

**legal and institutional aspects  
of the management of fisheries  
in the bangladesh exclusive economic zone