waters;
- Regulating the use of scuba gear and hookah gear;
- Regulating or prohibiting the use of spear guns or other similar device;

**Regulations**

- Regulating the landing, marketing and distribution of fish;

- Regulating the transiting of foreign fishing vessels through the fishery waters, including the manner in which fishery gear is to be stowed;
- Making provision for rewards to be paid to any person providing information on the operations of foreign vessels leading to a conviction or compounding offence under this Act;
- Prescribing the form of foreign fishing licenses which may take the form of a written license or a telexed or cabled authorization;
- Providing for the implementation of any agreement or arrangement entered into under Section 7;
- Regulating or prohibiting the entry into any fishing priority area established under section 35, of any class of vessel and prescribing any activities which may not be undertaken in that area;
- Providing for the licensing and control of fish aggregating devices and for rights to fish aggregated by such devices;
- Regulating;
- The management and protection of marine

(3) The taking of coral and shells

- The setting of fishing fences;
- The taking of aquarium fish;
- Aquaculture development,
- Prescribing measures for the protection of turtles, lobsters, and conchs;
- To provide for the control or prohibition of the import and export of fish;
- Prescribing standards and other measures for the safety of local fishing vessels and fishermen;
- Regulating or prohibiting the entry into any land leased for the purposes of aquaculture or into waters superjacent to such land;
- Prescribing any other matter which is required or authorized to be prescribed.

(4) The Minister may, by regulation, provide that the breach of any regulation made under this Act shall constitute an offence and may provide for penalties on summary conviction of a fine not exceeding five thousand dollars.

- The Minister may, by order published in the Gazette, exempt from the requirements of section 23, any type or class of fishing vessel, or any local fishing vessel under a size specified in the Order.
- Any regulations, Orders and notices made under the Fisheries Act 198- and any licenses, permits and other authorizations issued under that Act shall except in so far as they are

inconsistent with this Act , continue to have affect as though made or issued under this Act.

- The Fisheries Act 198- is hereby repealed.

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