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

Volume 1 - Fisheries Prosecution Manual

2013

**CRFM Secretariat
Belize 2013**

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

Volume 1 - Fisheries Prosecution Manual

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PROSECUTION AND ENFORCEMENT MANUALS FOR CARIFORUM MEMBER STATES:

Volume 1 - Fisheries Prosecution Manual

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ACRONYMS AND ABBREVIATIONS

CARICOM	Caribbean Community
CARIFORUM	Forum of the Caribbean Group of African, Caribbean and Pacific (ACP) States
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	UN Food and Agriculture Organization
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)
MCS	Monitoring, Control and Surveillance
MASCA	Maritime and Air Space Cooperation Agreement
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 Fisheries Management Organization
RSS	Regional Security System
SATNAV	Satellite navigation system
SOP	Standard Operating Procedure
UN	United Nations

UNCLOS United Nations Convention on the Law of the Sea
UNFSA United Nations Fish Stocks Agreement
VMS Vessel Monitoring System

FOREWORD

The Fisheries Sector in the CARICOM / CARIFORUM region employs over 182,000 persons, directly or indirectly, who are mostly from rural communities which lack other income earning opportunities. In addition the sector earns over US\$300 million per year from export, is a major source of protein and essential nutrients for thousands of persons across the region especially in rural communities with higher percentage of poor and vulnerable families.

Fish production in the CARICOM / CARIFORUM countries in 2010 was approximately 177,000 MT with an estimated value in the order of US\$800 million. Fishing has also become an important activity for the growing population of tourists, recreational fishers and diving enthusiasts. International, regional and national fishing tournaments are held each year throughout the region.

Illegal, Unreported and Unregulated (IUU) fishing is a major problem in the region. It is fishing activity carried out in contravention of the laws governing access to fisheries resources and the protection, conservation, sustainable use and management of the fish stocks and ecosystems. States are concerned about IUU fishing not only because of the damage to fish stocks, marine biodiversity and the fragile marine ecosystems, but also because of the significant social and economic losses suffered by States and fishing communities that are victims. Furthermore, IUU fishing is often associated with other illegal activities and when done by unauthorized foreign vessels, is a flagrant violation of states' sovereignty.

IUU fishing is a dynamic and multi-faceted problem and, as such, a concerted, coordinated and multi-pronged approach is required nationally and regionally to prevent, deter and eliminate the practice in the region. CARICOM / CARIFORUM States must act now to protect, preserve and manage the valuable fisheries resources, by among other things, by taking decisive measures aimed at eliminating all forms of IUU fishing.

This manual demonstrates that there is a shared commitment for effective management of the living marine resources and protection of the marine environment from harm caused by IUU fishing. It will provide enforcement personnel in the region with a set of procedural guidelines, based on international best practices, for efficient and successful prosecution of fisheries offences. It will therefore strengthen the States' ability to prevent, deter and eliminate IUU fishing and related activities.

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 programme, 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; and
- 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 1983-84 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 programmes, 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

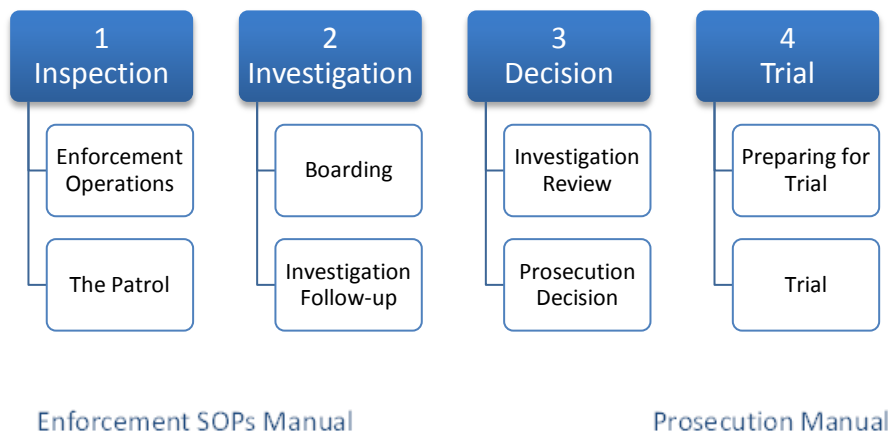
It has been generally accepted by CARIFORUM countries that expanded and updated versions of the two Manuals could be valuable tools in assisting them to combat IUU fishing. The basis for the review and update address three main issues:

1. The need for the Manuals to focus on national enforcement programmes (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.

Structure of the 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.

The two Manuals, together, provide a complete set of guidelines from making the preparations for enforcement operations, through to the prosecution trial and beyond. Broadly speaking, the Manuals cover four key stages – (1) **Inspection**, including guidelines on enforcement operations, preparations for and conduct of boarding; (2) **Investigation**, including the conduct of investigations on board vessels and collection of evidence; (3) **Decision**, covering the review of the case file by prosecutors, and decisions on what enforcement action to take; and (4) **Trial**, covering the preparation for, conduct of and follow-up after the prosecution trial.



Stages (1) and (2) are largely carried out in the field, as part of monitoring and enforcement operations, and are covered in the Enforcement SOPs Manual. Stages (3) and (4) are largely carried out on land / in the office, as part of the prosecution or sanctioning review and process (and possibly carried out by legal personnel, rather than Authorized Officers), and are covered in the Prosecution Manual.

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 has 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.

Similarly, the range of fisheries, fishing operations and fishers from country to country, and even within one country, varies substantially. For example, enforcement procedures that are suitable for larger foreign fishing vessels will not be suitable for artisanal fishing vessels.

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

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In addition, the consultants express their thanks to the various government agencies in the countries visited, namely Belize, Bahamas, Barbados, Dominican Republic, Suriname, St. Lucia and St. 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 the CRFM and OECS Secretariats has been invaluable.

CHAPTER 1 - The Prosecution Process

One of the most onerous yet important tasks for fisheries officers and administrators is preparing for the prosecution of those who contravene fisheries laws. It is essential that cases are prepared properly, with strict adherence to the criminal procedure rules applicable in the State concerned. Even if a decision is made not to prosecute, other forms of sanction (such as some administrative penalties) may require – as a matter of law and / or policy – cases are prepared and considered by the same strict standards as those contained in the criminal procedure rules.

The prosecutor will need to be familiar with all stages of the MCS operation. In these Manuals, these are organised into four key stages (see also **Structure of the Manuals**, pg. viii).

Stage 1 concerns **inspection**, including enforcement operations and patrols. At this stage, there is no suspicion of any offence – procedures are focussed on carrying out enforcement operations, boarding vessels, carrying out routine inspections, etc. Observations or information obtained at this stage, however, may be critical in future proceedings. The end of this stage results in the question “**Are there reasonable grounds for suspecting an offence may have been committed?**” If the answer to this is “no”, progress to the next stages will not be necessary. If the answer is “yes”, then the officer must move to the next stage.

Stage 2 concerns **investigation**, and covers investigations carried out during a boarding and other investigations (e.g. at landing sites, etc.). The key question here is, in the investigating officer’s view, **is there evidence that suggests an offence has been committed?** The conclusion of this stage should be a report from the investigating officer describing what evidence was collected and stating his conclusion on whether an offence has been committed.

Stages 1 and 2 are carried out primarily “in the field”, by Authorized Officers (and, as such, the detailed procedures are set out in the Enforcement SOPs Manual). They are very relevant to the prosecutor, however. The evidence obtained (or missed) from the enforcement operation will need to be reviewed, both substantively (what does the evidence show; what else needs to be proved?) and procedurally (was the evidence obtained lawfully?). Decisions will also need to be reviewed: based on the circumstances of the case, were official decisions permissible or justified? Key elements of the enforcement SOPs are outlined in this Manual, but reference may also be required to the Enforcement SOPs Manual for further details.

Stages 3 and 4 are carried out “in the office” and may be carried out by Authorized Officers or by specialist prosecuting officers (and / or lawyers), or a combination of both.

Stage 3 concerns the prosecution **decision**. The first step should be to undertake a review of the evidence: was it collected properly, is there enough evidence to support a prosecution, etc. (In practice, resource limitations might mean that this step, or parts of it, will be skipped, or at least not carried out until a prosecution decision is made, but it is still important – to encourage best practice – to include this step). The key question here is **can we prosecute?** This supports the decision in the next step, which must consider what enforcement method should be applied – e.g. formal warning, administrative penalty, prosecution, licence suspension, etc., taking into account in particular the public interest (seriousness of the offence, etc.). The key question here is **should we prosecute?**

Stage 4 concerns the actual **trial** and only arises if both questions in stage 3 are answered in the affirmative. During this stage, the focus is on detailed preparation for trial, the effective conduct of the trial itself and matters that may arise after trial, including trying to obtain an effective sentence and dealing with publicity issues.

CHAPTER 2 - Review

A. GENERAL

The Prosecutor may be called upon to give guidance on the evidence during the course of the investigation or upon the arrest of the defendant or the seizure of the vessel. In addition, the Prosecutor may also be called upon to review the evidence that has been collected. The Standard Operations Procedure (SOP) will set out the appropriate procedures and the Prosecutor should be aware of these procedures. The review of the matters dealt with in this chapter will assist in the advisory and decision-making functions of the Prosecutor.

Investigation primarily consists of ascertaining facts and circumstances of the case. It includes all efforts by the Authorized Officers (see SOP Manual) for the collection of evidence including:

- ascertaining the facts and circumstances of the case;
- boarding and inspection of the vessel;
- discovery and arrest of the suspected offender;
- collection of evidence relating to the commission of the offence;
- examination of various persons including the defendant and taking their statements.

It also covers the search of the vessel or other places or seizure of the things considered necessary for the investigation and that are to be produced at the trial. Investigation also includes the formation of an opinion as to whether, on the basis of all the evidence collected, there is a sufficient basis to lay a charge (or charges) against a defendant.

The process of investigation must be logical. However, it may often be necessary to change the order of events in the light of what is actually happening. The initial actions for all boarding should include (among other things):

1. identify the Master/Fishing Skipper;
2. check licence where appropriate (to ensure conditions are being met);
3. check fishing records and ships documents (including crew list);
4. compare the position shown on the vessels navigational aids and chart with that taken by the patrol craft. Confirm with the Master and ask if he agrees. If he does not agree, gain an explanation of the discrepancy and have the Master fix the ship again himself while you watch his methods;
5. check equipment in use to catch fish to ensure it meets the standards in force at the time, for example, mesh size, net shape, additions which might be used to influence mesh size, spacing and size of longline hooks;
6. identify fish types being caught;

7. check minimum sizes of fish caught;
8. check by-catch.
9. checking individual crew licences and any other ID.

On larger vessels, it will normally be necessary to inspect all areas where fish are handled or stowed, for example, upper deck working areas, fish handling and preparation spaces, fish holds and fish freezers.

When an offence is suspected, or discovered the Authorized Officer should be guided by the Judges' Rules¹ (**Appendix 6**). 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 fear 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 should caution that person or cause him to be cautioned (warned) before putting to him any questions, or further questions, relating to that offence.

For jurisdictions where the Judges' Rules apply, the caution (warning) should have been given in the following terms:

(Skipper) I have reason to believe that an offence against the Fisheries Laws of country has been committed. You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given as evidence. Verify in each country the exact terms of the caution and keep with you while at sea the exact caution authorised under the laws of the particular country.

Otherwise, the caution should be consistent with or as required by the relevant national "rules of caution". If the master does not speak English or the official language of the country (or appears not to), the caution (warning) should be read to a member of the crew who does speak the official language of the country to translate and language cards should be used if necessary.

When after being cautioned (or warned), a person was questioned, or elected to make a statement, a record should have been kept of the time and place at which any such questioning or statement began and ended and of the persons present.

Further information pertaining to the Judges' Rules can be found at **Appendix 6** of this manual.

After cautioning, the Master should be interviewed further to determine the authenticity of earlier responses. The questions should be asked in a language which the person who is being questioned understands (see SOP Manual **Appendix 5**). The prosecutor may need to consider evidence concerning what questions were asked, how they were asked etc., and may want to know what guidance the officer was using, and what questions might have been asked.

¹Applicable to all CARICOM English speaking countries except St. Lucia where the Judges' Rules have been codified under the Evidence Act. In Suriname & the Dominican Republic, a Judge is entitled to exclude a confession where such confession was obtained by torture, threat or intimidation.

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 normally be conducted by a minimum of two persons so that each can guard the other against possible attack. The Master should also be invited to accompany the search team and provide a plan of the ship to facilitate such. This will prevent later accusations of theft of personal or ship belongings and allow for further questioning concerning any other further evidence, which is found. For larger vessels, it is recommended that the search starts in the bridge, and then move to the fish handling areas, through to the fish processing areas and fish holds, then to the machinery spaces and accommodation.

1. It will be important to 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 settings. These may correspond with range and bearing of radar reflecting beacons or high flyers); SATNAV; radio direction finder (note the tuned frequency - it may correspond with buoys or FAD's found nearby); all tuned radio frequencies; autopilot; and course recorder. Some vessels may have a chalkboard with the courses' steered posted on it.
2. Check the charts in use for recently erased course lines and positions and / or positions not consistent with facts, (for example, a fishing vessel doing 30 knots).
3. Check charts in drawer(s). Charts are usually in the order of most recent one used on top with the ones used earliest beneath (or check if they are available electronically).
4. Ask for a look at the Ship's logs: deck log 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.
5. Begin a search of the other areas of the vessel only when the whereabouts of the crew are known. Check the condition of fishing gear (see SOP Manual Chapter 2 – B. Routine Boarding).

A custody log should be maintained during the transit of the vessel to Port. No further notes in the vessel's log should be made after the inspection and/or arrest/detention have been noted.

Appropriate written records should be taken in accordance with the SOP Manual (see Chapter 4 – C. Documentation).

B. SEIZED EVIDENCE

Once an offence is discovered or suspected, evidence should be assembled to prove three main elements:

1. that the person or vessel was in an area under national jurisdiction;
2. that when in the area, the person or vessel violated the national Fisheries Act (or fisheries legislation), regulations or legislation implementing relevant international agreements;
3. that probable cause to arrest existed at the time of arrest.

If a decision is made to detain or arrest the ship, the Master should immediately have been advised and cautioned. The relevant evidence such as logs, charts and fish samples should have been secured.

The logs and charts should be placed in an appropriate envelope after being initialled by the Master of the vessel, the investigating officer and one other who may be an officer present. The envelope must be then sealed in the presence of the above-mentioned persons who will affix their signatures thereon. The seal will only be broken by permission of the court at the time of tendering the articles as exhibits.

Appoint one person to be in charge of collecting and retaining evidence. Steps, which should be taken to secure evidence properly include:

1. Issuing a receipt to the Master for each piece of evidence taken;
2. The receipt must contain the following information:
 - description of the object;
 - name of vessel;
 - day, time and place seized;
 - name and signature of person seizing the evidence;
3. The receipt may also act as the inventory of items seized;
4. 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 30 cm);
 - where the top and bottom are taped together, write your initials, the date and number of the exhibit;
 - put a tag through the handle with:
 - o the nature of the sample,
 - o the day,
 - o date,
 - o time and place,
 - o the number of the exhibit,
 - o your name and signature.

Licence / access agreements and other permits should be renewed (and copies taken) to ascertain if there has been a breach of the conditions of the licence or the access agreement. In seizing evidence, it must be kept in mind that every element of the charge has to be proved.

When seizing evidence copies of photos should be taken as far as possible.

C. SALE OF PERISHABLE ITEMS OR GOODS SEIZED

In some jurisdictions (e.g. in the OECS countries, which follow the Model Act) there is an express provision allowing the Chief Fisheries Officer to sell fish or other articles of a perishable nature and for the proceeds to be held and dealt with in accordance with the Act. In such circumstances, an accurate and complete record should be kept of the fish or other perishable articles sold, the price obtained and where the proceeds of sale are kept. Many other jurisdictions do not have such express powers of sale of perishable items. It would be preferable to have clear statutory powers empowering the sale of perishable items and for clear provisions as to how the proceeds of sale are to be kept. In addition, such provisions

should be clear that if the defendant is acquitted he / she would be entitled to the proceeds of the sale of the perishable items. In addition, where the defendant is convicted then the proceeds of the sale would be liable to forfeiture.

D. CONTINUITY OF EVIDENCE

To reduce the chance that seized evidence is not admitted in court, the Authorized Officer must be sure of the continuity of evidence. From the time evidence is collected, until it appears in court, an Authorized Officer must be able to account for its whereabouts. This could possibly be over a period of months.

The ideal solution is never to allow the evidence out of your sight. In which case it should be locked away in a place where only you have the key. If evidence must be passed to another person, as is often the case, get a fully documented receipt for the exchange. Also make sure that a receipt book goes with the evidence so others can take similar precautions.

To establish proof of continuity of possession, Authorized Officers (or others) handling evidence / exhibits or passing evidence from one to another, must comply with the following:

- (a) Ensure that all exhibits are safely kept and that there is a clear and identifiable audit trail.
- (b) Prosecution should be able to account for all times during which exhibits have been in the custody of an Authorized Officer (or other person).
- (c) All evidence must be clearly labelled and marked showing:-
 - (i) day, date, time
 - (ii) location
 - (iii) officer first handling evidence and signed
 - (iv) receiving Authorized Officer (or person) handling and signed for;
 - (v) each subsequent receiving person must sign for the item.
- (d) The Authorized Officer receiving the evidence must sign the handing over in the official notebook (where there is) as having received the evidence and must record the following:-
 - (i) contents as marked
 - (ii) day, date and time of receipt and
 - (ii) sign and print the Authorized Officer's name and position
- (e) The same record must be made in the receiving Authorized Officer's official notebook. It is imperative that the evidence must be properly recorded and the person holding the evidence for a long period must secure the evidence in a restricted access area, in a secure cabinet or evidence safe. The safe must be such that it cannot be interfered with by a third party and to which the person holding the evidence only has access. The continuity and secure storage of evidence must be able to be proven in court.

E. THE DETAINED VESSEL

Vessels may be arrested and taken into port. Different rules apply depending on whether the vessel is a foreign or local vessel. Article 73 and 226 of UNCLOS requires a State, which has detained a foreign vessel to promptly release the vessel on the posting of a bond or other financial security. The International Tribunal of the Law of the Sea (ITLOS) has jurisdiction under Article 292 of UNCLOS in the absence of an agreement to decide on whether or not the detaining State has complied with this requirement.

In the case of local fishing vessels, this would be subject to the provisions of the national laws of the individual CARIFORUM country. Whether bond can be posted would depend on national laws. In the absence of any specific laws, or policy or guidance on their implementation, the principles under UNCLOS, as elaborated by ITLOS, should be followed.

The crew of the fishing vessel who are permitted to remain on board after the vessel has been detained would be expected to maintain the said vessel and as far as possible to retain the *status quo*, reasonable wear and tear exempted.

A prosecutor should not be the person to arrange the bond, although he may be called upon to give advice and possibly argue bonding arrangements in court. In the case of foreign vessels, the advice may be needed on the requirements of UNCLOS (which might be sought from the Foreign Affairs Ministry).

(i) Prompt Release of Foreign Vessels

Articles 73 and 226 of the Law of the Sea Convention requires a state , which has detained a vessel to promptly release the vessel on the posting of a reasonable bond or other financial security. The term “detention” as used in Article 292 of the Law of the Sea Convention is to be read in its broadest meaning covering all cases in which the movement of a vessel is prevented by an authority. The International Tribunal for the Law of the Sea (ITLOS) has jurisdiction, in the absence of agreement, to decide on whether or not the detaining State has complied with the requirements of Article 292.

The revised rules adopted by ITLOS (17th March 2007) make it possible for a bond or other security to be posted to the Registrar, ITLOS instead of the detaining State. If this is done, the financial security will only be transmitted to the detaining State when it is demanded to satisfy the payment of the final judgement award on decision of the detaining State.

In cases where a foreign ship is detained the following procedure should be followed:

- Promptly verify the flag state of the fact of detention;
- Consult your maritime administration;
- Consult the Attorney General’s Office;
- Consult the Ministry responsible for foreign affairs;
- Promptly release the vessel upon the posting of a reasonable bond or other financial security.

As to the factors to be taken into consideration of a bond see Bonding and Holding below.

(ii) Bonding and Holding

The object of Article 292 of the Convention is to reconcile the interests of the flag state to have its vessel and crew released promptly, with the interest of the detaining state to secure the appearance in court of the Master, and payment of the penalties. This balance depends upon a “reasonable” bond , which is the sole condition of the release. Therefore, in the prompt release proceedings, the key issue to be determined is the reasonableness of the bond.

In a number of judgements, the ITLOS Tribunal considered the factors that should be taken into account in assessing a reasonable bond for the release of a vessel or its crew under Article 292 of UNCLOS. Some of the factors considered by the ITLOS include the following:

- gravity of the alleged offences;
- the penalties imposed or imposable under the laws of the detaining state;

- the value of the detained vessel seized;
- the amount of the bond imposed by the detaining state and form of bond;
- although the proceeds of the catch represent a guarantee to the ship owner, depending on the circumstances of each case the catch has no relevance to the bond to be set by the detaining state.

The most experienced boat valuer available should be engaged to supply a figure. Boats have a habit of being extraordinarily valuable when first seized yet worth very little when a buy-back price is being negotiated.

- (a) Proper arrangements for the lodging of monies, if actually deposited, must be made.
- (b) If any part of the boat is required as an exhibit then this should be removed before the vessel is released.
- (c) It is not the responsibility of a prosecutor to look after a boat pending a trial. He may however find himself giving advice or appearing in court concerning the matter.

(iii) Local Vessels

Check in the fisheries legislation or other relevant national legislation to ascertain the scope of the powers (if any) to seize vessels, equipment and catch. Also, ascertain whether the fisheries legislation or any other legislation confers the power to post a bond or any other financial security.

(iv) General

The boat should be kept safely and securely. There are several examples of masters “making a run for it”. If essential parts are removed they must be kept safely and provision made for the emergency moving of the boat if adverse conditions arise (e.g. cyclone, storm). The authorities should ensure there is power to remove parts and be wary of the crew buying or manufacturing replacement parts and “making a run for it”.

Special care must be taken to ensure that any catch aboard does not spoil. Note any statutory powers there are to sell the catch and hold the proceeds of sale pending the court hearing, and powers to dispose of the catch if it is unsaleable.

Masters or crew members will sometimes sabotage the freezing machinery or other parts of a boat. The holding authorities could then be accused of negligence and incompetence in looking after the boat. Those looking after the boat should be advised to keep records of the checks made and to immediately investigate with an expert any damage or malfunction.

F. DETAINED OR ARRESTED PERSONS

There is considerable variance in the fisheries legislation as to the power of arrest exercisable by Authorized Officers, over persons, as opposed to vessels. Some of the legislation in the English speaking areas of CARIFORUM gives an Authorized Officer the power to both “seize any vessel, (together with its gear, stores and cargo), and “arrest the master, owner or charterer of any vessel seized and any other person whom he has reason to believe has committed an offense under this Act”. Newer Fisheries legislation which is modelled after this generally preserve the powers of arrest over persons, however, some of the older legislation only give the power to seize vessels. The best practice would be to have comprehensive legislative provisions permitting the arrest of persons as well as the seizure of vessels, fishing equipment, fish catch and any other evidence related to the offence.

One other provision, which is often found in national laws of some CARIFORUM countries, is the requirement that Authorized Officers who are not police officers must turn any arrested persons over to

the police as soon as practicable. Once this is done, the arrested person will be processed according to the legal procedure of the arresting state.

G. 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 provided the appropriate rules applicable to these matters are followed.

(i) Taking Notes Manually

Fisheries and other enforcement officers should use notes to record their observations. Recording observations at the time of the sighting of the vessel or as soon thereafter is very important as greater weight will be given by the courts of evidence of this nature. Thus written notes of events that were recorded at the time of the event, or soon afterwards are of great benefit to support a prosecution. In addition, notes taken at the time could be of significant help to an Authorized Officer who may have to give evidence in court a long time after the incident occurred.

Note taking serves the following purposes:

1. To give an accurate record of data and statistical records;
2. To recall many small important details such as vessel license number, serial number, foreign names and words, as well as exact words spoken;
3. To decide a course of action to be followed and ensuring no area of inquiry is overlooked in discussions with supervisors and fellow officers;
4. To prepare detailed reports and statements in chronological order;
5. To assist when testifying in court in cases where offenses are discovered and carried to Court. (Occasionally time between the offence and the court hearing may be lengthy.) See SOP Manual Chapter 4 Boarding – C. Documentation.

(ii) Electronic Note Taking

Notes may also be taken electronically. These notes taken electronically would be admissible to refresh the memory of the witness. The evidence would not be evidence of the fact stated in the notes but of the fact that the officer made the notes or wrote the notes.

The process of electronic note taking guidelines should take into consideration the following:

- Ensure the electronic device is working properly and records the correct date and time.
- Use appropriate software/application for the notes preferably with versioning/document history capabilities.
- If it is possible, save the record in an un-editable format (e.g. as a pdf document, rather than a Word document).
- If facilities are available, print out the notes during the inspection and ask the master, etc. to sign them.

- Again, if it is possible, email (at the time of inspection) a copy to a designated desk officer who can print out the document and record and store the print out in a proper manner.
- Once back in the office, a signed covering note should be provided recording details about the taking of notes.

H. Photographs

(i) The Purpose

Photographs can be extremely valuable as evidence because they record details, which may have escaped the attention of the observer at the time, which may prove vital at a later stage. Photography may be:

- Evidence in their own right;
- Supporting documentation as to what took place;
- Illustration of other evidence (e.g. officer's statement);
- Notes for the officer;
- Rebuttal evidence.

Whenever possible the cameras should be set to record the date and time on the picture or videotape.

Photographs can be particularly strong tools 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) When to be taken

Photographs should only be taken when an offence is observed or suspected. During routine boardings where there is a desire to take photographs of interesting aspects of the operation, then get the approval of the vessel Master first.

(iii) General Rules for Taking Photographs

Photographs serve as both evidence and as notes of the Officer. The Officer should take as much care in taking pictures as in taking notes. The procedures should be as described in the SOP manual Chapter 4 Boarding – D. Photographs – II. General Rules for Taking Photographs.

(a) Digital Photographs

In some countries (e.g. St. Vincent and the Grenadines) digital photographs are not admissible in evidence. In others (e.g. Belize under their Electronic Evidence Act) digital photographs are admissible. There is a trend in the CARICOM region (e.g. in Barbados) to revise existing Evidence Acts to facilitate the introduction of electronic evidence. As in the case of digital note-taking and looking towards the future, use of digital photography may also be done in parallel with conventional photography and written notes, making sure that attention paid to ensuring that the chain of custody is unbroken.

Methods of proving digital image file integrity include checksum/cyclical redundancy checks, hashing functions, digital signatures, visual verification, and written documentation. Experts may be able to determine whether a digital image has been altered (Scientific Working Group Imaging Technology 2011).

Image files should be copied to other media such as a hard drive, CD or DVD by a method, which accurately reproduces (duplicates) the data on the camera's media since removable flash media is designed as temporary storage and long term storage may lead to data corruption (Scientific Working Group Imaging Technology 2011).

(iv) Video Recording

If admissible in court, 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 of beginning and ending of each section of the recording should be made.

Pictures and notes

Whilst pictures and video films are very useful, they do not displace the requirements for notes. Notes should be taken of all events and supplemented by pictures whenever possible.

(v) Explanatory Pictures

It is probable that the judge or magistrate trying a fishing case will have little or no knowledge of the fishing industry or anything associated with it. All technical matters must therefore be carefully and clearly explained in opening and evidence adduced later to prove them. It is, therefore, worthwhile in such cases to prepare large explanatory diagrams and pictures. These can be used in opening and during the trial to assist witnesses in their descriptions.

I. TAPE RECORDING

Tape recordings may be admitted in evidence but the defendant must be supplied with copies of the tape recordings.

J. ELECTRONIC RECORDING AND REPORTING SYSTEMS

An electronic reporting system is used to record fishing activities' data and to report them to fisheries authorities. The system could replace paper log books. The modern technologies for fisheries control do not replace all traditional control and surveillance methods, such as inspections on board vessels or onshore. However, used correctly, the new technologies help to better target actions, and therefore cut costs and increase effectiveness. By cross-checking data collected via different systems, fisheries authorities can apply risk-based control strategies and detect illegal activities that would otherwise go unnoticed. Thus the appropriate use of modern technologies significantly reduces the total costs for MCS activities.

K. VESSEL MONITORING SYSTEM (VMS)²

² In Suriname since 2007 all trawlers are required to have a VMS so that the operations at sea can be followed from the shore. Suriname is also currently exploring the option of implementing VMS requirements on artisanal coastal fishing vessels and this is expected to start in 2014 and be fully implemented in 2015.

The vessel monitoring systems (VMS) is a satellite-based fishing vessel monitoring system providing data for the fisheries authorities at regular intervals on the location, course and speed of the vessel. The declining status of many fish stocks has created a strong incentive for states to adopt VMS as a part of an overall MCS strategy.

In common-law jurisdictions in the CARIFORUM area, expert evidence could be tendered to establish the admissibility of VMS evidence. However, the expert should explain the use and operation of VMS and demonstrate that the equipment was functioning. In countries such as Suriname and the Dominican Republic, VMS evidence would normally be admissible.

Best practice would suggest that it would be preferable for a state to enact specific legislation to allow for the admissibility of VMS evidence.

Different types of satellite-based VMS may be appropriate in different circumstances, depending on vessel size and areas fished.

A State must usually enact specific legislation to enable satellite-based VMS to operate as an integral and effective part of an MCS system. For example, legislations should provide that:

- (a) Fishing is subject to a licensing system that requires the installation of automatic location communicators (ALCs);
- (b) Fishing vessels must report regularly on their position, activities and catches;
- (c) Vessels must be clearly marked for identification purposes, allowing the comparison of visually acquired patrol sightings and the satellite-based VMS data;
- (d) Landings and transshipments must take place in designated ports or areas under specified conditions.

L. REMOTE SENSING

Remote sensing may be defined as “the acquisition of information about an object or event on the basis of measurements taken at some distance from it.” It is a term that includes aerial and space observation / monitoring. Dependant on the user’s requirements it includes anything from unmanned aerial vehicles (drones), single-engine light air-craft to satellites.

Remote sensing depends on sensors to detect and measure a physical parameter, such as electromagnetic radiation (visible light, x-rays, microwaves, and radio waves), and change it into either analogue or digital data , which can be stored or transmitted. Sensors can be mounted on boats, balloons, manned and unmanned airplanes and satellites. The advantage of remote sensing for fisheries monitoring is that it detects all vessels in a given area whether they possess or do not possess, or have disabled their satellite-tracking devices (FAO 2005).

Expert evidence as to remote sensing devices would be admissible but the best practice would suggest that there should be specific provisions allowing the use of evidence from remote sensing.

Suriname and Dominican Republic

In Suriname and the Dominican Republic, evidence of remote sensing would be admissible in their Courts.

CHAPTER 3 - Prosecutorial Decision

A. GENERAL

Once the evidence has been collected, the Prosecutor will now have to decide what course of action to adopt and if the evidence is sufficient to proceed against the defendant.

In this regard, the Prosecutor will exercise his discretion as to whether to:

- institute court proceedings
- issue a warning or caution
- arrange for the issue an administrative sanction where this option is available
- utilise the provisions for compounding (where this is available).

A Model “Prosecution, Sanctions and Redress Policy” for fisheries enforcement is provided in Appendix 8 of this Manual, which may be used to guide decisions about these matters.

B. PROSECUTION DECISION

In all cases, the following will be considered when deciding whether to prosecute or use some other type of sanction. The key questions are: **can we prosecute?** (is there sufficient admissible evidence?) and **should we prosecute?** (in all the circumstances, is it in the public interest to prosecute?). A fundamental consideration in any case is whether to prosecute would be in the public interest.

There are many factors / guidelines, which may have to be considered in deciding whether prosecution should be the best course of action. Factors / guidelines relevant to the fisheries cases, which should be taken into consideration include the following:

Issue	Points to consider
Quality of available evidence	Is there sufficient evidence to satisfy a court? Is all the evidence admissible? Has all the evidence been obtained appropriately?
Degree of criminality	How was the offence perpetrated? Was it opportunist? How much planning went into the offence, was it pre-determined? How long did it continue?
Persistent offender	Have they previously committed similar / relevant offences? Have they received sanction previously?
Position of Trust	Is the perpetrator an employee in the marine sector, representative or contractor? Are they a Member of the Ministry or Agency with responsibility for the fisheries sector?
Duration of the offence	How long did the offence continue?
Environmental and economic impact of the offence	Did the offence result in significant losses to fisheries resources? Were there impacts on the environment or ecosystem?
Voluntary disclosure	Was the offence admitted prior to investigation?
Widespread offence	Is the offence part of a local trend? The offence might not be particularly serious but may be particularly prevalent in a specific area. Are there grounds for believing that the offence is likely to be

Issue	Points to consider
	continued or repeated?
Social / Medical factors	Are there any mitigating circumstances? Are there any mental or physical disabilities? Is the perpetrator fit to stand trial? Social / medical factors should not automatically preclude prosecution but they must be considered.
Public Interest	What gain is there for the relevant local oversight authority and / or general public?

Each case must be considered on its merits, and a blanket policy should not be applied.

C. ENFORCEMENT OPTIONS

(i) Warning

The fisheries officer or an Authorized Officer may consider issuing a caution in the following circumstances:

- The perpetrator has never previously offended
- There was no planning involved in the offence
- There was no other person involved in the offence
- Penalty action is not appropriate
- The offence is minor
- The amount of marine resources is relatively small or the offence has taken place over a relatively short period of time
- The offence was admitted during an interview under caution (IUC)
- The persons has expressed remorse or regret
- It may not be in the public interest to prosecute, i.e. there might be social or medical factors to consider
- There is a strong likelihood that the perpetrator will pay the full amount being requested.

(a) *Verbal Warning*

- Consider whether a verbal warning is appropriate. If a verbal warning is given, a subsequent record should be made of this.

(b) *Written Warning*

- Where it is considered that violations of the law may have taken place and it is appropriate to do so, a written warning may be issued to the offender of the requirement to comply with the law. The written warning should specify the offence and the date and circumstances. Copies of written warning should be kept and a note made of when they were sent or given to the offender.

(ii) Prosecution under the Fisheries Act or Related Legislation

The decision whether or not to prosecute is the most important step in the prosecution process. A decision to prosecute should be guided by a range of factors – the key questions have been set out above.

The initial consideration in the exercise of the decision to prosecute or not is whether the evidence is sufficient to justify the institution or continuation of a prosecution.

- A prosecution should not be instituted unless there is admissible, substantial and reliable evidence that an offence has been committed by the offender.
- A prosecution should not proceed if there is no reasonable prospect of a conviction being secured.

Factors, which may also be taken into account in determining whether the public interest requires a prosecution include (taking account of the specific questions above) the following non-exhaustive matters:

- the seriousness of the offence
- alleged offenders' antecedents and background
- the passage of time since the alleged offence when taken into account the circumstances of the alleged offence
- the availability of alternatives (e.g. administrative penalties) but the alleged offence may be of such gravity that a prosecution is the appropriate response.
- the decision as to whether there is a reasonable prospect of a conviction should take into account.
- the availability, competence and credibility of witnesses
- the admissibility of any alleged confession (where a confession is part of the evidence)
- any other evidence available to the prosecutor

D. ADMINISTRATIVE PENALTIES

National fisheries legislation may provide for some form of administrative penalty (such as a ticketing system, fixed penalty notices, licence suspension or withdrawal, loss of quota, etc.).

The Fisheries officer or an Authorized Officer may consider issuing an Administrative Penalty in the following circumstances:

- The perpetrator has never previously offended
- There was no planning involved in the offence
- There was no other person involved in the offence
- A caution is not appropriate
- The offence is minor
- The amount to be paid above the market valuation of the resources of is relatively low or the offence has taken place over a relatively short period of time
- The offence was not admitted during the IUC (interview under caution)
- It may not be in the public interest to prosecute, i.e. there might be social or medical factors to consider.

If the person refuses the Administrative Penalty the case will normally be referred for prosecution.

(i) Financial Administrative Penalties / Ticketing

The model is similar to the Traffic Ticketing System used extensively throughout the Caribbean region. This approach treats violations of fisheries laws, which are then penalized by penalties (i.e. fines/financial penalties). In these cases, the criminal penalty is issued administratively but the right to trial remains for those who do not wish to plead guilty.

The payment of these fines / financial penalties will negate a court trial. However, if the fine is not paid within the specified time period and / or the accused wishes to challenge the issuance of the ticket / imposition of the fine, court proceedings would ensue. Non-payment of the fine is not considered an offence.

The advantages of this approach are:-

- that the process is more time efficient
- that if the defendant wishes to plead guilty there is no need to go to court
- the case is disposed of quickly
- reduction in cost of undertaking court proceedings.

Financial administrative penalties (FAPs) are used to address certain types of offences. Some of the criteria used in deciding whether a FAP is appropriate are:-

- the severity of the offence (potential scale of impact)
- the history of infringements by the offender
- the total number of offences committed at that time
- the financial gain related to the catch versus the proposed penalty

Often the offences are categorized based on the level of seriousness of the offence and the fines are established based on the category of the offence.

Financial Administrative Penalties are generally not considered appropriate/applicable in cases of assault or threats to enforcement officers or obstruction or failure to comply with direct instructions of enforcement officers.

E. COMPOUNDING OFFENCES

Definition

Compounding of offences is a settlement option by which the offender is given the option, on acceptance of guilt, to make a monetary payment in lieu of his prosecution, thereby avoiding court proceedings.

Background

Based on the 1984 Model OECS Fisheries Act all Fisheries Act in the OECS countries have provisions for the compounding of offences (normally by the Minister responsible for Fisheries) but in most of these Acts certain offences cannot be compounded.

In CARICOM countries outside of the OECS there is currently no provisions to compound offences but pending draft Fisheries Act in several countries make provisions for compounding.

Suriname and the Dominican Republic

From a prosecution standpoint, Suriname and the Dominican Republic handle cases very differently to the rest of the CARIFORUM countries.

In Suriname fisheries offences are classified under law as economic cases and are prosecuted as criminal offences. For example, the offender must be offered the option of paying a fine and avoiding a court trial or taking the matter to court. There are no provision for bail pending trial hence in almost 99% of the cases the offenders settle for compounding before trial. But there are cases where the offender exercises his rights for a trial in the court of law and would have to be taken to court after maximum period of 110 days. However, within the 110 day period a court could order the release of the defendant. Where the defendant decides to plead guilty, the case is tried in a competent District Court in accordance with the procedures of the Criminal Procedure Code.

In the Dominican Republic, there is an option for the compounding of cases but only the chief prosecutor has that discretionary power and not the fisheries or political officials. The municipal governments also have a significant role to play with regards to the enforcement of fisheries offences because of the heavy reliance of the subsistence fisheries in support of poverty alleviation and livelihoods in the local communities. Hence, in this regard, attention will have to be paid to the involvement of the stakeholders in the enforcement process. In the DR, the offender has to stay in jail until the matter is settled.

(i) Scope of Compounding

1. The main component in compounding of offences is that the person in whom powers to compound offences is vested (usually the Minister responsible for fisheries or the Director or Chief Fisheries Officer) decides to accept sums of money (usually not more than the maximum of fines allowed) from the offender if it is believed that an offence has been committed.
2. Other requirements in more recent legislation are that offences may be compounded only with the consent of the person found by the Minister or Director or Chief Fisheries Officer to have committed the offence and that notifications of the compounding of an offence may be made to the appropriate courts.
3. The Minister or Director may also be empowered to release any article seized in relation to the offence if he compounds such offence.
4. Both Suriname and the Dominican Republic use compounding but in Suriname minor fisheries offences are treated as civil matters not criminal offences.

The benefit of compounding is that matters are disposed of in a timely basis and the avoidance of delayed court processes.

(ii) Procedure for Compounding

The following procedures should be followed in cases where offences are compounded:

- Provision should be made for the compounding offences to be done by the Director or Chief Fisheries Officer;
- A form for an offer should be developed;
- The offender must admit having committed the offence and agree in writing to it being dealt with through compounding;
- Not all offences should be capable of being compounded e.g. assaulting a fisheries officer;
- The Minister, Director or Chief Fisheries Officer or the Head of the Fisheries Department should only compound offences after prior consultation with the Director of Public Prosecutions;
- The compounding agreement (signed by the Minister, Director, Chief Fisheries Officer, or the Head of the Fisheries Department) and the person who has committed the offence should be filed in the Supreme Court or Magistrate Court;
- An annual report on offences compounded should be filed with the DPP;
- Once payment has been made in respect of a compounded offence any vessel seized should be released.

(iii) Use of Compounding

To be used for:

- (a) minor fisheries offences
- (b) more serious fisheries offences involving foreign fishing vessels

The objective would be the early disposition of cases as well as to avoid unduly detaining foreign fishing vessels where there was a willingness to plead guilty and to compound the offence.

(iv) Calculation of Compounding

(c) Criteria

- The amount imposed should not exceed the amount prescribed for the fine
- The amount should not be negligible, e.g. not less than 1/3 of the amount specified for the maximum amount of the fine.

CHAPTER 4 – Preparation for Trial

A. GENERAL

One of the most onerous yet important tasks for fisheries officers and administrators is preparing for the prosecution of those who contravene fisheries laws. It is essential that cases are prepared properly, with strict adherence to the criminal procedure rules applicable in the State concerned. It is also essential, if the prosecution is to succeed, that the case is prepared so as to be persuasive in court, meaning that the right evidence has to be collected and then to be presented in the most effective way.

B. DUTY OF THE PROSECUTOR

In prosecuting, prosecutors represent the public and the public interest. The duty of the prosecutor is to ensure that the correct person is prosecuted for the appropriate offence and also to bring the offender to justice whenever possible. Prosecutors have a duty to act fairly and impartially and to ensure that the relevant evidence is adduced before the trial court. Prosecutors must always act in the interest of justice and not merely to obtain a conviction.

C. EVIDENCE

In all criminal procedure systems in the CARIFORUM region, it is for the Prosecutor to:

- prove his / her case
- prove it beyond reasonable doubt
- prove it for each charge and each defendant
- prove it by admissible evidence
- be aware that the burden of proof sometimes shifts from the prosecution to the defendant
- be aware of existing presumptions concerning certain types of evidence.

(i) Witnesses and statements

Every fishing case will be different and, of necessity, the evidence will vary from case to case. Only experience and preparation will fully equip the prosecutor to appreciate all the evidence that can be utilized in a fisheries case. It will be appropriate to develop a fisheries offences database that records the relevant data and information related to all fisheries offenders, their offences, their convictions, their acquittals and their warnings.

The original copies of all witness statements, in the correct form and signed, will be needed.

All the statements must be read, and the following checked:

- (a) Do they prove the charges that have been / will be laid?
- (b) Do they anticipate any defences that may be raised in taking formal interviews or statements (e.g. the master alleges engine breakdown - statement from expert witness (engineer) may disprove this)?
- (c) Do they contain inadmissible or unfairly prejudicial statements (e.g. hearsay, references to criminal matters not charged)?
- (d) Does the witness refer to:
 - (i) the exhibits he is producing;
 - (ii) his custody of the exhibits?
- (e) Is an additional statement required from the witness to clarify anything or add anything useful?
- (f) Do they aver the reasonable suspicion, reasonable belief or other basis, which must exist

- before the witness can act (e.g. for boarding / apprehending / hot pursuit)?
- (g) Has the witness taken photographs, video recording, prepared drawings or undertook electronic note taking? If so, these matters should be adequately identified in the statement of the Authorized Officer (or other person) who took the photographs or video recording or made the drawing or did the electronic note taking.
 - (h) If statutory presumptions are to be utilized, do the statements lay the requisite foundation of fact. For example, some Fisheries Acts provide that
 - 1) if an officer suspects that any fish to which the charge relates were taken in a particular area of water
 - 2) the officer gives evidence of the grounds of suspicion
 - 3) the court considers the suspicion reasonable then in the absence of proof to the contrary the fish will be deemed to have been taken in the particular area of waters claimed by the officer
 - (i) As far as possible the prosecutor must brief or interview all witnesses before trial.

(ii) Evidence of Fishing

The investigating officers may provide their own views on what was observed, or what the likely cause of any particular observation or behaviour was. The prosecutor may also review the evidence to see what might be inferred. It should be noted that the *opinions* of Authorized Officers (and the prosecutor) are very unlikely to be admissible as evidence, and the evidence available will usually be circumstantial. However, it can be very important in building the overall picture of the case, and in casting doubt on the defence evidence.

The following is a list of the kinds of observations, which might be used as evidence of recent fishing.

- (a) ***On Sighting Vessel***
 - (i) Hasty departure - sudden increase in speed, clouds of engine exhaust, bow wave, anchor being quickly hauled in, and location of vessels.
 - (ii) In the water - dead fish, offal, seabirds picking at objects, muddy water drawn up from bottom (shallow water), sharks taking rubbish.
 - (iii) Gear - buoys, flags nearby, wires, ropes dangling over side, small boats at reef, by vessel, being hauled in, divers.
 - (iv) Crew reaction to presence of Authorized Officers.
 - (v) Change of vessel and crew behaviour in any way on approach by surveillance vessel / team.
- (b) ***On Boarding Vessel***
 - (i) Bloody water and offal running from scuppers.
 - (ii) Noise of engine being started;
 - (iii) Crew - hastily stowing gear, bringing in anchor, pushing objects out of sight, generally agitated, wet or look as though been diving, fresh cuts and scratches.
 - (iv) Decks - wet running blood, offal.
 - (v) Gear - wet, and / or not stored / secured, wires still attached to gear, winches not disconnected, diving gear lying about or in small boats.
 - (vi) Fish - fresh, lying about deck or elsewhere.
- (c) ***On Inspection of Vessel***
 - (i) Wheel house - entries in logs, marks on charts; dummy logs, charts. Instruments working?
 - (ii) Radar setting, SATNAV reading, echo sounder, Global Positioning System (GPS), etc.

(See pg. 73-76); Freezers - fresh, half-frozen fish, colour of eye, gill. Temperature temporarily higher than usual, temperature records showing rises and falls, machinery working, no signs of breakdown/repairs.

- (iii) Engine room - main/auxiliary engine - hot or cold. Test-run, no signs of malfunction or recent repair. Refrigeration machinery working. Engine temperatures, log - variations, check fuel soundings.
- (iv) Log books and charts should be signed by two or more persons (members of boarding crew including captain) after the captain has given positions and made entries.
- (v) Presence of explosives or noxious substances.

(d) ***On Passage and Entry to Port***

- (i) Engine functioned well on passage to port.
- (ii) Freezers operated normally.
- (iii) Master had no difficulty in navigating and instruments worked.
- (iv) Gear tidied up by crew on passage (e.g. photograph of state of gear when first boarded).

(iii) Exhibits

Ensure that all exhibits have in fact been collected. (It is very embarrassing to ask a court for an adjournment so an exhibit can be found).

The exhibits must be clearly labelled, protected and preserved in the most appropriate manner.

Examine the exhibits. Extra evidence can often be found, e.g.:-

- Charts: rubbed out lines at area in question; EEZ, and closed areas faintly marked on;
- Freezer Logs: fluctuations of freezer temperatures at times of alleged fishing;
- Logs: twelve hourly positions not consistent with master's version of events; distances allegedly run impossible in time stated; is log a dummy? are entries consistent with other logs and charts?
- Photographs: show different stowage of gear on boarding from when vessel arrived at port.

Some exhibits require special care or procedures, e.g.:-

- Photographs - the person who took them must produce them; has he retained the untouched negatives in the event a conventional camera has been used?
- Fish, Perishables - do they need to be kept as exhibits; can they be kept as exhibits? note any statutory power to sell and retain proceeds of sale, or dispose of if unsaleable.
- Vessel itself - has it been immobilised; is there a power to immobilise? What is the emergency procedure for e.g. heavy storm, cyclone? (See also "Bonding and Holding" pg. 30 and relevant legislation).
- Radio Buoys (Beepers) - these can be damaged if dropped or knocked; they are expensive.
- Fishing Gear - nets, spear-guns, lines, tanks, etc.

(iv) Protection of Exhibits

When exhibits are returned to defendants after a case they often claim that some articles have been damaged or deteriorated while in possession of the authorities. Care must be taken to ensure this does not happen and that false claims will not succeed. If a vessel is detained regular checks must be made, particularly of the freezers, freezing machinery, fish, engines and gear. Records must be kept of these checks.

(v) Certificates³

Most fisheries acts provide for proof of certain facts by certificate. These provisions should be used to the full.

Check:

- (a) what facts can be proved by certificate;
- (b) who issues the certificate;
- (c) the form it should take;
- (d) its evidential value (conclusive proof, rebuttable presumption).
- (e) If the certificate needs to be served on the Defendant, the required time for service;
- (f) If the Defendant can object to the certificate and if so the prescribed time period;
- (g) If the Defendant object to the certificate make preparations to meet his objections;
- (h) If the certificate is properly signed by the person authorised by the legislation to sign certificates⁴; and
- (ii)** Review the legislation authorising the use of the certificate to determine whether if all conditions are satisfied for the admissibility of the certificate whether once admitted it will provide *prima facie* or conclusive evidence of the facts stated.

(vi) Machine or Instrument Evidence

When reading the witness statements a note should be made of any evidence, which relies upon scientific instruments (e.g. readings of a satellite navigation machine, radar).

There is a common law presumption that the readings of notorious scientific instruments are accurate. An instrument will fall into this class if by general experience it is known to be trustworthy and so notorious that no evidence is required to prove it is trustworthy.

If a scientific instrument is “notoriously reliable”, then readings from it can be given in evidence once it has been established that it was operating properly and the witness was a competent operator. However, the law is slow to recognise new instruments. For example, radar readings will be admissible whereas those of a satellite navigation machine will probably not be (unless there are specific provisions in national legislation governing the use of VMS evidence). The readings of an instrument, which is not recognised as being “notoriously reliable” can still be made admissible if:

³ See pg. 98 for a review on emerging trends in the use of certificates

⁴ The text of the Fisheries Act of other legislation authorising the use of certificates and who should sign the certificate should be strictly followed. Thus if the Act states that the certificate is to be signed by the Chief Fisheries Officer (CFO) then it is only when the certificate is signed by the CFO that it will be signed in accordance with the Act.

- (a) the whole system is proved by expert witnesses (a long and expensive process); or
- (b) the instrument was cross-checked against accepted instruments and found to be working properly and accurately.

Therefore, if a scientific instrument has been used, check:-

- (a) is the evidence needed?
- (b) is the instrument recognised by the court as “notoriously reliable”?
- (c) if not, was it cross-checked with instruments that are so recognised, before and after the material events? and
- (d) was the witness a competent operator?

It is also important to ascertain the maximum possible error of the instrument when functioning properly, (a satellite navigation machine will be accurate to a fairly high degree immediately after a satellite pass, but become progressively less accurate as it “dead reckons” positions until the next pass).

If the readings of an instrument are to be used in evidence then the prosecutor should go and see one and acquaint himself with its workings before the trial commences.

The most effective way of avoiding these problems is to have a statutory provision deeming the readings of instruments prescribed by the Minister admissible and *prima facie* proof of the facts claimed.

Designated Machine

A number of concerns arise from the introduction of evidence from machines, which are not recognised as “notorious”. It is costly and time-consuming for the prosecution to prove its case when evidence must be adduced as to the accuracy of each machine.

Provisions aimed at straightforward introduction of evidence from position-fixing instruments/ machines, visual display units and printouts have been developed to answer this need.

(a) Designation of Machine

The designation of a machine or class of machines as a “designated machine” for the purposes of the Act can be done by the Minister by notice in the Gazette.

This allows each country to designate machines according to need and technology.

(b) Readings of Designated Machine as Evidence

The readings of a designated machine are admissible as evidence of the facts they aver, if:

- (i) the readings were made by a competent operator; and
 - (ii) the machine was checked for correct working a reasonable time before and after the relevant readings were made and the machine appeared to be working correctly.
- (c) When evidence is adduced by the prosecution, provision is made for shifting the burden of proof to the defence to disprove the reliability of the system and the individual machine.

This is done by including a presumption that a designated machine, when checked for correct working and read by a competent operator, gives accurate readings within the manufacturer’s specified limits.

- (d) There is also provision for the readings of designated machines to be printed out or observed from

- a visual display unit, so evidence can be given from these sources.
- (e) A safeguard is introduced to ensure that the Minister can designate machines, which produce, wholly or partially, the readings concerned but not those which only receive information from elsewhere.

It is noted that a defendant can give evidence of the reading of any designated machine. If it is different from that of the prosecution then a conflict arises, apparently from the evidential rule. Both will be presumed accurate unless the contrary is proved. If both machines are working properly then they should give the same reading.

The conflict will not be one of evidence but one of competence and honesty of the witnesses. It is then a matter for the court to decide who it believes, the evidential burden lying on the prosecution in the usual way.

Other areas

The use of evidence from VMS, VDS and Remote Sensing (see pages 65 – 65) will also be important. For VMS, the Prosecutor should call an expert witness as to the technical nature of how VMS works in polling the position of the vessel. In addition, the prosecution must prove the accuracy of the device attached to the ship and that there was independent checking of the accuracy.

(i) Experts

An expert is a person with special skill, technical knowledge or professional qualifications whose opinion on any matter within his cognisance is admitted in evidence, contrary to the general rule that mere opinions are irrelevant. It is for the court to decide whether a witness is so qualified as to be considered an expert.

Experts are expensive and do not always form opinions, which help the case of those engaging them. An expert witness' primary duty is to the court, and not the "client", and must give an open and objective assessment. However, any case involving technical matters will at least require the assistance of an expert and possibly his evidence.

The first question to ask, therefore, is "Might the advice of an expert assist the prosecution's case?" If the answer is "yes" then make sure the correct one is engaged - it is not a good idea to send a navigation expert into a freezer. He/she should also be well briefed as to which matters his / her opinion will be needed upon, although general comments will also be useful. Expert evidence can often be used to rebut defences put forward by vessel masters and other potential defendants (see Common Excuses section, page 28).

The decision to engage an expert might be made at a number of different times. Listed below are some of the types of expert that might be involved in a fishing case, when they might be engaged and for what purpose.

- (a) **Expert on Fishing Methods** - to inspect the seized vessel immediately upon arrival at port; to report on the type and the state of gear; to say how it is normally stowed; to detail evidence of recent use; to explain the general method of use of gear to the prosecutor; to state if the gear on inspection in port is placed differently to that which appears in photographs taken or observations made immediately after boarding; and to explain to a court in detail the method of fishing involved;

- (b) **Expert on Fish** - to inspect the seized vessel as soon as possible and comment upon the state, in particular the freshness, of all fish on board; to identify the species of fish aboard, and total weights; to give opinions on the factors affecting and rate of spoilage of fish in different circumstances;
- (c) **Engineer** - to inspect and report on the vessel's engines; in particular to report if there is any evidence of a recent breakdown or repairs to the vessel's engines, winches, etc.;
- (d) **Freezer Engineer** - to inspect and report on the freezing gear; in particular to report if there is any evidence of a recent breakdown or repairs;
- (e) **Navigation Expert** - to give evidence upon how the position of the apprehended vessel was fixed (if he was aboard the patrol vessel); to relate the readings of machines involved, what checks were made thereon, how they work and possible percentage error;
- (f) **Valuation Experts** - to give advice and if necessary evidence upon the value of a seized vessel for bonding purposes, (this would avoid concerns, which could arise when a vessel has been released on a bond of \$100,000 if on "forfeiture" its real value turns out to be \$500,000); and the value of the fish aboard.
- (g) Experts in interpreting VMS data, satellite imagery and remote sensing, to give evidence of VMS data collection, satellite imagery and remote sensing.

Do not be deterred if an expert with the requisite list of qualifications does not exist in your area. Courts will accept the opinion of a witness who shows he has long experience of the matter concerned and is giving a considered opinion. "I've been fixing those engines and ones like them for years and there was nothing wrong with that one!" is perfectly good expert evidence.

Ensure that the witness statement of an expert commenced with a statement of his / her qualifications and experience.

Aspects to look at in engaging an expert include:

- Previous experience;
- Academic qualification;
- Training in the area of expertise
- Relevant expertise.

Always make an estimate of the likely cost before engaging him / her.

When preparing the witness statement of an expert, ensure it commences with a statement of his / her qualifications and experience.

An expert witness is usually required to provide a report and to give evidence in court (although sometimes the defence may accept the evidence of the written report alone). Where a report is prepared, it should:

- Be addressed to the court
- Contain a statement of truth / declaration and statement of qualification
- If a range of opinion on a particular area exists and it is relevant to the matter in hand this should be referred to and addressed.
- Relevant sources of evidence or literature cited or relied upon should be included in a

bibliography

- Any technical terms used should be explained, matters of fact should be clearly distinguished from the expert's opinion.

D. THE TAKING OF STATEMENTS FROM DEFENDANTS⁵

(i) General

There are two questions to ask of the evidence of the Authorized Officer.

1. Did he have power to do what he did? Does the Act give power to board as of right or on reasonable suspicion / belief of the commission of an offence? Did the officer have power to take samples, seize exhibits, etc.? Did he arrest the vessel or "order it to port"? (This will make a difference if it is later decided not to lay charges).
2. If he did not, is the ensuing evidence admissible / inadmissible / admissible at the discretion of the judge? In some jurisdictions evidence, which is gained unlawfully (e.g. after an illegal search) is inadmissible. There is no discretion in the judge to admit it. In other jurisdictions, such evidence might be admissible with the leave of the judge.

A Prosecutor should not open or lead evidence, which he knows is inadmissible, whose admissibility is subject to the discretion of the judge or to which the defence have given notice it will object.

(ii) Pitfalls

Recorded interviews with defendants can be a source of very useful evidence in chief and for cross-examination. They can also prove troublesome to an unwary prosecutor and on occasion damage his case far beyond any probative value that might have been gained from them.

The basic rule is that they must be voluntary.

The rules concerning interviews are no different in fisheries cases than in any other types of case. They will vary a little from country to country. Set out below is a checklist of the more important rules:-

1. Was the defendant cautioned - and cautioned properly?
2.
 - (a) Was he offered an interpreter?
 - (b) Did he understand what was being said?
 - (c) Was the interpreter competent and independent?
3. Was he asked if he wished to have a lawyer present? In some jurisdictions, there is no need to ask if a lawyer is required. It will generally enhance a prosecutor's submissions that a challenged interview was voluntary if the services of a lawyer have been offered.
4. In the case of a foreign fishing vessel, was the defendant asked if he wished to have a diplomatic

⁵ For the Dominican Republic, Haiti, and Suriname, reference should be made to the specific laws governing the procedure in these countries for the taking of statements.

- representative present? (If there is not one in the country, he should be informed of this).
5. Did the interviewer say who he was and show his authority identification card?
 6. Was the defendant told why he had been arrested / detained?
 7. Was he informed of any other matters, which are required to be told him by law (e.g. constitutional rights, if charged or not)?
 8. Was he permitted to have another crew member present? This might not be required by law and might in fact hinder the conduct of the interview. However, it will help rebut suggestions that a defendant was “on his own in a detention cell with a lot of foreigners and therefore said what he thought they wanted to hear”.
 9. If there are questions the defendant is obliged by law to answer was he informed of this obligation?
 10. Were breaks for rest/refreshment/toilet visits given at reasonable intervals? Were such breaks recorded?
 11.
 - (a) Was the interview read back to the defendant at the conclusion?
 - (b) Was he asked if it was true and told he could correct, alter or add anything he wished?
 - (c) Were all corrections, alterations or additions initialled?
 - (d) Was the interview dated and timed at the beginning and the end?
 - (e) Was any formal declaration required by law at the beginning and or/end written down and signed by the defendant?
 - (f) Did the defendant sign at the foot of each page and at the end of the interview?
 - (g) Did the interviewing officer and any other officials countersign?

Notes:

- (i) The absence of one or more of the above-listed points will not necessarily render an interview inadmissible. However, where there is discretion to admit interviews despite defects in the conduct thereof, it will become increasingly difficult to convince a judge that an interview was voluntary the more serious the defects were.
- (ii) A prosecutor should always scrutinize the record of interviews with a defendant carefully and ask himself “Can I obtain evidence to show that anything this defendant has said is untrue?” Such evidence will generally greatly strengthen a prosecutor’s case.
- (iii) Remarks made by a defendant other than in a formal interview are generally admissible. Indeed they are often closer to the truth than answers given in a formal interview when the defendant has had time to think out his position. Such remarks might be of great assistance to a prosecution case. However care must be taken in deciding whether or not to lead such evidence, and the following questions should be asked:
 - (a) were they made at a time when the caution should have already been given?
 - (b) were they heard by one or more officers (one officer is sufficient to lead such evidence, although he will be uncorroborated on the matter and more open to a “did say / didn’t say” argument with the defendant)?
 - (c) when, if at all, was a note made of the remarks concerned?
 - (d) was there a likelihood of misunderstanding (e.g. language problems, hearing difficulty, etc.)?

E. INTERPRETERS

A Prosecutor should compile a list of names, addresses and telephone numbers of people who are willing to act as interpreters, and the languages they speak. They should, if possible, have knowledge of technical fishing terms. It will help an interpreter employed for a case if he / she has already sat in court as a spectator and familiarised himself / herself with the procedures and court language.

An interpreter should be independent. His/her function is to accurately translate to the defendant everything said in court and everything said by the defendant to the court. Occasionally a witness will require an interpreter to perform the same tasks for him.

The court interpreter should not, if possible, be the same one who was present for the interview; the latter might, in some circumstances, end up as a witness.

Before the trial commences ensure that the interpreter speaks the same language as the defendant. His / her fees should also be agreed in advance - especially if there is no set court scale of fees.

Notes:

- (i) It is possible that only one interpreter for a particular language can be found. In those circumstances, he / she will have to be the court as well as the interview interpreter. Where there is no interpreter at all the charges should still be proceeded upon subject to the directions of the court. In both circumstances, the difficulty should be openly explained to the court.
- (ii) A master or other defendant might pretend he knows little or no English when in fact he speaks the language competently. Nearly all radio operators and many masters understand and speak English reasonably well.
- (iii) Where a language card has been used to question a defendant (usually upon boarding) then, unless otherwise agreed by the defence, the translation of the questions and correctness of the writing should be proved. This will require someone who knows the language and how it is written (i.e. someone who will probably qualify as an interpreter). Where possible internationally approved language cards could be pre-prepared for use by surveillance teams.

If answers to language card questions have been written in English, these will also have to be translated. However, written responses in defendant's own language may be preferable to obtain, and these could be translated into English later on for court purposes.

F. COMMON EXCUSES TO NOTE

Listed below are some of the excuses most often put forward by masters of apprehended vessels. Suggestions on ways to counter them have been added.

1. "My satellite navigation machine wasn't working"

The Authorized Officer should have checked this on boarding. Every master of a vessel can navigate by other means (e.g. sextant) or he shouldn't be a master. In most fisheries legislation the fact that the defendant didn't know exactly where he was fishing is irrelevant. 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.

2. **“My radar wasn’t working”**

The way to counter this is the same as (1), save that radar is only useful for position fixing when a “paint” of land or fixed object of known position can be obtained.

3. **“My engine broke down”**

This is a very common excuse, especially if a vessel is stationary when first observed. The Authorized Officer should as a matter of routine upon boarding ask if the engines are working properly and go and check them. An engineer should board the vessel on arrival in port to also check the engines and look for signs of recent repair, whether or not a breakdown has been alleged. A prosecutor should assess if an engine breakdown is relevant.

4. **“My freezers aren’t working”**

This excuse is used to explain unfrozen fish in freezers. The Authorized Officer should note if there is a quantity of hard frozen and unfrozen or partly frozen fish in the same freezer.

5. **“I have a licence ...**

(a) **but it’s not on board”**

Regulations and licence conditions generally require a copy of a licence to be kept aboard the vessel. The Authorized Officer should have checked by radio, before boarding, any licence numbers or the like painted on the vessel. If this excuse is raised in court the onus is usually, as a matter of law (statutory or evidentiary), upon the defendant to show he had a licence. It would, in any event, be worthwhile having a witness from the fisheries licensing department available to say “I have searched the register and there is no licence / no current licence issued in respect of this vessel”.

(b) **“but I didn’t know it had expired / I thought it had been renewed”**

Regulations and licence conditions generally require a copy of the current licence to be kept aboard the vessel. Illegal fishing is an offence of strict / absolute liability so even the *bona-fide* belief that a current licence was held will be no defence if no such licence exists, (see section (I) The Law, (iv) Strict / Absolute Liability, page 32).

6. **“I thought you were pirates”**

This excuse is given when a master has failed to stop his vessel when required to do so or taken off at full speed. The patrol vessel or other vessel being used for enforcement purposes should have identified itself by radio, by flying appropriate flags, have enforcement officers in uniform and generally comported itself in an official manner. If possible, maintain records to prove that patrol vessel behaved in accordance with the established standards.

7. **“I ran out of fuel”**

This excuse is usually given when the vessel is first observed within the EEZ.

8. **“I did not know about the regulations”**

Ignorance of the law will not afford an excuse to the law. Thus even if the Defendant was not aware of the regulations he would still be liable.

G. ANTECEDENT OF DEFENDANT AND VESSEL

The logs, charts and other documents of the seized vessel should be carefully examined. Much of what is recorded will probably be irrelevant. However these documents might give an indication of the vessel's activities prior to seizure and could well be useful in cross-examination, or for rebutting parts of the defence case.

The full antecedents of the defendants should be obtained in the usual way and, if necessary, checks made with other countries.

The "antecedents" of the vessel concerned should also be obtained, and checks made with other countries.

Where the vessel is a foreign vessel (or national DWF vessel) the regional registers (blacklists) of RFMOs can be checked (currently this only applies, within the CARIFORUM region, to ICCAT, but in the future others may become available such as through OSPESCA or the Caribbean Community Common Fisheries Policy). Any PSC-MOU blacklist can also be checked (although these might be of limited application), as well as national records including any such records maintained by the Fisheries Department or other general sources (e.g. Lloyd's Shipping Register).

The information obtained might not be usable in court, even when giving antecedents upon a conviction. However, sometimes such checks can reveal important facts.

H. VALUES

A court may well ask the prosecutor questions concerning "value". He should know:-

- (i) the value of the vessel, its stores and equipment;
- (ii) the value of the vessel's gear;
- (iii) the value of the catch (and its weight);
- (iv) the value of any bond or security lodged;
- (v) the cost of a licence;
- (vi) the value, scarcity and growing time of the species taken (e.g. giant clam);
- (vii) the environmental damage of the illegal acts (e.g. dynamiting fish); and
- (viii) the level of profit realisable from the unlawfully caught fish.

I. THE PRESS

If a foreign fishing vessel is arrested then the local and possibly the international press will be very interested. They will wish to know as much as possible, particularly about any aspects of the incident, which will make a "good story". There is generally no harm in keeping the press informed of events. However, the greatest care must be taken if talking to reporters or issuing press statements⁶.

⁶ In some jurisdictions, law enforcement officers do not speak to the press, rather there is a dedicated law enforcement department that is trained to do so.

It is far safer for prosecutors and other lawyers who might be involved in a forthcoming trial not to talk to the press. By doing this there cannot be arguments as to whether remarks have been correctly reported or been distorted. It cannot be suggested that a prosecutor has prejudiced a fair trial by some injudicious remark. There is a world of a difference between “the vessel was seized and master arrested for illegal fishing” and “the vessel was seized and master arrested for alleged illegal fishing”.

If press releases are to be made they should be written out and carefully considered before issue. Copies must be kept. The release itself should be restricted to the essential facts, contain no statements of opinion and in no way suggest any potential defendant is guilty or wrongful act has been committed.

J. THE LAW

It need hardly be said that a Prosecutor must know thoroughly the law relating to a case, which he is prosecuting. This includes not only the entirety of the acts and regulations concerned but also broader background matters, (e.g. rules for hot pursuit, the basis of the 200 mile limit, etc.) and subsidiary matters (e.g. licence conditions):

Special attention should be paid in fisheries cases to:-

(i) Jurisdiction

A prosecutor must know the provisions in the legislation, which make certain actions that took place beyond the territory and territorial seas of the country offences and which give courts the jurisdiction to hear those charges. The usual method of extending jurisdiction is to make any offence contrary to the fishing legislation committed within the EEZ or committed anywhere if aboard a domestically registered vessel triable in the country’s courts as if that offence had been committed in any place in the country.

The fisheries legislation should also be checked to ensure that proceedings are brought in the right court – Magistrates’ Court, High Court, District Court (Depending on the courts that exist in each country) - summarily or on indictment/information, etc.

A defence lawyer will always scrutinize legislation in the hope of finding a defect, which will result in his client’s acquittal or release without the merits of the case being heard.

(ii) Burden of Proof - in Criminal Cases

In a criminal case the burden of proof rests on the prosecution. The prosecution will therefore (in the absence of any statutory exceptions) be required to prove the guilt of the accused beyond a reasonable doubt.

Burden of Proof - Where the Burden Rests on the Defendant

Fisheries acts often contain provisions shifting, in specified circumstances, the burden of proof to the defendant e.g. that the defendant did in fact hold a licence. In the absence of statutory provision the standard of proof generally required of a defendant upon whom a burden of proof has been placed is "the balance of probabilities", and not "beyond reasonable doubt".

(iii) Presumptions

Many statutes create presumptions that will arise once a basis of fact is established (e.g. position entered in official log presumed to be the place a vessel was at a particular time unless contrary proved). Use such

presumptions, but try not to rely solely upon them. Ensure the presumption evidence contains the necessary basis of fact, and be ready to counter evidence or argument, which rebuts a presumption.

Some presumptions will be useable even after conviction (e.g. on forfeiture all fish found aboard a vessel are presumed to have been caught in the commission of the offence unless the contrary is proved.)

(iv) Strict / Absolute Liability

Many offences created under fisheries acts are ones of strict / absolute liability (i.e. where there is no need to prove an intent to commit the offence). Each charge laid must be examined to see if it falls in this category, and argument prepared to support the conclusions reached.

The courts in different jurisdictions approach these offences in two different ways, although all regard them to a greater or lesser degree as negating the necessity for proof of *mens rea*, i.e. intention to commit the offence.

Interpretation 1 - strict and absolute liability are synonymous. If a master is charged with unlawful fishing all that needs to be proved is that the vessel concerned was fishing within some prohibited area and he is the master of that vessel. It makes no difference whether or not he was mistaken as to his position, area boundaries, etc.

Interpretation 2 - strict and absolute liability have been given slightly different meanings. An absolute offence is still given the same meaning as it receives under Interpretation 1. However a strict liability offence would admit of a defence if it could be shown by the defendant that he honestly and reasonably believed and had reasonable grounds for believing in a state of facts which, if true, would not be an offence, or he did not intend to commit an offence and took all reasonable steps to ensure no offence was committed.

The English courts have tended to follow Interpretation 1 whereas Caribbean courts have tended to adopt Interpretation 2.

The words “strict” and “absolute” are only labels attached to statutory provisions, which are drafted in a particular way. The best approach is to look carefully at the wording of the statute itself in the light of its purpose, the general rules of interpretation and the provisions of any applicable criminal procedure code.

(v) International Law

Extensive knowledge of international law is not required to prosecute a fisheries case. However, a prosecutor must know the background to, and origins of, the concept of an exclusive economic zone (EEZ) and the quality of, and limitations upon, the exercisable sovereign rights. The meaning of terms such as baseline, territorial sea, internal waters, archipelagic waters should be known, (see ***Appendix 1***, pg. 52). If a bilateral or multilateral treaty is involved then its provisions and interpretations should also be known.

The domestic legislation establishing the zone concerned must be available, together with an authentic chart (if such exists) marked with the boundary.

The fisheries acts of some countries forbid the entry of foreign fishing vessels into their EEZ's except for purposes recognised by international law. It would take too long to discuss the purposes for which an entry would be recognised by international law. However on a charge of unauthorised entry it would be for the defendant to put in issue a purpose recognised by international law and for the prosecution to rebut

it (unless there is a specific provision shifting the burden to the defendant).

If hot pursuit or cross boundary action is involved, then applicable rules must be known. See Standard Operating Procedures Manual *Annex D*. Summary of Elements of Hot Pursuit.

K. CHARGES

Prosecutors should select charges which:

- reflect the seriousness of the charge;
- support the available evidence;
- enable the prosecution's case to be presented in a clear and coherent manner;
- allow the court where there is a conviction to impose the appropriate punishment provided for by the statutory provisions.

Draft charges with great care - after reading and assessing the evidence and getting to know the law.

There is nothing more embarrassing for a prosecutor than to see a defendant acquitted of Charge A when there was more than enough evidence to convict of Offence B, but it wasn't charged.

The Prosecution must prove each element of each charge against each defendant otherwise there will be acquittals.

There are two questions to ask:-

1. Whom do I charge? and
2. With which offences?

(i) The Charge

The evidence itself will usually suggest the charges that should be laid. It is worth listing all the offences in the fisheries legislation and then checking each in turn against the evidence.

Lesser offences should still be charged even if the evidence clearly reveals serious ones (e.g. a charge of failing to stow gear or unauthorised entry into the EEZ when illegal fishing is the main charge; regulation and licence infringements when a licensed vessel is in a closed area).

Keep clearly in view the potential penalties when deciding upon charges (e.g. is forfeiture available, will this mean licence cancellation?).

Ensure that each wrongdoing is separately charged and a series of acts do not blur into one charge (e.g. observed fishing at 6:00 am, 2:00 pm and 6:00 pm on the one day).

Do not be afraid to lay a charge if there are disagreements over the meaning of a section or its applicability. The only way to resolve such disagreements is to argue them before a court and obtain a ruling.

If an Authorized Officer has been assaulted, obstructed or interfered with in the execution of his duty then charges, whether against the master or crew members should be laid. This shows that no interference with Authorized Officers will be accepted, and will also be appreciated by the officers in general. The same approach will apply to such acts as throwing charts overboard, destroying evidence, etc.

It is not the duty of a prosecutor to “charge everything in sight” or “throw the book at a defendant”. However, he should charge all offences reasonably disclosed upon the evidence.

(ii) The Defendant

The master of the vessel concerned should always be charged, unless there are very unusual circumstances.

The vessel owner should also be charged, if this can be done, and the legislation so permits. It does give him a *locus standi* to argue against forfeiture if there is a conviction.

The fishing master and navigator can, if the legislation so permits, be charged, although this would be unusual. It might in certain circumstances be to the prosecution’s advantage to have a fishing master or navigator as a defendant.

The decision as to who to charge will depend on the facts and circumstances of the case. While for a large fishing vessel it is a common practice not to charge the crew yet in the case of a local fishing vessel, all crew members can be charged. It will be for the Authorized Officers who carried out the investigation to fully brief the Prosecutor who will decide what charge will be laid and against which persons in the context of the legislation of the particular CARIFORUM country.

Crew members are sometimes charged if the case against the master is not very strong. This will happen where legislation so allows, and forfeiture is available or mandatory upon conviction of the master or any member of the crew. The master might be acquitted but the main sanction, forfeiture of the boat, is available upon the conviction of the crew member - the crew member himself only receiving a small fine.

A crew member may be charged with assault/battery committed on an Authorized Officer.

Note:-

Prosecutors should be wary of one set of circumstances in which the usual illegal fishing provisions (“No foreign fishing vessel shall be used for fishing without a licence” together with “where a vessel is so used the master, etc. shall commit an offence”) might cause serious problems.

A master and a crew member could both be charged with illegal fishing and the crew member has admitted illegal fishing whereas the master has done no more than admit he is the owner of the vessel concerned. There might be some evidence of illegal fishing from the prosecution witnesses but not enough in itself to prove the charge.

At the close of the prosecution the defence could argue the master has no case to answer, and if the trial were to go ahead it would be inviting a conviction of one defendant upon the confession of another - a principle wholly repugnant to the criminal law.

The prosecution could reply it has been proved the vessel has been used for illegal fishing by the general evidence and the crew member’s admission, the master has admitted his position as master and so there is a case to answer.

A court should accept the defence submission - particularly in view of the tenuous nature of the proof and the possibility of a disgruntled crew member wishing to put his master in trouble. If, however, the prosecution submission is rejected, a defendant owner or fishing master could argue that a clear and

unequivocal admission by a master should not affect him. Further, if the owners were to be acquitted and the master convicted, forfeiture of the vessel would evoke a strong protest from the owner.

L. BAIL

Terms of bail are generally set on first appearance in court after arrest and charge. The principal purpose of bail is to ensure the attendance of a defendant at his trial. It would be unusual to request that a foreign national be remanded in custody pending trial. However if there is a real risk that the defendant might abscond with or without his boat and crew then a prosecutor should not flinch from asking for a remand in custody - once he has armed himself with good supporting reasons.

Common terms of bail which are imposed are:-

- (i) surrender of passport / personal identity documents;
- (ii) residence away from boat;
- (iii) ban on boarding boat or going to port / jetty area; and
- (iv) reporting two or three times a day to a police station.

M. PRE- TRIAL CHECKLIST

(i) Committal Proceedings

Check that:-

- (a) they have been held, if necessary;
- (b) the Certificate / Order of committal has been obtained and is in the correct form and signed, stamped;
- (c) a list of witnesses is with the court;
- (d) list of exhibits with court; and
- (e) it is known which exhibits are held by the court, and which by the prosecution.

(ii) Indictment / Information

- (a) Check witnesses to be called are all on committal proceedings list. If not, consider notice of additional witness and serve statement on defence. If defendant's statement at committal proceedings can be rebutted then issue notice of additional witness and serve his statement.
- (b) Check exhibits are all on committal proceedings list. If not, issue notice of additional witness to produce exhibit and serve notice and statement on defence.
- (c) Review all evidence and check:-
 - (i) whether there is evidence to prove every charge against every defendant so charged;
 - (ii) if any additional, alternative charges should be laid (and can be done in procedural law); and
 - (iii) if any additional defendants should be added (generally possible, but unusual after committal proceedings).

- (d) Draw up indictment / information.
- (e) Service indictment / information on:
 - (i) court; and
 - (ii) all defendants or defence counsel.

(iii) Witnesses

Ensure that:-

- (a) all witnesses on list have been served, and in good time;
- (b) additional witnesses have been served, and in good time; and any exhibits they produce, obtained and labelled:
 - (i) all necessary experts are witnesses and have been served;
 - (ii) statements of experts commence with list of qualifications / experience;
 - (iii) their fees are agreed beforehand;
- (c) there are no problems concerning holidays, illness, unexplained reluctance:
 - (i) transport is provided where appropriate; and
 - (ii) any difficulties are known e.g. unreliable inter-island boats

(iv) Interpreters

Ensure that:-

- (a) they are independent;
- (b) they are notified and agree to attend court;
- (c) fees have been fixed (agreed rate or court scale); and
- (d) they speak the correct language.

(v) Exhibits

Ensure that:

- (a) all exhibits are in the possession of the court or prosecution;
- (b) witnesses who are bringing exhibits do so (this should not be a usual practice);
- (c) documents –
 - (i) are originals
 - (ii) there are enough copies for judge, prosecution, defence, witnesses and spares for marking.
- (d) perishable exhibits –
 - (i) are held properly and are ready to be produced if needed (e.g. from freezer);
 - (ii) proceeds of sale are held, statement of account available.

- (e) for photographs - the police officer / witness has the untouched negatives in the event a traditional camera with film has been used.

(vi) Certificates

(a) Ensure that:-

- (i) all possible evidentiary certificates have been obtained;
- (ii) they are in correct form and signed by the person authorised by law to sign;
- (iii) they have been served on defence, court if required/advisable.

- (b) certificates / documents of appointment of Authorized Officers involved in case have been checked. In some jurisdictions, the Fisheries Act provides that all police officers, fisheries officers, and customs officers are Authorized Officers, and hence, in these cases, certificates / documents of appointment would not be required.

(vii) Court

Ensure that:-

- (a) the Indictment/Information has been lodged with the court;
- (b) the case has been listed;
- (c) sufficient number of days have been set aside (i.e. estimate + 50%);
- (d) the clerk of the Court has been informed there might be many spectators; and
- (e) Ensure that witnesses have been notified by court date.

(viii) The Prosecutor

He / she should:-

- (a) know the law thoroughly;
- (b) have an opening prepared (see “The Trial” section, page 40 for details);
- (c) have ensured diplomatic representatives of the defendants have been notified (as appropriate);
- (d) decide if an expert is required to sit with him/her in court (with the court’s leave an expert can usually sit with counsel throughout the trial);
- (e) have ready explanatory diagrams, pictures, blackboards etc. and copies (e.g. for fishing method, navigational system);
- (f) have checked if a certificate or consent of the DPP/AG is needed to prosecute a non-national, it is in the correct form and signed;
- (g) ascertain if the defence are prepared to admit facts e.g. vessel not licensed (NB procedure code

rules for formal admissions);

- (h) have checked antecedents of defendants, vessel - from Lloyd's Registry of Shipping, local Maritime Administrations, Criminal Records Office, any other sources of information; and
- (i) know maximum percentage error in normal working of any machines relied upon.

CHAPTER 5 - The Trial

A. GENERAL

The trial process would be the culmination of everything that has taken place from the initial monitoring control and surveillance activities through the investigation process and the preparation for trial. At this stage, the focus would be on what happens in the trial itself and to ensure so far as possible that there is a successful prosecution if all the evidentiary requirements are satisfied.

B. OUTSIDE THE COURT

(i) Proofing of Witnesses

The practice of proofing a witness is usual in some jurisdictions yet unacceptable in others. Proofing is the reading by a lawyer of a witness statement to the witness before going into court.

The word proofing might also cover the testing of the witness on some matters, asking for greater detail, referring to points of importance in the statement and asking him about matters not in the statement but which have become relevant.

The danger is that in proofing a witness, ideas, answers and even “facts”, which were not in his mind or part of his recollection will be wittingly or unwittingly placed there. And even if no such thing is done or intended the possibility hangs in the air. This is especially so when witnesses are “proofed” part way through the prosecution case. Defence counsel can ask questions such as “Did you talk to the prosecutor this morning about the evidence you were going to give? Were you asked about matters not in your statement?” The effect is to make everyone in court wonder whether the prosecutor has been “fixing” his witness or “putting ideas in his head”. However honestly and properly the “proofing” was carried out the witness’s standing will be harmed and the prosecutor might find a “bad smell” has attached itself to him.

If the master is foreign then it is probable that a diplomatic representative and members of the press will be present. Their reports will not reflect well upon the country as a whole if the possibility of improper behaviour by the prosecutor exists.

There is no reason why witnesses should not be given their statements to read to refresh their memories before going into court - indeed it is generally a good idea. The object of hearing evidence is not to visit a memory test upon some hapless man or woman. In some territories the prosecutor may read through the evidence with a witness and ask questions about additional matters or to clarify points.

It is therefore important to know exactly what is or is not permitted by way of proofing a witness.

C. IN COURT

(i) Arraignment

An arraignment is part of the process whereby the Defendant is asked if he pleads guilty or not guilty. If he pleads guilty the court will proceed to the guilty plea stage and the sentencing of the Defendant (subject however, to the matters stated in the Guilty Plea below).

At the arraignment stage the prosecutor should have his case file (with statements and exhibit lists etc. complete).

(ii) Guilty Pleas

The Defendant is entitled upon being asked to enter a plea of guilty, by doing so the Defendant will be admitting to the charge and the supporting facts. In cases where there are several charges the Defendant may seek to enter a plea to one or more of the charges or to a plea to a lesser charge (in which case the prosecutor will have to decide whether to accept this plea or not or to proceed on all charges).

The court has a discretion to accept the guilty plea and will do so in most cases. Normally the court will seek to satisfy itself that:

- the defendant is pleading guilty voluntarily;
- that the defendant understands that by pleading guilty he is admitting to the facts that make up the criminal charge;
- that in the case where the defendant does not speak English an appropriate interpreter has explained the charge to the defendant;
- that the defendant understands the consequences of a guilty plea namely that by pleading guilty he is giving up his right to have a trial

Where the court is not satisfied of the above matters it may refuse to accept a guilty plea and enter a not guilty plea and proceed to trial.

(iii) Interpreters

The judge or magistrate should, as soon as the court is in session, be informed of the necessity for an interpreter and the language to be interpreted. With the consent of the court, the interpreter should then be sworn in. It is generally best if he sits beside the defendant.

(iv) Experts

Expert witnesses may with leave, remain in court throughout the evidence. There are two reasons for this, first to help counsel when examining in chief or cross-examining upon technical matters, and second so they can hear the evidence of witnesses and not need it repeated to them when they come to give their opinions. It is a matter of discretion for the judge or magistrate whether or not to allow an expert to remain in court - the more controversial are the facts to which he is a witness the less likely it is he will be permitted to remain.

The assistance of an expert might be invaluable when it comes to cross-examining upon the defence case. He will be able to tell a prosecutor if the defendant is trying to mislead or lie to the court on technical matters.

(iv) Opening

Every prosecutor has his own particular way of opening a case. It is the moment when the court first hears the details of the allegations and the moment when the prosecutor shapes his case. It is also a time for acquainting the court with the terms of art and technical processes, which will be referred to in the evidence.

The interest of the court will wane if an opening commences with a detailed examination of the law or some technical matter. A common form of opening, which could well be used in fisheries cases is:-

(a) *The Story*

Tell chronologically in narrative form what happened. Do not refer to the law or deal with technical matters.

(b) *The Technicalities*

Explain the meanings of terms of art that will be used, the processes and technical matters involved in the case.

This can include not only methods of fishing but details of navigation systems, how they work, slang words used in the industry, types of fish, rates at which fish rot, etc. Use pictures, diagrams and other visual aids.

(c) *The Law*

Refer to the sections charged, the purpose of the act, evidential burdens, presumptions, whether offences are strict / absolute, etc.

(d) *The Defendant*

Detail charge by charge, defendant by defendant, how the evidence fits each defendant and each charge.

(v) *Witnesses*

(a) *Certificates*

Fisheries Acts, which provide for the proof of facts by certificate generally do not require a witness to prove the certificate in court. It speaks for itself. However if any challenge is made to the certificate or its contents then the maker or someone who can give evidence of the facts in dispute should be called.

Sometimes the veracity or accuracy of the contents of a certificate will not be put in issue until the defence case is presented. If this happens then the court's leave should be sought to call or recall a prosecution witness to deal with the matter. The certificate should have been challenged by the defence at the time it was produced to the court.

(b) *Presumptions*

If statutory presumptions are to be utilised then ensure that the necessary foundation of fact has been laid by asking witnesses specific questions.

(c) *Experts*

After an expert witness is sworn in and has given his name and address he should be asked to give his qualifications and detail his experience in the field in which he professes to be an expert.

Unlike ordinary witnesses, experts can be asked to state opinions upon given sets of facts (e.g. could that fish have been out of the water for more than three days; would this kind of repair require the engine to be shut down/take twenty-four hours; how long had that fish you saw been in that freezer).

(d) Inexperienced Witnesses

1. Nervousness

Most witnesses called will never or only occasionally have given evidence before. They will be nervous and, by reason of that, say things they don't mean or know are not correct or omit important matters. Sometimes they might "clam up" and say nothing.

A skilful prosecutor will put his witnesses at ease by asking clear, simple questions on non-contentious matters before dealing with important facts.

A prosecutor will not lightly interrupt a cross-examination. However if he considers a witness is being hectorred, intimidated or deliberately confused then a timely intervention to point this out will not be criticised.

Re-examination is a time when confusions and inconsistencies, which might have come about in cross-examination can be clarified. A few carefully worded questions can restore the standing of a witness whose reliability, accuracy or veracity has been shaken in cross-examination. Re-examination is not a time for opening new facts or cross-examining one's own witness on evidence he has given which is helpful to the defence.

2. Notes

If a witness has made notes contemporaneously with or soon after the events in question then he should bring them to court and use them. The prosecutor should ask the witness early on in his evidence when he made the notes and obtain leave from the court for the witness to use them. Notes are for the purpose of refreshing memory and are not meant to be merely read out.

A witness has a right to refresh his memory by looking into a copy of a document. Such documents will include contemporaneous notes, photos. If the recorded statement is not in writing it is not to be used for refreshing memory. The document needed to refresh a witness' memory may be admitted as evidence of court. The memory-refreshing document need not have been made by the witness, although the witness must have checked it while the facts were fresh in his mind.

All fisheries and Authorized Officers should keep notes whenever they are engaged in the execution of their duties. It must be remembered that most fisheries officers and authorised officers are unlikely to have given evidence more than once or twice before.

3. Dress and Behaviour

Officers must be sure that they are well dressed, clean and neat during every Court appearances. This is not only out of respect to the Judge and Court; it also gives the impression of an Officer who is proud of and neat in his work.

When giving evidence, the Officer should stand or sit (as is the custom of the Court) in an alert and confident manner. Do not chew gum, or anything else, and do not slouch.

It is worthwhile warning inexperienced witnesses of these matters, so they may come prepared.

Fisheries and other Authorized Officers should wear their uniforms in court (if there is a uniform).

4. Exhibits

Always maintain a checklist of exhibits and who is producing them. Tick them off as they are produced. Ensure they are all properly labelled.

If a document, such as a chart, is to be marked by a witness in the course of the trial make sure it is a copy. If another witness is to put on the same mark then another and clean copy should be used - to present the first marked copy to the second witness is, in effect, leading him. If it is necessary, an original may, with the court's leave, be marked.

The Court should be requested to view the seized vessel itself if this will help in deciding the case. It is also useful in giving the judge a look at the circumstances in which the boarding and inspection were made.

5. Examination in Chief

When a witness is called to give evidence, such a witness will first be questioned by the party calling the witness. This is the examination in chief, the object of which is to obtain from the witness all the facts supporting the case for the party who has called the witness that are within the personal knowledge of that witness.

Evidence obtained during examination in chief should be clear and not given too fast as often notes of the evidence will be taken by the judge presiding at the trial. Allow time for the witness to answer the questions.

It is a general rule that a witness must testify in his or her own words. In order to protect the integrity of the evidence, a party who calls a witness is prevented from asking leading questions of the witness. A leading question is a question that in its phrasing suggests its own answer. For example, "You saw a boat with marking XY600 and persons throwing fish overboard?" By suggesting the answer to the witness, you reduce the impact of the evidence of that witness as you are in effect putting answers in the mouth of the witness.

It is settled law that leading questions may not be put to a witness in examination in chief (or in re-examination) except where:

- in non-contentious matters e.g. matters that are agreed as not being in dispute;
- the court has given leave
- the matter relates to an introductory part of the evidence of the witness e.g. name, occupation employment
- the witness is an expert and the question seeks the opinion of the witness on a hypothetical statement of facts relating to the evidence being adduced

6. Cross-Examination⁷

Cross-examination in a fisheries case will be no different from that in other types of case. It requires the

⁷ See also Common Excuses at pg. 47

prosecutor to have a thorough knowledge of his own case and evidence and the defence case and evidence. If time permits, cross-examination should be prepared point by point. Many books have been written upon the art of cross-examination. In the final analysis, the effectiveness of a cross-examination is the measure of the skill of the prosecutor. As a broad guide it is better to take a few good points and deal with them rather than embark upon a meandering journey through the defence case.

The prosecutor must have in clear focus the points in dispute between the prosecution and defence. He should then cross-examine thereon and “put” the prosecution case to the defence witnesses. Some examples are set out below.

- (a) The master does not challenge that he was fishing and had no licence but says he was in international waters

Cross-examination should be directed towards the question of where the vessel was when it fished:-

- (i) if the master says my satellite navigator was not working, he can be asked “then you don’t know exactly where you were?” and “you can’t refute the Authorized Officer’s evidence when he says you were 11 miles inside the EEZ?”
- (ii) if the master says he fixed by sextant at a particular time then calculate the dead reckoned position as adjusted for tides and currents. Cross-examine on this if it puts him inside the EEZ.
- (iii) ask about the rubbed out pencil marks on the chart 11 miles inside the EEZ.

- (b) The master admits he was in the zone but denies he was fishing

Cross-examination should be directed towards all the indications of recent fishing.

- (i) why were the scuppers running blood when the boarding party came aboard?
- (ii) why was the fish that had been lying on the deck for two days still fresh in appearance?
- (iii) how was it that a third of the fish in the port freezer were not even cold when the rest were rock-solid frozen?
- (iv) why were the hauling wires shown in photograph 3 attached to the winches if no fishing had taken place for four days?
- (v) how did the two crew members receive those patterns of superficial cuts on their elbows and knees (clam boats)?

- (c) The master agrees he took off at speed when approached by the patrol vessel but says he thought it was a pirate ship or unauthorised vessel.

Cross-examination should be directed to the appearance of the patrol vessel and its crew.

- (i) the patrol vessel’s name and number were marked?
- (ii) it flew the correct flags, didn’t it?
- (iii) the crew were all in uniform?
- (iv) they identified themselves on the radio?
- (v) you took off because you wanted to avoid being caught for illegal fishing – isn’t that the truth?

- (d) The fisher claims not to know about the fisheries regulations.

Notes:

- (i) If an expert witness is called for the defence then questions can be asked to ascertain if he is truly independent or has some link with the defendant, e.g. “Does he work for the company that owns

the seized vessel?” “Is the expert’s company partly or wholly financed by the company that owns the seized vessel?”

Unless there is very strong evidence to show the expert is not putting forward genuine opinions it should not be suggested. However, if there are strong financial or other links with the defendant or the company that owns the seized vessel then this will allow the court to assess how truly independent the expert is.

- (ii) It may happen that a new field of evidence is opened up during the defence case.

If this field of evidence could not reasonably have been foreseen and the prosecution can bring or recall witnesses to rebut parts or all of it then a prosecutor should not hesitate to ask leave of the court to bring or recall those witnesses.

7. Re-examination

Once a witness has given their evidence in chief and been cross-examined by the other side the person prosecuting or defending (who had initially called witness) may re-examine the witness. The purpose of re-examination is to give the witness the opportunity to explain any matters that were raised during cross-examination. It is not another opportunity to go through the evidence provided.

An example of when re-examination might be necessary would be where the cross-examination has perhaps shown the witness testimony to be muddled and confused. Alternatively, you might want to use re-examination if during the cross-examination inconsistencies have appeared between a witness testimony and the prior statement.

Re-examination can be used to highlight flaws or inconsistencies in the other side’s case or alternatively to connect anything during cross-examination, which potentially could be damaging to your case.

(i) No Case Submissions

The prosecutor has a right to reply to a submission of no case.

Most defence lawyers will not try to misrepresent the law or the evidence. However, if this is done at any time and particularly upon a submission of no case to answer, it should be firmly and accurately corrected.

Arguments, which are wrong in law or fact, in the opinion of the prosecutor, should also be firmly and accurately corrected. The following are examples of erroneous suggestions:

- that an offence requires *mens rea* when it is one of strict / absolute liability;
- that radar is not a notorious scientific instrument;
- that the readings of a satellite navigation machine are not admissible even if cross-checked against recognised scientific instruments;
- that the word “now” called out to coincide the activities of two witnesses is hearsay.

(ii) Case for the Defence

If a no case submission is rejected the defendant may select any of the following options:

- call no witnesses (including the accused) and proceed to close the defence case;
- call the defendant to give sworn evidence (in which case the defendant would be subject to cross-

- examination);
- allow the accused to give an unsworn statement from the dock (in which case the defendant cannot be cross-examined);
- call witnesses for the defence.

(iii) Closing Speeches

In making a closing speech the prosecutor should refer to the charges to show how every element of every offence has been proved against each defendant. He should briefly deal with those elements, which are agreed or over which there is no serious challenge and then deal in detail with the evidence concerning the disputed matters. In doing so points, which the defence are likely to make should be foreseen and pre-empted. If there are matters of law in contention, the prosecutor must state his submissions thereon and how he says the facts fit those interpretations of the law.

If the case against any particular defendant or on any charge is weak then this should be quickly conceded. The prosecutor should cite what supporting evidence there is and then move to the stronger parts of his case.

(iv) Court Decision

After hearing the evidence for the prosecution and the evidence (if any for the defendant) and upon the conclusion of the closing speeches, the Judge will render a verdict of not guilty or guilty. In most jurisdictions of where there is a not guilty verdict there is no right to appeal against that verdict. If the verdict is guilty, the court will proceed to the sentencing phase of the trial.

CHAPTER 6 - Sentencing, Appeals and Post Trial

A. GENERAL

The major focus of this chapter is sentencing but it also deals with other important aspects of the post-verdict process, namely appeals and certain post-trial matters. Preparation for, or attention to these matters should not be underestimated. In particular, carefully and strategically prepared submissions on sentencing matters can result in significantly more effective penalties, which reinforce the entire MCS effort. Likewise, effective follow-up actions after trial, can lend further support to the overall MCS effort or help build capacity for future actions.

B. THE SENTENCING PROCESS

Sentencing is an important part of the court process and the Prosecutor should be properly prepared for this stage of the court process.

In preparing for the sentencing process, the Prosecutor should:-

- (i) Review the legislative provisions relating to the offence e.g. the level of fines and sanctions.
- (ii) Examine any forfeiture provisions in the existing legislation
- (iii) Discuss with the Authorized Officers/Fisheries Department of the impact of any IUU activity in the fisheries sector.
- (iv) In serious cases obtain an assessment/valuation of the fish catch
- (v) Obtain the information indicated in this chapter.

In addition to sentencing, the Prosecutor should ensure that all document is in place in the event that there is an appeal.

If a person pleads guilty, or is found guilty after a trial, the court is required to decide what sentence should be imposed on the offender. The sentence may involve:

- Fine
- Imprisonment.

In some jurisdictions, the courts are also empowered at the time of sentencing to impose forfeiture orders, to require the Defendant to pay the cost of the prosecution or an additional penalty to reflect the criminal benefit for the offence.

Statutes often specify the range of sentencing that may be imposed for various offences. A modern trend is for the statute to set minimum and maximum penalties for fines and imprisonment.

The broad objectives to be achieved in sentencing are:

- **Punishment** - refers to the consequences to the offender for engaging in criminal behaviour and can include imprisonment and fine.
- **Rehabilitation** - this means imposing a sentence that will help to change the offender's behaviour with the aim of reducing the likelihood that he or she will commit the offence (this approach could be used in less serious offences by artisanal fishers).
- **General Deterrence** - this refers to the idea that potential offenders will be discouraged from committing criminal offences where they see the kinds of penalties that are imposed for engaging in criminal behaviour (this would be especially relevant for persistent offenders, persons fishing out of season, persons fishing in marine protected areas and foreign fishermen).

- **Community Protection** - means protecting the community from the offender and from crime generally.

Matters that **must** be taken into consideration by the court

- the legislative provisions setting out the penalties for the offence e.g. the statutory provision may require minimum penalties or automatic forfeiture e.g. of vessel or gear.

Matters that **may** be taken into consideration by the court:

- the nature and circumstances of the offence. The types of offence, which are committed vary greatly as do the circumstances in which they occur and the nature of the seriousness (e.g. fishing in closed season, fishing in prohibited areas, types of fish, volume of the catch).
- the criminal past of the offender. The number of offences previously committed by the offender and their seriousness can indicate whether previous attempts at rehabilitation or specific deterrence have been successful (previous recorded warnings will also be relevant).
- the actions of the Defendant. This includes whether the Defendant has shown contrition for the offence such as pleading guilty at the earliest opportunity.
- the offender's personal circumstances. The character, previous behaviour (including any criminal record for any other offence, cultural background, age, means and family circumstances are also likely to be considered.

C. PREPARATION FOR SENTENCING AND HEARING

As with the trial, the Prosecutor needs not only to be prepared, but also to be persuasive.

The Prosecutor must have ready and available:

- (a) the antecedents of all the defendants;
- (b) the antecedents of the vessel;
- (c) the value of the vessel, its stores and equipment;
- (d) the value of the vessel's fishing gear;
- (e) the value of the catch (and its weight);
- (f) the cost of a licence;
- (g) the prevalence of the types of offences concerned;
- (h) the environmental and financial harm caused by the types of wrongful activity of which the defendant has been convicted (including the scarcity and growing time of species illegally taken, e.g. giant clam);
- (i) the maximum fines for each offence;
- (j) the fines imposed in similar cases previously and brief synopses of those cases;
- (k) if possible, the details set out in (j) from other countries;

- (l) for which offences forfeiture is available/discretionary/mandatory and whether for the vessel and/or gear and / or catch;
- (m) the value of any bond held; and
- (n) the likely financial gain the defendant would have made had he not been caught.
- (o) Factors which would be considered aggravating circumstances in imposing sentences could include:-
 - (i) the offence is shown to have been a deliberate breach of the law rather than as a result of carelessness;
 - (ii) previous convictions under the Fisheries act;
 - (iii) previously recorded warnings for similar offences;
 - (iv) the defendant's attitude towards the fisheries officers i.e. dismissive or obstructive;
 - (v) the deterrent effect that the sentence could have on the person the likelihood that a deterrent penalty may have on others likely to commit the same or similar offences.
 - (vi) The implications of the offence on the enforcement of the regulatory regime, e.g. a failure to comply with conditions of a fishing licence undermines the integrity of the licensing scheme and may adversely affect legitimate operations.
 - (vii) With regards to offences affecting fish and fish stocks, whether recovery species are involved, and any issues as to quota status.
 - (viii) The degree of harm the offending may cause to any aspect of the marine environment or any protected species.
 - (ix) The financial benefit of the offence or other financial aspects of the offence including the impact on other legitimate operators.
 - (x) Whether the offence was committed deliberately or officials were obstructed during the course of the offending / investigation.
 - (xi) The previous enforcement record of the offender.
 - (xii) The attitude of the offender including any action that has been taken to rectify or prevent recurrence of the matter(s).
 - (xiii) Where offences are prevalent or difficult to detect, the deterrent effect on others by making an example of the offender.

D. FORFEITURE

(i) Forfeiture Provisions

The vessel involved in the commission of an offence will probably be forfeited upon the conviction of the master or even a crew member. However, the owner of the vessel might not be before the court. A prosecutor should check carefully the provisions of the Act authorising the use of the forfeiture provisions to ensure that these provisions are strictly followed. Where available, relevant case law should also be examined.

- (i) If forfeiture is discretionary, the court might require a formal request before exercising the power.
- (ii) There might be circumstances where the court has a discretion to forfeit the vessel, gear and catch, but it would be wiser to only confiscate the gear and catch. For example, if the vessel is worth little or is unsaleable and the cost of repatriating the master and crew will fall on the government, then the vessel, less its gear and catch, can be returned so the master and crew can sail home.

(ii) Other Matters

- (i) If appeals are contemplated by either the prosecution or defence then application should quickly be made to the court for orders retaining the boat, gear, equipment and catch pending the appeal. Bond or security monies if held, should not be paid out, the makers of bonds not released from their obligations, and exhibits and perishables preserved.
- (ii) If the master or crew members are fined then the prosecution should ask for restrictions similar to bail conditions to be imposed until the fines have been fully paid.
- (iii) Know who is responsible for dealing with a forfeited vessel's gear, equipment and catch. Have him standing by even before the end of the trial. Inform him of any forfeiture as soon as it occurs.
- (iv) Know who is responsible for repatriation of the crew of a forfeited vessel, since they won't be able to pay their own airfares. Inform him of any forfeiture of the vessel as soon as it occurs.
- (v) Request any necessary orders for the disposal of exhibits.

E. APPEALS

Where a defendant is found guilty and sentenced, such a defendant has a right to appeal against both the guilty verdict and the sentence or may just appeal against the sentence only⁸.

F. POST-TRIAL

1. Send copies of the charges, synopses of the evidence and judgments in full to the Fisheries Department.
2. Keep copies of (1) in your fisheries file.
3. Analyse:-
 - (a) your own performance, the mistakes, the good points - add any notes to this manual in the "Notes" section at the back;
 - (b) the performance of others involved. Discuss with them ways of improving everyone's performance.
4. Ensure the vessel, its gear and catch are returned to the correct person or taken possession of by the correct authority.
5. Check that fines are paid by the time given, and if not institute enforcement proceedings.
6. Ensure that bond or security monies have been returned to the correct person or paid to the correct authority.
7. Arrange for exhibits to be disposed of according to the court's orders.
8. Arrange for the press to be advised of the result of the prosecution through the designated communications person.

⁸ In Suriname both the Defendant and the Prosecutor can appeal against conviction and sentence. As a general rule in the common law jurisdictions in the CARIFORUM countries, only the Defendant can appeal.

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).

(iv) 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).

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.

I. 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.

J. 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

New Policy and Legislative Developments

a. PARTICIPATORY MANAGEMENT

The traditional approach by governments to the management of fisheries, has been to adopt a *'the top down approach'* which sees government officials as the sole responsible agents for all aspects of the fisheries management process. As the resources and enforcement capacity of governments become stretched and inadequate, and opportunities for greater effectiveness through co-management and other participatory modalities are explored, there is evidence that pursuing a participatory / collaborative approaches leads to greater efficiency and sustainability. Essential to successful co-management / participatory arrangements is gaining real commitment of stakeholders through genuine involvement; greater transparency and meaningful consultation, clear definition of rights and responsibilities. This approach leads to greater public understanding of the challenges and greater support of the measures implemented, greater sense of ownership of the industry and responsibility for its protection and management. Further, it often leads to greater voluntary compliance, as such this participatory approach is considered a progressive and cost effective path to sustainable fisheries management.

Examples of cases where enforcement has been delegated to NGOs include two examples from Belize. First, TIDE (Toledo Institute for Development and Environment) has a co-management agreement with Belize Fisheries Department in respect of the Port Honduras marine Reserve and has enforcement officers who are fisheries officers and thus have enforcement powers under the Fisheries Act. These enforcement officers are all paid by TIDE. Secondly the Southern Environmental Association has a co-management agreement with Fisheries Department and co-manage Gladdens Spit and Silk Caye Marine Reserve, this NGO employs enforcement officers who are appointed as fisheries officers and thus have enforcement powers within the areas covered by the co-management.

In general participatory management schemes may offer their own enforcement framework or may be integrated with the enforcement management framework of the relevant fisheries agency thus

- participatory management systems may have their own enforcement and sanctioning systems, which may not displace enforcement and prosecution powers under legislation, but might be given preference;
- there may be specific provision for co-enforcement (e.g. wardens, observers, etc.) which involve special considerations;
- there may be a need for specific policies or supervisory measures for enforcement officials;
- there may be the need for Authorized Officers to step in for the purposes of securing evidence (non-Authorized Officers will have limitations in the evidence they collect, and possibly its value in court).

B. NEW TECHNOLOGY

There have been a number of new technologies which have become more readily accessible to developing countries as the cost of the commercial applications has become more affordable. These applications have transformed Monitoring, Control and Surveillance (MCS) in Fisheries Management. There is currently a range of different MCS technologies that can be used but this requires that decisions be made about finite (human, technological and financial resources). Many commercial applications are now available to support MCS strategies and make use of new technologies. Currently one example receiving attention in marine management is maritime intelligence.

Some of these technologies include:

(a) Vessel Monitoring Systems (VMS)

Vessel monitoring systems (VMS) are used in commercial fishing to allow environmental and fisheries regulatory organizations to monitor, minimally, the position, time at a position, and course and speed of fishing vessels. They are a key part of monitoring, control and surveillance (MCS) programs at the national and international levels. VMS may be used to monitor vessels in the territorial waters of a country or a subdivision of a country, or in the Exclusive Economic Zones (EEZ) that extend 200 nautical miles (370.4 km) from the coasts of many countries. Detail of VMS approved equipment and operational use will vary with the requirements of the nation of the vessel's registry, and the regional or national water in which the vessel is operating.

The IPOA (IUU) encourages the use of a vessel monitoring system (VMS), in accordance with relevant national, regional or international standards

Article 14 (3) of the Draft Common Fisheries policy requires parties to establish an appropriate vessel monitoring system to monitor the position and activity of vessels flying their flags. New legislation in some CARICOM countries specifically address VMS e.g. Draft Fisheries Act in Bahamas, Draft Resources Act in Belize and the High Seas Act in Belize.

The types of offences for which data obtained from VMS has been used as evidence include:

- Unlawful entry in a closed area;
- Failure to properly maintain a functioning VMS transponder (in jurisdictions where there is a legal requirement to have a VMS on board the vessel);
- Providing false information to fisheries authorities; and
- Tampering with transponder (again where there is a legal requirement to have a VMS on board the vessel).

(b) Vessel Detection Systems (VDS)

Vessel Detection Systems is a satellite-based technology (satellite imaging of sea areas) which may help to locate and identify fishing vessels at sea. The basic function of VDS is to allow the identification of vessels and the detection of their positions at sea particularly when the VMS is malfunctioning or has been turned off. This system consists of a ground station for the reception and Synthetic Aperture Radar (SAR)-processing of the satellite data; link from ground station to monitoring station; automatic ship detection software; software to correlate detected ships with VMS positions; interface to visualise results and communicate them to authorities.

(c) Remote Sensing

Remote Sensing may be defined as "the acquisition of information about an object or event on the basis of measurements taken at some distance from it." It is a term which includes aerial and space observation/monitoring. Dependent on the user's requirements it includes anything from unmanned aerial vehicles (drones), single-engine light air-craft to satellites.

(d) The use of cellular telephone / smart phones

Cellular / Smart phones – Fishers can use cellular phones and GPS-enabled cameras to help combat IUU and pirate fishing because it enables them to collect picture evidence of IUU and pirate fishing using

the GPS-enabled cameras and the cellular phone can be used to notify authorities of the illegal activity. Pinging of cellular/smart phones can also help to provide location information of fishers, provided they are within range of cellular transmission towers, but even when within range, this can cover several miles. If the cellular phone or smart phone is GPS capable, then the location of the phone can be estimated. Authorized Officers on boarding a vessel can examine cellular or smart phones to determine if they possess GPS capabilities, determine if it is functional to refute any argument that the fisher did not know his or her location at sea.

Cellular / Smart phones may be used by Authorized Officers to collect evidence – digital voice recording and/or digital video recording and/or digital pictures, or to record digital notes.

(e) Computer Technology

Modern computer technology will be of significant assistance to MCS including areas such as licensing, registration and the collection of data on fish catches.

C. NEW ENFORCEMENT MEASURES

- Port State measures
- "Long arm" enforcement provisions (e.g. Lacey Act)

(i) Port State Measures

The FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (the Agreement) was adopted by the FAO Conference in 2009. The main purpose of the Agreement is to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing through the implementation of robust port State measures. The Agreement envisages that parties, in their capacities as port States, will apply the Agreement in an effective manner to foreign vessels when seeking entry to ports or while they are in port. The application of the measures set out in the Agreement will, inter alia, contribute to harmonized port State measures, enhanced regional and international cooperation and block the flow of IUU-caught fish into national and international markets.

(Source: www.fao.org/fisheries/topic/166283/en)

A Caribbean MOU exists in respect of port state measures which most CARIFORUM countries are members. The Caribbean MOU is not a fisheries enforcement mechanism. There is a Code of Good Practice for port state inspectors under the Caribbean MOU - http://www.caribbeanmou.org/code_practice.php which would apply almost entirely to fisheries PSM.

Paragraph 6 of Article 21 requires Parties to establish an *ad hoc* working group to report periodically on funding mechanisms. They should address (i) a scheme for contribution; (ii) identification and mobilization of funds; (iii) development of criteria and procedures to guide implementation; and (iv) progress in the implementation of the funding mechanisms. The Article also requires that the *ad hoc* working group take account of a number of other issues concerning developing countries. These issues are listed in the Agreement.

(ii) “Long Arm” Enforcement Provisions

There is a provision which can be introduced in national fisheries legislation, and if more widely applied, this provision could enhance cooperation in fisheries enforcement to stem illegal fishing operations in the region. The name of the provision, the ‘*Lacey Clause*’, originates from the Lacey Act of the United States.

The U.S. Lacey Act, makes it unlawful for any person subject to U.S. jurisdiction to "import, export, transport, sell, receive, acquire, possess, or purchase any fish, wildlife, or plant taken, possessed, transported, or sold in violation of any Federal, State, foreign, or Indian tribal law, treaty, or regulation.

One of the main advantages of this type of 'long arm' provision is that it avoids the difficulties associated with effecting extra-territorial jurisdictions by criminalizing actions that occur within their territories (i.e. importation) while supporting management and conservation measures outside the limits of their jurisdiction.

The Lacey Act has become an important tool in the efforts to control smuggling and trade in illegally taken fish and wildlife. The Lacey Act enables the US Federal government to assist other governments in enforcing their own conservation laws.

Many countries other than the US have adopted the "long arm" strategy in fisheries enforcement. The draft Belize Fisheries Resources Act and the draft Bahamas Fisheries Act contains such provisions.

D. DEVELOPMENTS IN EVIDENCE

(i) Presumptions

A common approach in criminal law is the use of presumptions. This arises when certain facts are established by the prosecution then other facts are presumed, but the defendant has the right to adduce evidence to challenge the presumption. This has been extended in certain CARICOM countries to fisheries offences e.g. some statutes provide that all fish found on board a fishing vessel which has been used in the commission of a fisheries offence shall be presumed to have been caught in the commission of that offence. Proper documentation would be necessary for these presumptions to apply.

(ii) Certificates

In some new fisheries legislation, there is an emerging trend to expand the use of certificates. An example of this is the draft Belize Fisheries Resources.

Areas where certificates may be used:-

- as to the location of the vessel
- that the person was or was not the holder of a licence, authorisation, or certificate of registration.
- that an appended copy is a true copy of a licence or other document issued under the Act.
- that a particular location or area was within fisheries waters, or within an inland or marine reserve, or was closed, limited or restricted, or in any other way a controlled area of fisheries waters, or an area of fisheries waters subject to conditions.
- that appended charts show the boundaries on specified date of fisheries water, territorial waters, closed limited areas or other zones delineated for specific purposes.
- that a particular item or piece of equipment is fishing gear.
- the cause or manner of death or injury to any fish.
- the appended document is a copy of a treaty or international conservation reserve or other bilateral or multilateral legal instrument.
- a call sign, name or number is that allotted under any systems of naming or numbering of vessels.
- a particular position or catch report, or copy which is appended, was given in respect of a specified vessel.
- that any specified return, log, record or information required to be kept or furnished under an Act was kept or furnished.

- that any specified interest in any specified fishing right was not held by a person named in the certificate
- the identity or species of the fish in question.

(iii) Procedure re Certificates

- Certificate is served upon the Defendant at a specified time before trial.
- Defendant within a specified time serves notice of objection on Prosecutor.
- Where no notice of objection within a specified time, certificate will (unless the court finds that

Defendant was unduly prejudiced by the failure to object) be treated as conclusive proof of the facts stated in the certificate.

E. OTHER DEVELOPMENTS

- The use of administrative penalties (fixed penalties, compounding, etc.) - these either exist in various CARIFORUM countries or are under consideration. Compounding is currently part of the fisheries legislation in all OECS countries and is being considered in pending legislation in other CARIFORUM countries. Compounding also currently exists under the legislative systems in Suriname and the Dominican Republic. Fixed penalties for fisheries offences exist under the Trinidad and Tobago fisheries legislation and fixed penalties are being considered under draft legislation for other CARIFORUM countries.
- Fisheries observer schemes permitted under some Acts e.g. High Seas Fishery Act (Belize). The observer programme places trained observers on fishing vessels operating on the high seas. It seeks to provide fisheries departments, the fishing industry and others with independent, reliable and accurate information on the fish catch, effort and practice of fishing vessels operating on the high seas. Under the observer programme, the Fisheries Administrator could designate in writing persons to act as observers on vessels that have been issued with valid authorisations. The observers would be permitted to board vessels with a valid authorisation in order to exercise the observers' functions. The legislation would place an obligation on the operator, master and crew members to allow the observers to board and perform their functions.

APPENDIX 3 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, trade and market monitoring systems, transshipment monitoring systems, etc.;
- (d) supporting communications and reporting 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, including promoting active engagement;
- (j) bilateral, sub-regional and regional cooperation with other complementary 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 key to the successful implementation of any planning strategy. The absence of MCS operations renders a fisheries management scheme incomplete and ineffective.

The definition of MCS 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, by-catch, 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.

(i) 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 (including not only harvesting but also trade and transshipment operations), 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) at all levels of the process.
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 and active enforcement to ensure compliance by those fishers that persist in ignoring the law.
 - (vi) Monitoring and evaluation of MCS performance.

Coastal Watch Program⁹

The OECS Coastal Watch Programme (CWP) is a conceptual idea of fisheries management in the OECS for the development of an effective, inexpensive surveillance tool which will address the maritime surveillance information needs of the sub-region. It is intended to assist Member States in achieving the rational deployment of their slender multi-task maritime surveillance and enforcement resources. The CWP proposed to utilize fishermen and other mariners, coastal communities, National Fisheries Divisions, law enforcement agencies, and aircraft operators to provide information on all types of suspect illegal activities taking place in the maritime jurisdictional area of the State. It was envisaged that there would be the establishment of a national CWP in each Member State, which will be supported by coordinated regional activities, to be undertaken by competent regional organizations. It was also envisaged that coast guard services would be appointed as national coordinating agencies within their respective States. In this capacity, they will act as the repository for all information on maritime surveillance and enforcement within the maritime jurisdiction of the Member State. They would also be charged with the responsibility of coordinating surveillance / enforcement assistance from other Member States, or from regional organizations whenever the need arises.

⁹ Bibliographic reference:

Robin, D.V. and P.A. Murray, 1994. Profile of fisheries enforcement in the Organisation of Eastern Caribbean States (OECS) sub-region. pp. 57 - 60 *IN Report of the Global Fisheries Enforcement Workshop, October 25-27, 1994*, U.S. Department of State, Washington D.C., U.S.A.

APPENDIX 4

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 decreases 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 a 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 a metre 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 - 45⁰C. 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 more steady 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 (see Surveillance Section).

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 unthumbed 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 mothership. 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°C followed by a quick rise in temperature and gradual return to -18°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 5 Fish and Fishing

A. TYPES OF FISH

(i) Tuna

(a) Skipjack (*Katsuwonus pelamis*)

Skipjack accounts for approximately 35% of the total Caribbean region catch. It is generally caught by purse seiners and pole and line vessels.

Description: Black, purple and green metallic sheen above, silvery white below.
Sides below lateral line with 5 broad dark grey longitudinal stripes.
Fins silver grey.

(b) Yellowfin (*Thunnus albacares*)

Yellowfin is generally caught by trolling, purse seiners and longliners

Description: Blackish-blue above, yellow on sides, silver on belly. Belly with about 20 subvertical broken pale lines. Finlets bright yellow.

(c) Bigeve (*Thunnus obesus*)

Description: Blue black above, silvery below, young with series of elongate pale spots on belly. Finlets dull yellow. In tropics only juveniles at surface.

(d) Albacore (*Thunnus alalunga*)

Albacore is generally caught by longliners and troll boats

Description: Back metallic dark blue, lower side and belly white. Iridescent blue band running laterally. First dorsal fin deep yellow, second dorsal and anal fins light yellow. Anal finlets dark.

(e) Other Tuna

There are several other species of tuna and related species although they are not as commercially important as (a) - (d) e.g. mackerel tuna, frigate mackerel, southern blue fin tuna, dogtooth tuna.

(ii) Billfish

Billfish, such as marlin and sailfish, are frequently caught, usually by longliners, and will be retained and sold commercially. They are also one of the main species of game fish, and are often caught by sport fishing vessels using rod and reel.

(iii) Dolphinfish (*Coryphaena hippurus*)

Description: Bluish or greenish above and golden-yellow below, with small dark spots scattered on sides.

(iv) Wahoo (*Acanthocybium solandri*)

Many other species of fish are caught and sold by commercial fishing vessels. For example Wahoo

Description: Dark blue above, silvery below, with 24 - 30 dark, narrow double or Y -shaped vertical bars on upper parts of sides

(v) Rainbow Runner (*Elegatis bipinnulatus*)

Description: Blue green above, pinkish white below, with two narrow longitudinal blue lines bordering a broad yellow mid-lateral band. Fins mostly yellow.

(vi) Barracuda (*Sphyraena barracuda*)

Description: Blue above, silver below, with 19 - 22 vague cross bands on back Irregular angular black blotches on lower trunk and tail.

(vii) Baitfish

Pole and line vessels will throw baitfish into the water to draw and retain fish around the vessel for catching. Longline vessels will bait their hooks with them.

Baitfish will be either caught in or around the fishing grounds, usually close to land and reefs, or brought by the vessel from its port of origin. They are kept live in tanks on board on pole and line vessels.

(Note: The taking of baitfish might well be illegal for foreign vessels if it is done within territorial seas. In any event custom owners of reefs and nearby villages might object to large commercial vessels taking baitfish).

(viii) Snapper

The term “snapper” refers to any of about 105 species of fishes of the family Lutjanidae (order Perciformes). Snappers are found, often in abundance, throughout the tropics. Active, schooling fishes with elongated bodies, large mouths, sharp canine teeth, and blunt or forked tails, snappers are usually rather large, many attaining a length of 60 – 90 centimetres (2 – 3 feet). They are carnivores and prey on crustaceans and other fishes. The better known species of snapper in the Caribbean include the grey, or mangrove, snapper (*L. griseus*), a grey, reddish, or greenish Atlantic fish; the yellowtail snapper (*Ocyurus chrysurus*), a swift-moving Atlantic species with a broad, yellow stripe from the nose to the wholly yellow tail; the red snapper (*Lutjanus campechanus*), a bright-red fish (one of several red-coloured snappers) famed as food and found in rather deep Atlantic waters. It also includes the queen snapper (*Etelis oculatus*) a deep-water species which is caught in the Windward Islands, including Martinique.

(ix) Sea egg

The West Indian sea egg, is a species of sea urchin. It may be found at depths of less than 10 metres (33 ft.). It is found in seagrass meadows, in rubble areas and on shallow rocky reefs. Young sea urchins conceal themselves in crevices and under rocks during the day but larger individuals stay out in the open. The gonads of the West Indian sea egg are traditionally consumed in the West Indies. Sea eggs are collected by skin diving and it used to be possible to collect a thousand in a few hours. Sea urchin numbers have declined during the late twentieth century. The cause of this population collapse is thought to be overfishing, though pollution and disease may have played a part. The sea urchins have become rare in the most easily fished locations and are still common in more remote places.

(x) Lobster

Panulirus argus (the Caribbean spiny lobster) fishery is one of the most important in the Caribbean. It is the most important food export of the Bahamas, and rivals the shrimp industry in the Florida Keys in commercial value. They are eagerly sought by both commercial lobstermen and sport divers in South Florida, the Caribbean, the Bahamas, and Bermuda. The Caribbean spiny lobster inhabits tropical and subtropical waters of the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico. Adult spiny lobsters make their homes in the protected crevices and caverns of coral reefs, sponge flats, and other hard-bottomed areas. Spiny lobsters get their name from the forward-pointing spines that cover their bodies to help protect them from predators. They vary in colour from almost white to dark red-orange. Two large, cream-colored spots on the top of the second segment of the tail make spiny lobsters easy to identify. They have long antennae over their eyes that they wave to scare off predators and smaller antennae-like structures called antennules that sense movement and detect chemicals in the water.

(xi) Conch

The queen conch (*Strombus gigas*) is a large, marine, gastropod mollusc. The queen conch lives in sand, seagrass bed, and coral reef habitats. It is found in warm, shallow water and is generally not found deeper than 70 feet (21 m). The queen conch is found throughout the Caribbean Sea and Gulf of Mexico, and ranges as far north as Bermuda and as far south as Brazil. Queen conchs are prized for both their edible meat and attractive shell. Queen conch abundance is declining throughout the species' range as a result of overfishing and poaching.

(xii) Jacks

Jacks refer to any of numerous species of fishes belonging to the family Carangidae (order Perciformes). The name jack is also applied collectively to the family. Representatives can be found in temperate and tropical portions of the Atlantic, Pacific, and Indian oceans and occasionally in fresh or brackish water. Jacks are important commercially, are favoured sports fishes, and are caught in beach seine fisheries of the insular eastern Caribbean. Interestingly, in this region the name Jacks also refers to certain species of scads in the genera *Decapterus* and *Selar*. Scad generally reach lengths of about 25 – 30 cm (10 – 12 inches). They have deeply forked tails, and some are mackerel-shaped with narrow, streamlined bodies. Scad eat other fishes and invertebrates. They are bluish or blue-gray on the top half of the body and silvery below.

(xiii) Shells and Corals

It is becoming an increasingly common practice for crew of some fishing vessels while in port and other people to take specimen shells or Black Coral. The legality of this will depend upon the definition of fish in the fisheries act or any specific legislation or regulations. Note that even if shellfish are included in the

definition of fish it might not be illegal under the main act to take them. This could occur if the fish are taken by a swimmer from the beach or reef or an ordinary small boat (not being a boat from a fishing vessel). Most acts only penalise a master, owner or charterer, and in any event when a “fishing vessel is used” to catch or take the fish.

Some countries have prohibited the taking of shells either completely or if there is a live animal inside. This is usually done by regulation under the main act.

(xiv) Other Fish

King mackerel like all mackerel have keels on either side of the tail base. The king mackerel or kingfish (*Scomberomorus cavalla*) is a migratory fish of the western Atlantic Ocean (Massachusetts, USA to Brazil) and is an important fish for both commercial and recreational fisheries. King mackerel prefers outer reefs and coastal waters at depths between 23 – 34 m. It is a silver fish with indistinct bars or spots on its side, with white on the belly. The dorsal surface is black with iridescent tones of blue and green (may appear olive). Young fish have small bronze spots in 5 or 6 irregular rows. Its entire body is covered with very small, almost invisible, loosely attached scales. The lateral line starts high on the shoulder then dips abruptly mid-body then continues as a wavy horizontal line to the tail. Unlike other members of the genus, the king mackerel lacks a black area on the anterior portion of the first dorsal fin. This mackerel is the largest in its genus and will grow to 50 - 90 cm in length.

B. FISHING METHODS

On a global scale, the three main commercial methods of fishing for migratory pelagic fish species are - pole and line, longline and purse seine. Many trolling fisheries for migratory pelagics also exist in the CARIFORUM region.

(i) Pole and Line

This method, put in its simplest terms, involves the standing of the crew on the boats rails with a pole and a line hooking the fish individually. It is aimed at the surface-swimming skipjack and yellow fin tuna and is arduous and labour-intensive.

Japan has the largest number of pole and line vessels registered in the region. This method was at its peak in the early 1970s, when there was great demand for skipjack tuna. Cost-saving innovations are now being made on new vessels in an attempt to compete with the more efficient purse seiner. Tuna caught by the pole and line method are, however, generally of better quality than those caught by the purse seine method, an essential factor if the fish are to go to the sashimi market.

(a) The method of fishing:

- (i) catch or bring baitfish - see below “Bait fishing”
- (ii) locate the fish - see above “Location of fish”. The best pole and line fishing generally occurs far from land, although the distance to bait grounds may limit the area of activity of the vessel.
- (iii) approach the fish - this requires considerable skill or they will swim away or disperse. Small quantities of live bait might be thrown to bring and to keep fish nearby (this is called chumming).
- (iv) stop boat and turn on sprays - these fine sprays situated along the side of the boat are a necessary part of the operation, and give good evidence that fishing is taking place. Opinions differ as to whether the spray conceals the boat and fishing activity from the fish or simulates the activity of live bait.
- (v) throw more live bait - this will be done as necessary to keep the fish close by.

- Baitfish will always be used sparingly.
- (vi) start poling- every crew member not otherwise engaged will pole fast and furiously. Barbless hooks are used to enable almost instant unhooking, the poles are made of fiberglass or bamboo.
 - (vii) process and preserve the caught fish - depending upon the kind of vessel the fish will go by conveyers, chutes to be frozen or placed in brine.
 - (viii) find another school - when the school “sounds” or moves off.

Pole and lining is thought to be the most exciting method of fishing.

(b) Baitfishing

Pole and line vessels need baitfish. They are kept live in circulating tanks.

There are a number of methods of catching live bait: e.g., dip-netting, beach seining. Boats operate inshore when catching live bait.

Dip-netting starts at dusk when the light boat, usually left on station by the pole and line vessel, puts on its lights. Fish are attracted to the light. The pole and line vessel will return to the bait ground after dark and often as late as 2 or 3 am. It might also put lights on. The lights are then put off on one side of the main boat and the dip-net is set there. The baitfish will then all congregate around the light boat. It then moves into the area above the net. The main boat switches on her lights above the net. The light boat puts its lights off and moves out of the net. The net’s edges are raised and the trapped fish transferred to tanks.

Note: Most fishing regulations and licences forbid the taking of fish within territorial seas. The origin of livebait aboard a vessel should be checked carefully. All baitfish taken locally will have originated from coastal reef-associated lagoons.

(ii) Longline

This method of fishing involves the suspending of a long line (which could be 60 to 100 kilometers long or more) by floats at set depths, usually from 80 - 300 meters. Baited hooks on short branch lines are attached at set intervals to the longline. This method is aimed at the single, larger, deeper-swimming tuna rather than the surface schooling type. Bottom long lines are used to fish for deep water snappers. Palangue, which is used in the Windward Islands including the French Departments, is also a form of bottom-set longlining.

(a) The method of fishing:

- (i) bring bait
- (ii) locate the fish - see above “Location of fish”. This is perhaps more difficult than for surface - swimming fish. Many boats use instruments to obtain sea temperature gradients to decide where and how deep to set the hooks.
- (iii) set the line - first a large marker with a light, radar reflector and radio beacon will be attached to the end of the line and put over the side. The line is not simply run out but is set by a line thrower at approximately twice the speed of the vessel. The speed of set, length of the float line and number of branch lines between floats will determine the depth of the line. As the line is cast crewmen bait the hooks and attach branch lines at determined intervals. Floats are added to the main line at various intervals. The end and middle of the line are marked similarly to the beginning. It is completely detached from the vessel. The vessel will steam into the prevailing

current when setting.

- (iv) the operation of setting the line will take about 4-5 hours.
- (v) “soak” the line - the line is left about 4 - 5 hours.
- (vi) haul the line- the end of the line is retrieved, the markers removed and the line end led round the line-hauler into a storage bin. As the line comes in branch lines are disconnected from the main line and stored. Fish are pulled in separately through the bulwarks, processed and stored in freezers or crushed ice or for short periods in chilled brine. Fish other than tuna will be caught, such as billfish or sharks. These may or may not be retained. Hauling the line can take in excess of 10 hours.

(Note: drying shark fins are an indication of recent fishing, as could be the amount and condition of bait on board and the presence of used bait).

(iii) Purse seine

Purse seine fishing is the placing of a “purse” net around and beneath a school of tuna. The trapped fish are then brailed (scooped up), placed in wells and frozen.

Purse seiners make great use of hydraulic equipment - in particular in the power block. They are capital intensive vessels. Purse seiners generally seek the surface-swimming skipjack tuna for the canning industry. The crushing pressures when they are being brailed in large quantities render their flesh unsuitable for the sashimi market. Protected species, such as dolphins, are often crushed to death before they can be released.

(a) The method of fishing

- (i) Locate the fish - see above “location of fish”. If a log or other floating object around which fish are gathered is sighted then a radio buoy will be attached to it. On US vessels these buoys are called “beepers”. The purse seiner will use the radio buoy to return to it later and set around it, usually just before dawn. The engine temperature of the helicopter will indicate recent flight and possibly fishing.
- (ii) Decide whether to make a set - the time and expense of making a set can be considerable. Scanning sonar is used to examine logs and floating objects to ascertain if there are sufficient fish to warrant a set. A master will usually only set around a log or floating object once a day, just before dawn. Fish that are not around a log or floating object will only be set upon if they are boiling or foaming schools, and even then only after careful consideration.
- (iii) Make a set - the skiff (large boat on the stern) is let go. It slides off the purse seiner attached to one end of the net. The purse seiner and skiff then sail in opposite directions in a circle around the fish - as quickly as possible, but with the least disturbance possible. The fishing master may be aloft in the helicopter directing operations and watching the movement of the fish.

Until the circle is entirely complete, about 10-15 minutes, fish can escape through the gap between the two ends of the net. The crew will try to deter this by thrashing the water, hammering hull plates, dropping small explosive charges and herding the fish in speedboats.

Until the net is pursed fish can escape downwards. The warmer and clearer the water is and the

deeper the thermocline the more likely it is that fish will escape downwards.

Pursing is achieved by retrieving both ends of the net (ortsas) and then winching in both ends of the purse line until the purse is complete and downward escape is impossible. The rings on the bottom of the net through which the purse line is run are slotted onto the ring stripper as the bottom of the net bunches. The ring stripper is a rigid diagonally upwards pointing bar at the ship's side. This process usually takes about 30 minutes. The purse seiner will be kept in position by use of bow and stern thrusters (if fitted) and the skiff pulling on a line attached to the quarter.

Recovering the net will now commence. Meanwhile the skiff will hold the side of the net away from the purse seiner to facilitate brailing. The fish are transferred to a hopper, sorted and sent down a chute to the deck below. All fish except medium and large skipjack, yellowfin and bigeye are discarded, (Japanese boats will retain billfish).

- (iv) Recover the net - recovery will be mostly complete before brailing commences as it concentrates the fish into a small volume beside the purse seiner. Nets are 1 - 1 1/2 kilometres long and 2 - 300 meters deep.

The end of the net is led through the power block at the top of the boom and wound in. The crew will carefully stack the net as it comes down onto the deck to ensure it runs out properly on the next set. The rings on the ring stripper will be slipped off one by one as the net runs through the power block and the purse line runs back off the winch with it.

Recovery of the net usually takes about an hour. Sometimes many fish will get stuck in the net, usually by the gills. This is called a Christmas tree.

- (v) Ready for the next set - when the net has been fully stacked the skiff will be brought back aboard. Everything will then be done to make the purse seiner ready for the next set.

Less than one in four sets not on a log or floating object will result in the capture of tuna.

The search for fish commences again.

(iv) **Gill-netting**

Gillnetting is the suspending of monofilament nets in the water. Fish find them very difficult to see, swim into the mesh and are then caught behind the opercula (gill coverings) when they try to pull back out. Nets, which might be up to 50 kilometres long, are left in the water for periods of 4 to 10 hours.

(v) **Trolling**

This is the trailing of baited or unbaited lures on lines behind a vessel. Tunas are easily caught.

(vi) **Pot Fishing**

Pot fishing is the use of an enclosed wire or net trap to catch fish. The pot is often locally made of tree branches and chicken wire. It is placed on the bottom and usually marked with a buoy. Pot fishing may be regulated by requiring sizing gates to allow smaller fish to escape, or to keep larger fish out. There may also be a requirement to have a bio-degradable panel in the trap which will disintegrate in time and allow fish to escape in the event that the pot is lost.

(vii) Diving

The entry of the diver or swimmer into the water, with or without gear to catch fish. Diving may be “Free”, without equipment, where the diver hold his or her breath and dives down, “surface supplied”, where the diver is supplied with air from a boat mounted compressor, or “self-contained”, where the diver wears air or SCUBA tanks. The diver may use a hand spear, spear gun or hook to catch the fish.

(viii) Seine Netting

The use of a fine net which is weighted at the bottom and buoyed at the top, laid as a curtain around schools of fish. Beach seining is done by anchoring one end of the net to a beach, and then setting the net from a boat. The net is then recovered onto the beach.

(ix) Dynamiting

The use of dynamite and other explosives to render fish more easily caught is a widespread practice in many localities. This method of fishing is illegal in many CARIFORUM countries, but is noted here as there has been growing concern regarding its use. Apart from being a wasteful method, much damage and destruction is caused to coral reefs and other substrates. Defendants in prosecutions are nearly always citizens of the country concerned.

(a) How Bombs are Made

The explosives generally come from old wartime bombs, grenades, etc. or are stolen from legitimate users (e.g. mining or construction companies). Occasionally the explosive is made up from commercially available substances.

The explosive is then packed in a suitable container - usually a fizzy drink bottle or slightly larger jar. Stolen or homemade fuses and detonators are added.

Hand grenades and other small bombs left over from the last war are still sometimes used.

(b) Method of Fishing

Two or more people will go out together. When a school of fish is located the dynamiter will light the fuse and throw the bomb amongst the fish. Immediately after the explosion the men involved will go into the water and retrieve the stunned and dead fish as quickly as possible. Dead fish will generally sink.

Larger bombs, fitted with longer fuses and sometimes sinkers, are occasionally used to ensure an explosion at or near the bottom.

This is a hazardous occupation and it is not unusual for dynamiters to lose an arm or a leg or their lives.

(c) Effects of Underwater Explosions

The effect of an underwater explosion is to create a wave of increased pressure. This radiates out in all directions from the site of the explosion. Pressure waves will be reflected by the sea bottom to a greater or lesser degree depending on the nature of the bottom. The surface of the water may also reflect some of the pressure wave. The magnitude of the pressure wave is broadly related to

the size of the explosion. It decreases in intensity quite quickly as it spreads outward (diminishing as an inverse function of the cube of the distance travelled).

Following the pressure wave is a negative pressure wave which contributes to the damage. The effects of a pressure wave upon fish and other aquatic life varies. Fish with airbladders will suffer far more than those without. Shrimps, lobsters and crabs are generally more resistant than fish with air bladders.

The damage caused to coral by a pressure wave increases with its closer proximity to the site of the explosion. A roughly circular crater is produced and shattered and broken coral spread about. Coral over a wider area will gradually die also with the death of coral polyps. The more often a reef is subjected to explosions, and the greater the intensity of the explosions then the greater damage there will be to the reef.

Gradual recovery of a reef will occur, but it takes many years and it doubtful whether full recovery ever takes place. There will be fewer species of fish in and around dynamited reefs.

(d) Dynamited Fish

Fish that have been caught by the use of explosions might display the following:-

- (i) ruptured rib cage;
- (ii) ruptured swim bladder;
- (iii) haemorrhaging against top of body cavity against vertebrae;
- (iv) abnormally soft flesh;
- (v) abnormally pliant vertebral column and/or/because of vertebrae separated individually);
and
- (vi) loss of and damage to body parts.

(Note: (i) and (ii) will show up on X-ray films as will (v)).

(x) **Fish Aggregating Devices (FADs)**

FADs are not in themselves a method of fishing - but by their propensity to aggregate fish they provide excellent fishing opportunities. It is not known why fish will aggregate around objects floating in the water, although there are a number of theories.

FADs basically consist of a mooring weight, a counter weight and a large float. They are joined by a strong light rope and a chain. The aggregating device itself is attached to the float. The "raft" part is made of bamboo, large plastic drums filled with polystyrene or welded steel containers. Lights and radar reflectors might be attached for easy location.

FADs can be positioned in water up to 4,000 meters deep. Fishing around FADs is carried out in a number of ways, primarily trolling and vertical longlining. Most fishing regulations and many licences forbid fishing within a set distance (1/2 - 2 miles) of a FAD unless the vessel concerned placed it or it was placed by a government for local vessels. Permission is usually required before a foreign fishing vessel can place a FAD in the water.

(Note:- A majority of sets made by trolling vessels and purse seiners are around logs and other floating debris in effect naturally occurring, un-anchored FADs).

(xi) **Other methods**

(a) **Trawling** - the pulling of a "sock-like" net (wide at one end and closed at the other) through the

water.

- (b) **Dredging** - the dragging of a trawl-like net along the bottom to collect mollusks and bottom fish.
- (c) **Dip netting** - See Baitfishing in section (a) Pole and Line.
- (d) **Trammel Netting** - the use of a double meshed net to entangle fish swimming into it. The trammel net is essentially two nets, one of relatively open mesh, and a second liner net of fine mesh. Fish attempting to swim through the large mesh are bagged within the finer mesh.
- (e) **Rod and Reel** - the use of a fishing rod and reel and baited or lured hook. This is most commonly done by sports fishermen pursuing game fish such as marlin, shark or other fast swimming fish.
- (f) **Drop Line** - the use of a baited hook on a single line, dropped over the side, and usually recovered with a large reel mounted on the side of the boat.
- (g) **Harpoon** - the use of a hand thrown, or possibly gun fired spear with a barbed point. The sharp point is usually detachable and attached to a line which allows the fish to be pulled in. Harpooning was commonly used for whales, swordfish and other large species which usually swim on the surface.

(xii) Support Vessels

Motherships - provide fishing vessels at sea with fuel, food, water, supplies, crew services, etc. They will transport and land fish. Some motherships carry small fishing vessels to the fishing grounds where they are put over the side to fish.

Factory / Processing Ships - Fresh fish are transshipped to these vessels for processing, preserving and transporting. Frozen fish might also be transferred to them.

(Note: Prosecutors should know if the definition of fishing or related activities in their Act includes “transshipping” or the operations of a factory ship).

Carrier Ships - These ships are used to transport fish which have already been frozen (and possibly processed).

Fisheries Patrol Boat - OECS States have numerous small patrol boats. These may be operated by the marine police or coast guard.

C. PRESERVATION AND SPOILAGE

1. Preservation of Fish

Fish are generally preserved aboard tuna fishing vessels in three ways - with ice, in chilled brine and by freezing. The purpose in lowering the temperature of fish is to retard by varying degrees the rate of spoilage by bacterial and enzyme action. In very broad terms, the lower the temperature, the slower the rate of spoilage. The faster the chilling and freezing, the better the quality of the preserved fish.

(a) Ice

This is a short-term preservation method. Properly iced fish will soon cool to 0 or -1⁰C and will remain

edible, if kept at that temperature, for up to nine days. Japanese longliners will ice their catch when they are within nine days of a sashimi market.

It is important to ensure that ice is in contact with the whole surface area of each fish. Meltwater will enhance contact, but might cause contamination if not properly drained. Inevitably icing will only be used on boats operating close to or heading towards their ports of discharge.

(b) Chilled brine

Seawater in tanks is cooled to about -1°C , just above its freezing point. Immersed fish cool rapidly. This method more effectively retains the quality of the fish and facilitates greater ease of handling. The main disadvantage of this method is the salt uptake of the fish. There is also some loss of colour after a period of time. Fish should not be left in chilled brine for more than 5 days.

Longline and particularly purse seine vessels utilise this method of preservation. They will periodically remove the brine and freeze the fish.

(c) Freezing

Freshly caught fish or those held in chilled brine are frozen to 18 to -30°C . At these temperatures fish can remain in good condition for up to 12 months. The crucial factor is speed of freezing - in particular they must go from 0 to -5°C in under two hours after being caught, otherwise flesh damage could occur. Blast-freezers (i.e. freezers with powerful fans) facilitate fast freezing.

All distant-water fishing vessels have freezing tanks or compartments.

2. Evidence

Evidence of recent fishing can often be found by an Authorized Officer in or around freezers.

(a) Unfrozen or partly frozen fish in freezers

An expert might be able to say that this amount of fish in that freezer would take 10 - 12 hours to become "rock-hard" frozen. Then this is strong evidence of fishing within, say, the last 18 hours if the fish is not hard frozen.

(b) Freezer Logs

When fish are first placed in a freezer the temperature of the freezer goes up and then gradually down again. Most boats keep freezer logs. If properly maintained these will record such fluctuations and be possible indications of the approximate times and dates of fishing.

Authorized Officers must be constantly reminded of the dangers of entering a freezer while conducting a boarding operation. They should not do so unless a fellow officer is in sight and guarding the door. If shut in a blast freezer an officer should immediately stop the fan by breaking it with a frozen fish or other object.

3. Changes on Death

The log of a fishing vessel shows that it has been in a country's EEZ for two days. The master denies fishing. He accounts, during interview, for a period of hours when the vessel was apparently stationary by

alleging an engine failure. The boarding party found fresh fish. If the prosecution can lead evidence to show the fish had been less than 24 hours out of water, at the very most 36 hours, then the master will have some very difficult questions to answer if he goes into the witness box.

When a fish dies various changes occur - bacteriological, chemical and physical:-

Bacteriological - bacteria are found naturally in a live fish in the gills, gut and over the skin, whilst the flesh itself contains no bacteria. Upon death these bacteria multiply rapidly and soon produce a slime on the skin and in the gills and make the fish smell 'off'. The bacteria draw on the flesh of the dead fish for nutrients.

Chemical - digestive enzymes in a fish's gut will, after death, start attacking the gut wall and the lining of the abdominal cavity (this is called autolysis), and ultimately they will cause the flesh to start breaking down.

Physical - upon death the fish's muscles contract and the body stiffens (this is called *rigor mortis*). As rotting and breakdown of the fish occurs it will gradually become less rigid.

As soon as a fish has died the above processes will start. The rate at which bacteria grow and thus spoilage occurs depends upon the temperature. At -18°C and below bacterial growth ceases and the fish can be kept for several months. Temperatures between 4°C and -18°C will progressively retard growth as the temperature lowers. Above 4°C bacteria will multiply rapidly. Freezing a fish does not kill bacteria, it merely slows down or stops their rate of growth. So if a fish held at -20°C is allowed to reach 10°C the bacteria will multiply. Refreezing the fish will only arrest the increase in numbers, and not kill those bacteria produced while the fish was unfrozen.

Fish that have been damaged or mishandled will rot more quickly than other fish; bacteria can invade the flesh more readily.

Example 1

A fish lying on the deck of a boat, un-shaded in the sun in tropical temperatures of 27° to 30°C will show the following changes:-

- | | |
|-------------------|--|
| 20 - 30 minutes : | starts to become rigid, rigor mortis commences. |
| 2 - 3 hours: | skin dry; gills change from rose to light pink; flesh begins to lose elasticity (i.e. if prodded it doesn't rebound into shape). |
| About 4 hours: | eye surface loses tension; becomes soft. |
| 5 - 12 hours: | body cavities start to smell (food decomposing); eye surface goes concave; flesh loses all elasticity; off smell becomes noticeable; gills go pinky-grey with mucus building up. |
| 12 - 30 hours: | rotting starts, usually from tail and in gills and body cavity; increasing loss of rigor occurs. |

Note: All these timings are approximate and changes will occur at different rates according to

conditions.

Example 2

A fresh 3 - 4 kilogram tuna was allowed to rot under cover in a net store in the tropics. The weather was overcast and rainy during the experiment. The following changes were observed:

Up to 24 hours:	flesh firm and elastic; skin intact; no sign of dehydration at the eyes or scales; eyes not clouded or sunken; gills red and mobile; fins normally coloured; fresh fishy smell.
32 - 34 hours:	dehydration of scales apparent; eyes started to cloud and sink; gills become deep muddy red colour, and quantities of slime on gills; colour of fins gone.
about 54 hours:	several breaks to skin, flesh very inelastic, indentation of prod remained; eyes exceedingly decayed and cloudy; large quantities of bacterial slime issuing from gills; gills no longer red; fins completely bleached, split and dehydrated; smell was ammoniacal, sulphurous, typical of rotten fish.

Note that all these timings are approximate and changes will occur at different rates according to conditions.

It is easy to understand why the observations of an Authorized Officer on boarding a vessel are so important. The detailed examination of just one or two fish found on the deck might, in some cases, provide the vital evidence for the prosecution.

D. FISHING GROUNDS FOR MIGRATORY RESOURCES

Tuna are described as a “highly migratory species”. This means they swim over great distances of ocean during their lives. However, there is currently some scientific debate over whether the migratory patterns of skipjack tuna meet this criterion.

Articles 61, 62 and particularly 64 of the Law of the Sea Convention are concerned with the conservation and optimum utilization of such species.

Despite their migratory nature the distribution of various species of tuna is fairly well known. The best indicator of distribution is the position and catch reports of fishing vessels.

Fishing vessels will, of course, sail to where the greatest concentrations of fish are to be found, although new grounds are always being sought and tested. The location of fishing grounds will vary according to seawater temperatures, currents and other factors, known and unknown.

APPENDIX 6

The Judges' Rules

Home Office circular No. 31/1964

Sir

I am directed by the Secretary of State to inform you that new Rules have been made by Her Majesty's Judges of the Queen's Bench Division with regard to interrogation and the taking of statements by the police. These Rules supersede the rules previously made by- the Judges. They are reproduced in **Annex A** to this circular.

2. The new Rules differ in certain important respects from the old. It will be observed, in particular, that two forms of caution are prescribed according to the stage which an investigation has reached. One is to be given when an officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence. After this caution questioning may continue, but a record must be kept of the time and place at which such questioning began and ended and of the persons present. The second form of caution is to be given as soon as a person is charged with or informed that he may be prosecuted for an offence. Thereafter questions relating to the offence can be put only in exceptional cases, where they are necessary for the purpose of preventing or minimising harm or loss to any person or to the public or for clearing up an ambiguity in a previous answer or statement.

3. As is made clear by the Judges, the Rules are concerned with the admissibility in evidence against a person of answers, oral or written, given by that person to questions asked by police officers and of statements made by that person. In giving evidence as to the circumstances in which any statement was made or taken down in writing, officers must be absolutely frank in describing to the court exactly what occurred, and it will then be for the Judge to decide whether or not the statement tendered should be admitted in evidence.

4. The Rules, which have been made by the Judges as a guide to police officers conducting investigations, should constantly be borne in mind, as should the general principles which the Judges have set out before the Rules. But in addition to complying to the Rules, interrogating officers should always try to be fair to the person who is being questioned, and scrupulously avoid any method which could be regarded as in any way unfair or oppressive.

5. In Appendix B there is a statement of guidance for interrogating officers about various procedural points which may arise in course of interrogation and the taking of statements. This guidance has been drawn up with approval of the Judges.

ANNEX A: Administrative Directions to the Police

The Rules do not affect the principles:

- (a) That citizens have a duty to help a police officer discover and apprehend offenders;
- (b) That police officers, otherwise than by arrest, cannot compel any person against his will to come to or remain in any police station;
- (c) That every person at any stage of an investigation should be able to communicate and to consult privately with a solicitor. This is so even if he is in custody provided that in such a case no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so;
- (d) That when a police officer who is making enquiries of any person about an offence has enough evidence to prefer a charge against that person for the offence, he should without delay cause that person to be charged or informed that he may be prosecuted for the offence;
- (e) That it is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression.

The principle set out in paragraph (e) above is overriding and applicable in all cases. Within that principle the following Rules are put forward as a guide to police officers conducting investigations. Non-conformity with these Rules may render answers and statements liable to be excluded from evidence in subsequent criminal proceedings.

² The origin of the Judges' Rules is probably to be found in a letter dated 26 October 1906, which the then Lord Chief Justice, Lord Alverston wrote to the Chief Constable of Birmingham in answer to a request for of the fact that on the same circuit one Judge had censured a member of his force for having cautioned a prisoner, while another Judge had censured a constable for having omitted to do so. The first four of the present Rules were formulated and approved by the Judge of the King's Bench Division in 1912; the remaining five in 1918. They have been much criticised, inter alia for alleged lack of clarity and efficacy for the protection of persons who are questioned by police officers on the other hand it has been maintained that their application unduly hampers the detection and punishment of crime. A Committee of Judges has devoted considerable time and attention to producing, after consideration of representative views, a new set of Rules which has been approved by a meeting of all the Queen's Bench Judges.

The Judges control the conduct of trials and the admission of evidence against persons on trial before them: they do not control or in any way initiate or supervise police activities or conduct. As stated in paragraph (e) of the introduction to the new Rules, it is the law that answers and statements made are only admissible in evidence if they have been voluntary in the sense that they have not been obtained by fear or prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression. The new Rules do not purport, any more than the old Rules, to envisage or deal with the many varieties of conduct which might render answers and statements involuntary and therefore inadmissible. The rules merely deal with particular aspects of the matter. Other matters such as affording reasonably comfortable conditions, adequate breaks for rest and refreshment, special procedures in the case of persons unfamiliar with the English language or of immature age or feeble understanding, are proper subjects for administrative directions to the police.

Rules

- I. When a police officer is trying to discover whether, or by whom, an offence has been committed he is entitled to question any person, whether suspected or not, from whom he thinks that useful information may be obtained. This is so whether or not the person in question has been taken into custody so long as he has not been charged with the offence or informed that he may be prosecuted for it.
- II. As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions, or further questions relating to that offence.

The caution shall be in the following terms:

“You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence”.

When after being cautioned 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 or statement began and ended and of the persons present.

- III. (a) Where a person is charged with or informed that he may be prosecuted for an offence he shall be cautioned in the following terms:

“Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence”.
- (b) It is only in exceptional cases that questions relating to the offence should be put to the accused person after he has been charged or informed that he may be prosecuted. Such questions may be put where they are necessary for the purpose of preventing or minimising harm or loss to some other person or to the public or for clearing up an ambiguity in a previous answer or statement.

Before any such questions are put the accused should be cautioned in these terms:

“I wish to put some questions to you about the offence with which you have been charged (or about the offence for which you may be prosecuted). You are not obliged to answer any of these questions, but if you do the questions and answers will be taken down in writing and may be given in evidence”.

Any questions put and answers given relating to the offence must be contemporaneously recorded in full and the record signed by that person or if he refuses by the interrogating officer.

- (c) When such a person is being questioned, or elects to make a statement record shall be kept of the time and place at which any questioning or statement began and ended and of the persons present.
- IV. All written statements made after caution shall be taken in the following manner:
 - (a) If a person says that he wants to make a statement he shall be told that it is intended to make a written record of what he says.
He shall always -be asked whether he wishes to write down himself what he wants to say; if he

says that he cannot write or that he would like someone to write it for him a police officer may offer to write the statement for him. If he accepts the offer the police officer shall, before starting, ask the person making the statement to sign, or make his mark to, the following:

“I....., wish to make a statement. I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence”.

(b) Any person writing his own statement shall be allowed to do so without any prompting as distinct from indicating to him what matters are material.

(c) The person making the statement, if he is going to write it himself, shall be asked to write out and sign before writing what he wants to say, the following:

“I make this statement of my own free will. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence”.

(d) Whenever a police officer writes the statement, he shall take down the exact words spoken by the person making the statement, without putting any questions other than such as may be needed to make the statement coherent, intelligible and relevant to the material matters: he shall not prompt him.

(e) When the writing of a statement by a police officer is finished the person making it shall be asked to read it and to make any corrections, alterations or additions he wishes; When he has finished reading it shall be asked to write and sign or make his mark on the following Certificate at the end of the statement:

“I have read the above statement and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it of my own free will”.

(e) If the person who has made a statement refuses to read it or to write the above mentioned Certificate at the end of it or to sign it, the senior police officer present shall record on the statement itself and in the present of the person making it, what has happened. If the person making the statement cannot read, or refuses to read it, the officer who has taken it down shall read it over to him, and ask him whether he would like to correct, alter or add anything and to put his signature or make his mark at the end. The police officer shall then certify on the statement itself what he has done.

(V) If at any time after a person has been charged with, or has been informed that he may be prosecuted for an offence a police officer wishes to bring to the notice of the person any written statement made by another person .who in respect of the same offence has also been charged or informed that he may be prosecuted, he shall hand to that person a true copy of such written statement but nothing shall be said or done to invite any reply or comment. If that person says that he would like to make a statement in reply, or starts to say something, he shall at once be cautioned or further cautioned as prescribed by Rule III(a).

(VI) Persons other than police officers charged with the duty of investigating offences or charging offenders shall, so far as may be practicable, comply with these rules.

APPENDIX B: Administrative Directions on Interrogation and the Taking of Statements

1. Procedure generally

- (a) When possible statements of persons under caution should be written on the forms provided for the purpose. Police officers' notebooks should be used for taking statements *only* when no forms are available.
- (b) When a person is being questioned or elects to make a statement, a record should be kept of the time or times at which during the questioning or making of a statement there were intervals or refreshment was taken. The nature of the refreshment should be noted. In no circumstances should alcoholic drink be given.
- (c) In writing down a statement, the words used should not be translated into "official" vocabulary; this may give a misleading impression of the genuineness of the statement.
- (d) Care should be taken to avoid any suggestion that the person's answers can only be used in evidence against him, as this may prevent an innocent person making a statement which might help to clear him of the charge.

2. Record of interrogation

Rule II and Rule III (c) demand that a record should be kept of the following matters:

- (a) when, after being cautioned in accordance with Rule II, the person is being questioned or elects to make a statement - of the time and place at which any such questioning began and ended and of the persons present;
- (b) when, after being cautioned in accordance with Rule III (a) or (b) a person is being questioned or elects to make a statement - of the time and place at which any questioning and statement began and ended and of the persons present.

In addition to the records required by these Rules full records of the following matters should additionally be kept:

- (a) of the time or times at which cautions were taken, and
- (b) of the time when a charge was made and / or the person was arrested, and
- (c) of the matters referred to in paragraph 1 (b) above

If two or more police officers are present when the questions are being put or the statement made, the records made should be countersigned by the other officers present.

3. Comfort and refreshment

Reasonable arrangements should be made for the comfort and refreshment of persons being questioned. Whenever practicable both the person being questioned or making a statement and the officers asking the questions or taking the statement should be seated.

4. Interrogation of children and young persons

As far as practicable children (whether suspected of crime or not) should only be interviewed in the presence of a parent or guardian, or, in their absence, some person who is not a police officer and is of the same sex as the child. A child or young person should not be arrested, nor even interviewed, at school if such action can possibly be avoided. Where it is found essential to conduct the interview at school, this should be done only with the consent, and in the presence, of the head teacher, or his nominee.

5. Interrogation of foreigners

In the case of a foreigner making a statement in his native language:

- (a) The interpreter should take down the statement in the language in which it is made.
- (b) An official English translation should be made in due course and be proved as an exhibit with original statement.
- (c) The foreigner should sign the statement at (a).

Apart from the question of apparent unfairness, to obtain the signature of a suspect to an English translation of what he said in a foreign language can have little or no value as evidence if the suspect disputes the accuracy of this record of his statement.

6. Supply to accused persons of written statement of charges

- (a) The following procedure should be adopted whenever a charge is preferred against a person arrested without warrant for any offence:

As soon as a charge has been accepted by the appropriate police officer the accused person should be given a written notice containing a copy of the entry in the charge sheet or book giving particulars of the offence with which he is charged. So far as possible the particulars of the charge should be stated in simple language so that the accused person may understand it, but they should also show clearly the precise offence in law with which he is charged. Where the offence charged is a statutory one, it should be sufficient for the latter purpose to quote the section of the statute which created the offence.

The written notice should include some statement on the lines of the caution given orally to the accused person in accordance with the Judges' Rules after a charge has been preferred. It is suggested that the form of notice should begin with the following words:

“You are charged with the offence(s) shown below. You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence”.

- (b) Once the accused person has appeared before the court it is not necessary to serve him with a written notice of any further charges which may be preferred, If, however, the police decide, before he has appeared before a court, to modify the charge or to prefer further charges, it is desirable that the person concerned should be formally charged with the further offence and given a written copy of the charge as soon as it is possible to do so having regard to the particular circumstances of the case. If the accused person has then been released on bail, it may not always be practicable or reasonable to prefer the new charge at once, and in cases where he is due to surrender to his bail within forty-eight hours or in other cases of difficulty it will be sufficient for him to be formally charged with further offence and served with a written notice of the charge after he has surrendered to his bail and before he appears before the court.

7. Facilities for defence

- (a) A person in custody should be allowed to speak on the telephone to his solicitor or to his friends provided that no hindrance is reasonably likely to be caused to the processes of investigation, or the administration of justice by his doing so. He should be supplied on request with writing materials and his letters should be sent by post or otherwise with the least possible delay. Additionally, telegrams should be sent at once, at his own expense.

Persons in custody should not only be informed orally of the rights and facilities available to them, but in

addition notices describing them should be displayed at convenient and conspicuous places at police stations and the attention of persons in custody should be drawn to these notices.

APPENDIX 7

List of Relevant Legislation and Other Instruments in CARIFORUM Countries

A. RELEVANT LEGISLATION AND OTHER INSTRUMENTS

(i) Antigua and Barbuda

(a) Fisheries Laws

- Fisheries Act - http://www.sice.oas.org/investment/NatLeg/ANB/Fisheries_e.pdf
- Draft Fisheries Act [2004] - http://www.fisheries.gov.ag/information/laws_regulations/pdf/Draft_Fisheries_Act.pdf
- Fisheries Regulations 1990 - http://www.fisheries.gov.ag/information/laws_regulations/pdf/Fisheries_Regulations_1990.pdf
- Draft Fisheries Regulations [2004] - http://www.fisheries.gov.ag/information/laws_regulations/pdf/Draft_Fisheries_Regulations.pdf
- Draft Fisheries (Seafood) Regulations [2004] - http://www.fisheries.gov.ag/information/laws_regulations/pdf/Draft_Seafood_Regulations.pdf
- Draft Seafood(Live Lobster) Standards - http://www.fisheries.gov.ag/information/laws_regulations/pdf/Draft_Lobster_Standards.pdf
- The Barbuda Local Government Act (deals with fisheries) - <http://www.laws.gov.ag/acts/chapters/cap-44.pdf>
- The [Draft] High Seas Fishing Act, [2004] - http://www.fisheries.gov.ag/information/laws_regulations/pdf/Draft_High_Seas_Fishing_Act_and_Regulations.pdf

(b) Evidence Laws

- Evidence Act - <http://www.laws.gov.ag/acts/chapters/cap-155.pdf>
- Evidence (Special Provisions) Act 2009 - <http://laws.gov.ag/acts/2009/a2009-5.pdf>
- The Evidence (Proceedings in Other Jurisdictions) Act - <http://www.laws.gov.ag/acts/chapters/cap-156.pdf>

(c) Other Laws / Other Instruments

- The Criminal Procedure Act (contains information on Admiralty Jurisdiction) - <http://www.laws.gov.ag/acts/chapters/cap-117.pdf>
- The Eastern Caribbean Supreme Court Act (contains information on Admiralty Jurisdiction) - <http://www.laws.gov.ag/acts/chapters/cap-143.pdf>

- The Magistrate's Code of Procedure Act (makes reference to offences committed on high seas) - <http://www.laws.gov.ag/acts/chapters/cap-255.pdf>
- The Marine Areas (Preservation and Enhancement) Act - <http://www.laws.gov.ag/acts/chapters/cap-259.pdf>
- The Maritime Areas Act - <http://www.laws.gov.ag/acts/chapters/cap-260.pdf>

(ii) Bahamas

(a) Fisheries Laws / Other Instruments

- Agriculture and Fisheries Act - http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1963/1963-0050/AgricultureandFisheriesAct_1.pdf
- Seal Fisheries (Crown Colonies and Protectorates) Order in Council, 1913 - http://laws.bahamas.gov.bs/cms/images/LEGISLATION/SUBORDINATE/1913/1913-0488/SealFisheriesCrownColoniesandProtectoratesOrderinCouncil1913_1.pdf
- Whaling Industry (Regulation) Act (Newfoundland, Colonies, Protectorates and Mandated Territories) Order, 1936 - http://laws.bahamas.gov.bs/cms/images/LEGISLATION/SUBORDINATE/1936/1936-0716/WhalingIndustryRegulationActNewfoundlandColoniesProtectoratesandMandatedTerritoriesOrder1936_1.pdf
- Fisheries Resources (Jurisdiction and Conservation) Act - http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1977/1977-0013/FisheriesResourcesJurisdictionandConservationAct_1.pdf
- Fisheries Resources (Jurisdiction and Conservation) (Declaration of Protected Areas) (South Berry Islands Marine Reserve) Order - http://laws.bahamas.gov.bs/cms/images/LEGISLATION/SUBORDINATE/2009/2009-0116/FisheriesResourcesJurisdictionandConservationDeclarationofProtectedAreasSouthBerryIslandsMarineReserveOrder_1.pdf
- Fisheries Resources (Jurisdiction and Conservation) (Declaration of Protected Areas) (The Exuma (Jewfish Cay) Marine Reserve) Order - http://laws.bahamas.gov.bs/cms/images/LEGISLATION/SUBORDINATE/2009/2009-0115/FisheriesResourcesJurisdictionandConservationDeclarationofProtectedAreasTheExumaJewfishCayMarineReserveOrder_1.pdf
- Fisheries Resources (Jurisdiction and Conservation) Regulations - http://laws.bahamas.gov.bs/cms/images/LEGISLATION/SUBORDINATE/1986/1986-0010/FisheriesResourcesJurisdictionandConservationRegulations_1.pdf
- Fisheries Resources (Potters Cay Fish Landing Complex) Regulations - http://laws.bahamas.gov.bs/cms/images/LEGISLATION/SUBORDINATE/1986/1986-0011/FisheriesResourcesPottersCayFishLandingComplexRegulations_1.pdf

(b) Evidence Laws

- Evidence Act - http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1996/1996-0004/EvidenceAct_1.pdf
- Evidence (Amendment) Act 2011 - <http://www.bahamas.gov.bs/wps/wcm/connect/6735749b-e8f4-4a01-9f9c-838f5d3a98c9/Evidence%28Amendment%29+Bill,+2011+-+Copy+laid+in+House+5th+October,+2011.pdf?MOD=AJPERES>
- Evidence (Proceedings in Other Jurisdictions) Act, 2000 - <http://www.bfsb-bahamas.com/legislation/EPOJA.pdf>

(c) Other Laws / Other Instruments

- Archipelagic Waters and Maritime Jurisdiction - http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1993/1993-0037/ArchipelagicWatersandMaritimeJurisdictionAct_1.pdf
- The Penal Code - <http://www.bahamasmaritime.com/downloads/Bahamas%20Marine%20Legislation/Ch%2084%20Penal%20Code.pdf>

(iii) Barbados

(a) Fisheries Laws / Other Instruments

- Fisheries (Amendment) Act - <http://faolex.fao.org/docs/pdf/bar23713.pdf>
- Fisheries Act - <http://www.spsenquirypoint.gov.bb/files/CAP391.pdf>
- Fisheries (Management) Regulations, 1998 - <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/87107/98970/F1464867899/BRB87107.pdf>
- Links to Fisheries Act and Regulations - http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=BRB&p_classification=19&p_origin=SUBJECT
- Fishing Agreement between the Government of the Republic of Trinidad and Tobago and the Government of Barbados - <http://faolex.fao.org/docs/pdf/bar2101.pdf>

(b) Evidence Laws

- Evidence (Amendment) Act 2007 - <http://barbadosparliament.com/htmlarea/uploaded/File/Bills/2007/The%20Evidence%20%28Amendment%29%20Act%202007.pdf>
- Evidence (Proceedings in Other Jurisdictions) - <http://www.barbadosparliament-laws.com/en/ShowPdf/121A.pdf>

(c) ***Other Laws / Other Instruments***

- Marine Areas (Preservation and Enhancement) Act - <http://faolex.fao.org/docs/pdf/bar19683.pdf>
- Marine Boundaries and Jurisdiction Act, 1978 - <http://faolex.fao.org/docs/pdf/bar1041.pdf>

(iv) **Belize**

(a) ***Fisheries Laws/Other Instruments***

- Fisheries Act, revised 2000 - <http://www.belize law.org/web/lawadmin/PDF%20files/cap210.pdf>
- High Seas Fishing Act, revised 2003 - <http://www.belize law.org/web/lawadmin/PDF%20files/cap210-01.pdf>

(b) ***Evidence Laws***

- Evidence Act, revised 2000 - <http://www.belize law.org/web/lawadmin/PDF%20files/cap095.pdf>
- Electronic Evidence Act - <http://www.belize law.org/web/lawadmin/PDF%20files/cap095-01.pdf>

(c) ***Other Laws / Other Instruments***

- Maritime Areas Act, revised 2000 - http://www.commonlii.org/bz/legis/consol_act/ma11183.pdf
- Maritime Areas Act, revised edition 2003 showing the subsidiary laws - http://www.commonlii.org/bz/legis/consol_act/ma11318.pdf

(v) **Dominica**

(a) ***Fisheries Laws / Other Instruments***

- Fisheries Act - <http://www.dominica.gov.dm/laws/chapters/chap61-60.pdf>
- Fisheries (Marine Reserve) Regulations - <http://faolex.fao.org/docs/pdf/dmi111822.pdf>
- Agreement on fisheries between the European Economic Community and the Government of the Commonwealth of Dominica - <http://faolex.fao.org/docs/texts/bi-18078.doc>
- Council Regulation (EC) No. 3329/93 concerning the conclusion of an Agreement on fisheries between the European Economic Community and the Government of the Commonwealth of Dominica - <http://faolex.fao.org/docs/texts/eur36340.doc>
- Protocol on conditions relating to reciprocal access for fishing vessels of both Parties - <http://faolex.fao.org/docs/texts/bi-18080.doc>

(b) ***Evidence Laws***

- Evidence (Amendment) Act, 2001 - <http://www.dominica.gov.dm/laws/2001/act1-2001.pdf>

- Evidence (PROCEEDINGS IN OTHER JURISDICTIONS) - <http://www.dominica.gov.dm/laws/chapters/chap5-07.pdf>
- (c) **Other Laws / Other Instruments**
 - Territorial Sea, Contiguous Zone, Exclusive Economic and Fisheries Zones Act - <http://www.dominica.gov.dm/laws/chapters/chap1-11.pdf>
 - Agreement on Maritime Delimitation between the Government of French Republic and the Government of Dominica - <http://faolex.fao.org/docs/pdf/bi-33055.pdf>
- (vi) **Dominican Republic**
 - (a) **Fisheries Laws / Other Instruments**
 - Fisheries Act 1962 - <http://www.ambiente.gob.do/cms/archivos/legislacion/ley5914-62.pdf>
 - Decreto N° 1.059/66 - Pesca de camarones con atarraya o esparavel (shrimp cast net) - <http://faolex.fao.org/docs/texts/dom75160.doc>
 - Decreto N° 1.345/67 - Prohíbe la pesca de la langosta hembra (female lobster) - <http://faolex.fao.org/docs/texts/dom75163.doc>
 - Decreto N° 312/86 - Prohíbe la captura, posesión, procesamiento y comercialización de las especies de lambí (conch) - <http://faolex.fao.org/docs/pdf/dom18034.pdf>
 - Decreto N° 313/86 - Prohíbe la comercialización de diversas especies marinas (Barracuda (*Sphyraena barracuda*), Barracuda (*Sphyraena picudilla*), Amberjack *Seriola rivoliana*, peje King *Alectis crinitus*) - <http://faolex.fao.org/docs/pdf/dom18035.pdf>
 - Decreto N° 316/86 - Veda y prohíbe la captura, posesión, procesamiento y comercialización de langosta con tallas menores a las indicadas (lobster) - <http://faolex.fao.org/docs/pdf/dom18038.pdf>
 - Decreto N° 317/86 - Dispone veda y prohíbe la captura, posesión, procesamiento y comercialización de cangrejos con tallas menores a las indicadas (crabs) - <http://faolex.fao.org/docs/pdf/dom18039.pdf>
 - Decreto N° 320/86 - Regula la captura, confinamiento y comercialización de todas las especies de peces o invertebrados acuáticos con fines ornamentales (fish and aquatic invertebrates for ornamental purposes) - <http://faolex.fao.org/docs/pdf/dom18042.pdf>
 - Decreto N° 513/06 - Declara de alta prioridad nacional el desarrollo sostenible de la pesca y la acuicultura (sustainable development of fisheries and aquaculture) - <http://faolex.fao.org/docs/pdf/dom103739.pdf>
 - Resolución N° 1/08 - Reglamento sobre la tenencia, manejo y exhibición de especies de mamíferos marinos (marine mammals) - <http://faolex.fao.org/docs/pdf/dom104307.pdf>

- Resolución N° 68/96 - Veda de recuperación para algunas especies de cangrejos (crabs) - <http://faolex.fao.org/docs/pdf/dom18049.pdf>

(b) Other Laws/Other Instruments

- Ley N° 66 - Declara la República Dominicana como Estado Archipelágico (archipelagic state) - <http://faolex.fao.org/docs/pdf/dom99037.pdf>; <http://faolex.fao.org/docs/pdf/dom99037EN.pdf>
- Ley General de Medio Ambiente y Recursos Naturales de la República Dominicana - <http://natlaw.com/interam/dr/eg/sp/spdren00003.pdf>
- Ley N° 573 - Mar Territorial, Zona Contigua, Zona Económica Exclusiva y Plataforma Continental - <http://faolex.fao.org/docs/pdf/dom1265.pdf>; <http://faolex.fao.org/docs/pdf/dom1265F.pdf>; <http://faolex.fao.org/docs/pdf/dom1265E.pdf>
- Acuerdo sobre delimitación de áreas marinas y submarinas y cooperación marítima entre la República Dominicana y la República de Colombia - <http://faolex.fao.org/docs/pdf/bi-23919.pdf>
- Tratado sobre delimitación de áreas marinas y submarinas entre la República Dominicana y la República de Venezuela - <http://faolex.fao.org/docs/pdf/bi-99034.pdf>; <http://faolex.fao.org/docs/pdf/bi-99034EN.pdf>
- Links to various laws (Spanish) - <http://www.lexadin.nl/wlg/legis/nofr/oeur/lxwedom.htm#Environmental%20Law>

(vii) Grenada

(a) Fisheries Laws / Other Instruments

- Fisheries Act 1986 - <http://faolex.fao.org/docs/pdf/grn1194.pdf>
- Fisheries Act Amended - <http://www.mylexisnexis.co.za/grenada/default.asp>
- Fisheries Regulations 1987 (S.I. No. 9) - <http://faolex.fao.org/docs/pdf/grn1195.pdf>
- Fisheries (Amendment) Regulations 1996 - <http://faolex.fao.org/docs/pdf/grn6904.pdf>
- Evidence Act - <http://www.mylexisnexis.co.za/grenada/default.asp>
- Oyster Fishery Ordinance (Cap. 206) - <http://faolex.fao.org/docs/pdf/grn38852.pdf>

(b) Other Laws / Other Instruments

- Grenada Territorial Sea and Maritime Boundaries Act, 1989 - <http://faolex.fao.org/docs/pdf/grn4292.pdf>

(viii) Haiti

(a) Fisheries Laws / Other Instruments

- Décret réglementant l'exercice du droit de pêche en Haiti, 1987 - <http://faolex.fao.org/docs/pdf/hai1211.pdf>

(b) Other Laws / Other Instruments

- Accord entre la République d'Haiti et la République de Cuba sur la délimitation des frontières maritimes entre les deux Etats - <http://faolex.fao.org/docs/pdf/bi-25341.pdf>
- Acuerdo sobre Delimitación de áreas marinas y submarinas entre la República de Colombia y la República de Hait - <http://faolex.fao.org/docs/pdf/bi-23917.pdf>
- Declaration by the Haitian Government of 6 April 1977 establishing the boundary of the territorial waters of the Republic of Haiti at 12 nautical miles and of its Economic Zone at 200 nautical miles - <http://faolex.fao.org/docs/pdf/hai5070.pdf>; <http://faolex.fao.org/docs/pdf/hai5070F.pdf> ; <http://faolex.fao.org/docs/pdf/hai5070S.pdf>
- Décret fixant les limites de la mer territoriale, la zone économique exclusive et du plateau continental - <http://faolex.fao.org/docs/pdf/hai1210.pdf>; <http://faolex.fao.org/docs/pdf/hai1210E.pdf>
- Links to various laws including Civil and Criminal Procedures - <http://www.lexadin.nl/wlg/legis/nofr/oeur/lxwehai.html>
- Jurist Haitien - http://juristehaitien.chez.com/tables/droit_haitien/droit_haitien.html
- Lois relatives à l'environnement côtier et à la pêche en Haïti - <http://www.unesco.org/csi/pub/info/haiti.html>
- Links to civil codes (historical) - <http://www.dloc.com/dlohlaw/results/?t=code%20civil>
- Haitian law overview - <http://www.nyulawglobal.org/globalex/Haiti1.htm>
- Programme National pour le Développement de la Pêche Maritime en Haïti 2010-2014 - http://www.agriculture.gouv.ht/view/01/IMG/pdf/Texte_Peche_-_MARNDR_2010-2.pdf

(ix) Jamaica

(a) Fisheries Laws / Other Instruments

- Aquaculture, Inland and Marine Products and By-products (Inspection, Licensing and Export) Regulations, 2000 - <http://faolex.fao.org/docs/pdf/jam21448.pdf>
- Fishing Industry (Amendment of Schedule) Order, 2000 - <http://faolex.fao.org/docs/pdf/jam21429.pdf>

- Fishing Industry (Fishery Management Areas) Order, 2000 (conch) - <http://faolex.fao.org/docs/pdf/jam21431.pdf>
 - Fishing Industry (Conservation of Conch (Genus Strombus)) Regulations, 2000 - <http://faolex.fao.org/docs/pdf/jam21430.pdf>
 - Conch Levy Act - <http://www.google.com.jm/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CCkQFjAA&url=http%3A%2F%2Fwww.moj.gov.jm%2Flaws%2Fconch-export-levy-act&ei=Of11UpG0AYb68gSZg4FA&usg=AFQjCNHg66ElCndfXXJc63H7q1BDfK9OLg&sig2=o-6YAZrAbGl2m5Ze3mmzbg&bvm=bv.55123115,d.eWU>
 - Acuerdo de Pesca entre la República de Colombia y Jamaica. - <http://faolex.fao.org/docs/texts/bi-24329.doc>
 - Memorandum of Understanding between the Belize Ministry of Agriculture and Fisheries and the Ministry of Agriculture of Jamaica - <http://faolex.fao.org/docs/pdf/bi-23790.pdf>
 - Fishing Industry Act - http://moa.gov.jm/Fisheries/legislation_Fisheries_Industry_Act_1975.php
 - Fishing Industry (exemption) Order - <http://www.moj.gov.jm/sites/default/files/laws/Fishing%20Industry%20Act.pdf>
 - Fishing Industry Regulations - http://www.nepa.gov.jm/symposia_03/laws/Environmental_Laws/Fishing_Industry_Regulations_1976.pdf
 - Overview of the Draft Fisheries Policy Framework - http://moa.gov.jm/Fisheries/legislation_Draft_Fisheries_Policy_Framework.php
 - The Fishing Industry (Special Fishery Conservation Area) - http://moa.gov.jm/Fisheries/legislation_The%20Fishing_Industry_Special_Fishery_Conservation_Area.php
- (b) Evidence Laws**
- Evidence Act - <http://www.moj.gov.jm/sites/default/files/laws/Evidence%20Act.pdf>
- (c) Other Laws / Other Instruments**
- Exclusive Economic Zone Act, 1991. - <http://faolex.fao.org/docs/pdf/jam1693.pdf>
 - Exclusive Economic Zone Act (Baselines) Regulations - <http://faolex.fao.org/docs/pdf/jam22356.pdf>
 - Maritime Areas Act - <http://faolex.fao.org/docs/pdf/jam7862.pdf>
 - Morant and Pedro Cays Act - <http://faolex.fao.org/docs/pdf/jam111069.pdf>
 - Tratado de delimitación marítima entre la República de Colombia y Jamaica - <http://faolex.fao.org/docs/texts/bi-23697.doc>; <http://faolex.fao.org/docs/pdf/bi-23697E.pdf>

- Agreement between the Government of the Jamaica and the Government of the Republic of Cuba on the delimitation of the maritime boundary between the two States - <http://faolex.fao.org/docs/pdf/bi-33057.pdf>
 - Natural Resources (Marine Parks) Regulations, 1992 - <http://faolex.fao.org/docs/pdf/jam17708.pdf>
- (x) Montserrat**
- (a) Fisheries Laws / Other Instruments**
- Fisheries Act - <http://agc.gov.ms/wp-content/uploads/2011/10/Fisheries-Act.pdf>
 - Fishery Limits Proclamation - <http://faolex.fao.org/docs/pdf/msr1927.pdf>
 - Territorial Waters Jurisdiction Act, 1878 - <http://faolex.fao.org/docs/pdf/msr99734.pdf>
- (b) Evidence Laws**
- Evidence Act - <http://agc.gov.ms/wp-content/uploads/2011/10/Evidence-Act.pdf>
- (c) Other Laws / Other Instruments**
- Claim to Montserrat's Continental Shelf Proclamation - <http://faolex.fao.org/docs/pdf/msr1928.pdf>
 - Décret n° 97-937 du 8 octobre 1997 portant publication de l'accord de délimitation maritime entre le Gouvernement de la République française et le Gouvernement du Royaume-Uni de Grande Bretagne et d'Irlande du Nord concernant la Guadeloupe et Monserrat (ensemble un annexe), signé à Londres le 27 juin 1996 (maritime boundary Guadeloupe and Montserrat) - <http://faolex.fao.org/docs/pdf/mul10140F.pdf>; <http://faolex.fao.org/docs/pdf/mul10140E.pdf>
- (xi) St. Kitts and Nevis**
- (a) Fisheries Laws / Other Instruments**
- Fisheries Act 1984 - <http://faolex.fao.org/docs/pdf/stk2103.pdf>
- (b) Evidence Laws**
- Evidence Act - reference to new act passed in 2012 (not online) - <http://www.zionline.com/news/?054695E8-FBAB-2E05-FA4D07D0DF702E36>
 - Evidence Bill Comparative Law Analysis Review [http://hipcar.gov.kn/sites/hipcar.gov.kn/files/documents/I_Mukasa_HIPCAR_e-Evidence St Kitts and Nevis June2011.pdf](http://hipcar.gov.kn/sites/hipcar.gov.kn/files/documents/I_Mukasa_HIPCAR_e-Evidence_St_Kitts_and_Nevis_June2011.pdf)

(c) ***Other Laws / Other Instruments***

- Maritime Areas Act, 1984 - <http://faolex.fao.org/docs/pdf/stk2102.pdf>
- Maritime Areas (Establishment of Safety Zones Around Installations) Regulations - <http://faolex.fao.org/docs/pdf/stk4581.pdf>
- National Conservation and Environment Protection Act, 1987 - <http://faolex.fao.org/docs/pdf/stk3651.pdf>

(xii) **St. Lucia**

(a) ***Fisheries Laws/Other Instruments***

- Fisheries Act, 1984 - <http://www.malff.com/images/stories/fisheries/articles/Fisheries%20Act.pdf>
- Draft Fisheries Act, 2009
- Fisheries Regulations 1994 - <http://www.malff.com/images/stories/fisheries/articles/Fisheries%20regulations.pdf> or <http://faolex.fao.org/docs/pdf/stl5074.pdf>

(b) ***Evidence Laws***

- Evidence Act (Royal St. Lucia Police Force) - <http://www.rslpf.com/evidenceact2002.pdf>

(c) ***Other Laws / Other Instruments***

- Administration of Justice (Miscellaneous Provisions) Act
- Maritime Areas Act, 1984 - <http://faolex.fao.org/docs/pdf/stl2107.pdf>
- Convention de délimitation signée à Paris le 4 mars 1981 (France and St. Lucia) - <http://faolex.fao.org/docs/pdf/bi-2162F.pdf>; <http://faolex.fao.org/docs/pdf/bi-2162E.pdf>

(xiii) **St. Vincent and the Grenadines**

(a) ***Fisheries Laws / Other Instruments***

- Fisheries Act - <http://faolex.fao.org/docs/pdf/stv2112.pdf>
- The High Seas Fishing Act, 2001 (regulation of Vincentian vessels fishing on the high seas)

(b) ***Evidence Laws***

- Police and Criminal Evidence Act 1990 - http://www.oas.org/juridico/spanish/vct_res15.pdf

(c) ***Other Laws / Other Instruments***

- Maritime Areas Act, 1983 - <http://faolex.fao.org/docs/pdf/stv2109.pdf>

- Marine Parks Act, 1997 - <http://faolex.fao.org/docs/pdf/stv52993.pdf>

- Marine Protected Area Act

(xvi) Suriname

(a) Fisheries Laws/Other Instruments

- Fish Inspection Act (Dutch) - <http://faolex.fao.org/docs/pdf/sur42727.pdf>
- Sea Fishery Decree (full text not available) - <http://www.ecolex.org/ecolex/ledge/view/RecordDetails;DIDPFDSIjsessionid=10459323F92B2B9C46F2DB6526712405?id=LEX-FAOC002156&index=documents>
- Fish Inspection Act, 2000 (No. 107)) (text in Dutch) - <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/88517/101236/F1755246127/SUR88517.pdf>
- Fish Inspection Ordinance (No. 9) (text in Dutch) - <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/88516/101235/F166620458/SUR88516.pdf>

(b) Other Laws / Other Instruments

- Law Containing the Extension of the Territorial Sea of the Republic of Suriname and the Establishment of a Contiguous Economic Zone - <http://faolex.fao.org/docs/pdf/sur2157E.pdf>
- Acuerdo entre el Gobierno de la República Bolivariana de Venezuela y el Gobierno de la República de Suriname sobre Cooperación en materia de desarrollo y manejo de recursos hidrobiológicos marinos (Venezuela and Suriname, aquatic resources management) - <http://faolex.fao.org/docs/pdf/bi-86124.pdf>
- Code of Criminal Procedure

(xv) Trinidad and Tobago

(a) Fisheries Laws / Other Instruments

- Control of Importation of Live Fish Act - http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/67.52.pdf
- Fisheries Act - http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/67.51.pdf
- Draft Fisheries Management Bill (2011) - <http://www.cftdi.edu.tt/home/sites/default/files/Draft%20Fisheries%20Management%20Bill%202011%20Version%2003.11.pdf>

(b) Evidence Laws

- Evidence Act - http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/7.02.pdf
- Evidence (Amendment) Act 2009 - <http://www.ttparliament.org/legislations/a2009-16.pdf>

- Evidence (Amendment) Bill 2010 - <http://www.ttparliament.org/legislations/b2010s04.pdf>

(c) ***Other Laws / Other Instruments***

- Archipelagic Waters and Exclusive Economic Zone Act, 1986 - <http://faolex.fao.org/docs/pdf/tri2088.pdf>; (unofficial updated to 2011) <http://faolex.fao.org/docs/pdf/tri105030.pdf>
- Archipelagic Baselines of Trinidad and Tobago Order, 1988 - <http://faolex.fao.org/docs/pdf/tri99563.pdf>; updated to 2009 <http://faolex.fao.org/docs/pdf/tri105764.pdf>
- Marine Areas (Preservation and Enhancement) Act - <http://faolex.fao.org/docs/pdf/tri4482.pdf>
- Territorial Sea Act - http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/1.51.pdf

APPENDIX 8

Model Prosecution, Sanctions and Redress Policy for Fisheries Management in the CARIFORUM

1. Introduction

Unsustainable fisheries management and poor practices pose a serious threat to the economic development of the CARIFORUM and especially Small Islands Developing States [SIDS]. Much more needs to be done on the legislative, regulatory and institutional fronts to effect proper and sustainable approaches to the development of a viable fisheries sector in the Region.

Several attempts have been made to manage existing fisheries resources, but the existing legislative and regulatory frameworks are inadequate to effectively respond to different categories of offences and circumstances of resource management and the exploitation of new resources.

Improved fisheries monitoring, control, surveillance [MCS] and enforcement is therefore a critical priority for the Region in the years ahead. The MCS framework should involve mechanisms for:

- Increasing financing available for enforcement;
- Implementing regional approaches to monitoring, control and surveillance;
- Upgrading legislative provisions to facilitate MCS arrangement;
- Increasing user participation in the MCS system.

At present, fisheries practices in many developing countries are resulting in jurisdictional conflicts regarding territorial rights to waterways, which give rise to ownership of marine resources, with significant repercussions for the respective countries' fisheries sectors, natural resource bases, and eco-environmental balances.

It is the responsibility of each State to ensure that systems and structures are established within branches of each CARIFORUM State to protect marine resources through its work against degradation and exploitation. The work of the various institutions in each Member State consists of investigation, detection and prevention of fraud and corruption of marine resources.

Seeking appropriate sanction and/or redress is pivotal to this. It is essential that enforcement policy is flexible, clear and consistently and equitably applied to deter unlawful exploitation of marine resources. Prosecution or other appropriate sanction will only be sought where it is in the public interest to do so. The purpose of a prosecution is to establish the guilt, or otherwise, of the accused. If a conviction is secured it is for the court to decide on an appropriate punishment, which can act as a deterrent to others. The purpose of this policy is to ensure that the decision to sanction/prosecute can be justified as fair, reasonable and consistent.

2. Levels of Authorisation

Cases for Caution or Administrative penalty can be authorised at the Attorney General's level. All prosecution cases must be authorised by the Director of Fisheries, Chief Fisheries Officer, or Head of the Fisheries Department **in each Member States' respective Ministries**. This includes cases where a caution or administrative penalty has been refused.

The final decision to prosecute will be taken once the case papers have been examined by Legal Services. Larger or more complex cases may need to be referred to the Police. Referrals to the Police **must** be authorised by the Director of Fisheries or Chief Fisheries Officer.

3. *General Policy*

In all cases, the following will be considered when deciding whether to prosecute. A fundamental consideration is whether to do so would be in the public interest.

There are many factors/guidelines which may have to be considered in deciding whether prosecution should be the best course of action. Factors / guidelines relevant to the fisheries cases which should be taken into consideration include the following:

Issue	Points to consider
Quality of available evidence	Is there sufficient evidence to satisfy a court? Is all the evidence admissible? Has all the evidence been obtained appropriately?
Degree of criminality	How was the offence perpetrated? Was it opportunist? How much planning went into the offence, was it pre-determined? How long did it continue?
Persistent offender	Have they previously committed similar/relevant offences? Have they received sanction previously?
Position of Trust	Is the perpetrator an employee {in} the marine sector, representative or contractor? Are they a Member of the Ministry or Agency with responsibility for the fisheries sector?
Duration of the offence	How long did the offence continue?
Environmental and Economic Impact of the Offence	Did the offence } result in significant losses to fisheries resources? Were there impacts on the environment or ecosystem?
Voluntary disclosure	Was the offence admitted prior to investigation?
Widespread offence	Is the offence part of a local trend? The offence might not be particularly serious but may be particularly prevalent in a specific area. Are there grounds for believing that the offence is likely to be continued or repeated?
Social / Medical factors	Are there any mitigating circumstances? Are there any mental or physical disabilities? Is the perpetrator fit to stand trial? Social / medical factors should not automatically preclude prosecution but they must be considered.
Public Interest	What gain is there for the relevant local oversight authority and/or general public?

The following factors need to be considered along with those in point 3.0. National legislation allows authorities to sanction offenders by way of cautions and administrative penalties as well as by prosecution. Authorities can also seek redress by way of fine, warning and notices.

Each case **will** be considered on its merits and a blanket policy will not be applied.

4. *Fisheries Officer or Authorized Officer Caution*

The fisheries officer or an Authorized Officer may consider issuing a caution in the following circumstances:

- The perpetrator has never previously offended
- There was no planning involved in the offence
- There was no other person involved in the offence
- Penalty action is not appropriate
- The offence is minor
- The amount of marine resources is relatively small or the offence has taken place over a relatively short period of time
- The offence was admitted during an interview under caution (IUC)
- The persons has expressed remorse or regret
- It may not be in the public interest to prosecute, i.e. there might be social or medical factors to consider
- There is a strong likelihood that the perpetrator will pay the full amount being requested.

If the person refuses the caution, the case will normally be referred for Prosecution.

5. *Administrative Penalty*

The penalty is the equivalent of a punitive fine - amounting to 30% above the market value of the marine resources. The amount is not negotiable with the offender.

The Fisheries Officer or an Authorized Officer may consider issuing an Administrative Penalty in the following circumstances:

- The Perpetrator has never previously offended
- There was no planning involved in the offence
- There was no other person involved in the offence
- A caution is not appropriate
- The offence is minor
- The amount to be paid above the market valuation of the resources of is relatively low or the offence has taken place over a relatively short period of time
- The offence was not admitted during the IUC (interview under caution)
- It may not be in the public interest to prosecute i.e. there might be social or medical factors to consider.

If the person refuses the Administrative Penalty the case will normally be referred for Prosecution.

6. *Prosecution*

Cases involving **significant** marine resources, protracted, or highly organised criminality, should always be considered for prosecution. Officers must consider all the issues addressed in **point 3.0** prior to recommending prosecution.

7. *Internal Employee*

The Director of Fisheries or Chief Fisheries Officer will liaise with the Relevant Authority and Executive Directors if prosecution is to take place against a member of staff. Occasionally, this may be out of the Ministry's control, if an external body (e.g. Police) is bringing the case.

Disciplinary proceedings may also be taken against members of staff and these are not subject to a criminal burden of proof, but 'balance of probabilities'.

8. *Publicity*

Having consideration to the appropriate Ministry's policies regarding publicity the Ministry will seek to publicise each case successfully prosecuted.

Publicity is an important tool in the prevention of fraud as it highlights the work of the Fisheries Department and can act as a deterrent.

BIBLIOGRAPHY

- Antigua and Barbuda. Ministry of Agriculture, Lands, Housing and the Environment. Fisheries Division. *Antigua and Barbuda's Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*. April 2010. Accessed 27 July 2013. http://www.cavehill.uwi.edu/cermes/CCRF/Antigua_%26_Barbuda_NPOA_IUU_Fishing.pdf.
- Berg, Erik C. "Legal Ramifications of Digital Imaging in Law Enforcement." *Forensic Science Communications* 2, no. 4 (October 2000). Accessed 7 September 2013. <http://www.fbi.gov/about-us/lab/forensic-science-communications/fsc/oct2000/berg.htm>.
- "Caribbean Memorandum of Understanding on Port State Control." CMOU. 2010. Accessed 8 September 2013. <http://www.caribbeanmou.org/>.
- ConservationDrones. "Marine Conservation Drones." ConservationDrones.org. 28 July 2013. Accessed 19 September 2013. <http://conservationdrones.org/2013/07/28/marine-conservation-drones/>.
- Environmental Legal Assistance Center. "Mending Nets A Handbook on the Prosecution of Fishery and Coastal Law Violations." Oneocean.org. 2004. Accessed 27 July 2013. http://www.oneocean.org/download/db_files/mending_nets.pdf.
- FAO. *The Application of Remote Sensing Technology to Marine Fisheries: An Introductory Manual*. By M.J.A. Butler, M.-C. Mouchot, V. Barale, and C. LeBlanc. Rome, 1988. Accessed 19 September 2013. <http://www.fao.org/docrep/003/t0355e/t0355e00.htm>.
- . *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas*. 1993. Accessed 8 September 2013. <http://www.fao.org/fishery/topic/14766/en>.
- . *An Introduction to Monitoring, Control and Surveillance Systems for Capture Fisheries*. By Peter Flewwelling. Rome, 1999. Accessed July 30, 2013. <http://www.fao.org/docrep/003/v4250e/V4250E00.htm>.
- . *Satellite-Based Vessel Monitoring Systems International Legal Aspects and Developments in State Practice*. *FAO Legal Papers Online #7*. By Erik Jaap Molenaar and Martin Tsamenyi. April 2000. Accessed 19 September 2013. http://www.fao.org/fileadmin/user_upload/legal/docs/lpo7.pdf.
- . *Recent Trends in Monitoring, Control and Surveillance Systems for Capture Fisheries*. By Peter Flewwelling, Cormac Cullinan, David Balton, Raymond P. Sutter, and J. Eric Reynolds. FAO Fisheries Technical Paper No. 415. Rome, 2002. Accessed 27 July 2013. <ftp://ftp.fao.org/docrep/fao/005/y4411e/y4411e00.pdf>.
- . *Administrative Sanctions in Fisheries Law*. By P. Cacaud, M. Kuruc, and M. Spreij. FAO Legislative Study 82. Rome, 2003. Accessed 10 September 2013. <http://www.fao.org/docrep/006/y5063e/y5063e04.htm>.
- . *Fisheries and Aquaculture Topics. United Nations Fish Stocks Agreement. Topics Fact Sheets*. By David Doulman. 27 May 2005a. Accessed 18 September 2013. <http://www.fao.org/fishery/topic/13701/en>.
- . General Fisheries Commission for the Mediterranean. *Fisheries Laws and Regulations in the Mediterranean: A Comparative Study*. By Phillippe Cacaud. Studies and Reviews No. 75. Rome, 2005b. Accessed 19 September 2013. <http://www.fao.org/docrep/008/y5880e/y5880e07.htm>.
- . *Report of the Expert Consultation on the Use of Vessel Monitoring Systems and Satellites for Fisheries Monitoring, Control and Surveillance*. FAO Fisheries Report No. 815. Rome, 2006. Accessed 19 September 2013. <ftp://ftp.fao.org/docrep/fao/009/a0959e/a0959e00.pdf>.
- . *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*. 2009. Accessed 8 September 2013.

- http://www.fao.org/fileadmin/user_upload/legal/docs/1_037t-e.pdf.
- Haughton, Milton O. "Compliance and Enforcement of Fisheries Regulations in the Caribbean." In *Proceedings of the 54th Annual Gulf and Caribbean Fisheries Institute*, 188-201. Proceedings of 54th Annual Meeting of the Gulf and Caribbean Fisheries Institute, Allegro Hotel Providenciales, Turks and Caicos Islands. 2003. Accessed 27 July 2013. http://procs.gcfi.org/pdf/gcfi_54-14.pdf.
- IMO. "Port State Control." Port State Control. Accessed 8 September 2013. http://www.imo.org/blast/mainframe.asp?topic_id=159.
- . Law Reform Commission. *Documentary and Electronic Evidence*. LRC CP 57. 2009. Accessed 8 September 2013. <http://www.lawreform.ie/fileupload/consultation%20papers/cpDocumentaryandElectronicEvidence.pdf>.
- Kuemlangan, Blaise. "National Legislative Options To Combat IUU Fishing." Proceedings of Expert Consultation on Illegal, Unreported and Unregulated Fishing, Australia, Sydney. 2000. Accessed 9 September 2013. <http://www.fao.org/docrep/005/y3274e/y3274e0b.htm>.
- "Latin American Agreement on Port State Control of Vessels." Acuerdo Latino - Viña Del Mar 1992. 5 November 1992. Accessed 9 September 2013. <http://www.acuerdolatino.int.ar/ciala/index.php>.
- Martin, John D. "Overcoming Authentication Hurdles to the Admission of Electronic Evidence." *Trial Evidence*, no. Winter 2009 (31 December 2008): 13-15. Accessed 8 September 2013. http://www.nelsonmullins.com/DocumentDepot/Proof_WI09_pages.pdf.
- Phillips, Terrence, and Jannel Gabriel. "Managing Praedial Larceny in Fisheries – New Technologies and Challenges." Proceedings of Regional Consultation on Praedial Larceny, St. Lucia. 2010. Accessed 7 September 2013. http://www.google.com.jm/url?sa=t&rct=j&q=&esrc=s&source=web&cd=25&cad=rja&ved=0CEAQFjAEOBQ&url=http%3A%2F%2Fwww.caricom-fisheries.com%2FLinkClick.aspx%3Ffileticket%3Djbs3Slp1zYE%253D%26tabid%3D87&ei=mFQzUq-bLoT-9QS604CIBQ&usq=AFQjCNEjhFT-DmMzg4Nu1DZYJw3Hq_boXA&bvm=bv.52164340,d.eWU.
- Scientific Working Group Imaging Technology. "Digital Imaging Technology Issues for Courts." Crime Scene Investigator Network. 15 January 2011. Accessed 30 August 2013. <http://www.crime-scene-investigator.net/swgit-section17.pdf>.
- Simpson, James J. "Remote Sensing in Fisheries: A Tool for Better Management in the Utilization of a Renewable Resource." *Canadian Journal of Fisheries and Aquatic Sciences* 51, no. 3 (11 April 2011): 743-71.
- Suriname, White Paper on Fisheries Subsector 2012 – 2016
- Tie, Robert. "Get Your Evidence Admitted Manage the Chain of Custody." Association of Certified Fraud Examiners. April 2012. Accessed 7 September 2013. <http://www.acfe.com/article.aspx?id=4294972540>.
- UCL Faculty of Laws. "Centre for Law and the Environment: Satellites and the Law." UCL Laws: Satellites and the Law. Accessed 19 September 2013. http://www.ucl.ac.uk/laws/environment/satellites/index.shtml?ahrc_proj_publications.
- UK. House of Lords. *Science and Technology - Fifth Report*. By Select Committee Appointed to Consider Science and Technology. 3 February 1998. Accessed 30 August 2013. <http://www.publications.parliament.uk/pa/ld199798/ldselect/ldsctech/064v/st0502.htm>.
- . House of Lords. *Digital Images as Evidence – Eighth Report*. By Select Committee Appointed to Consider Science and Technology. 22 June 1998b. Accessed 30 August 2013. <http://www.publications.parliament.uk/pa/ld199798/ldselect/ldsctech/121/12101.htm>.
- . Marine Management Organisation. *Financial Administrative Penalties for Fisheries Offences*. 30 August 2012. Accessed 27 August 2013. http://www.marinemanagement.org.uk/fisheries/monitoring/documents/fap_guidance.pdf.

UN. General Assembly. *Straddling Fish Stocks and Highly Migratory Fish Stocks*. A/CONF.164/37. 1995. Accessed 8 September 2013.
http://www.un.org/depts/los/convention_agreements/texts/fish_stocks_agreement/CONF164_37.htm.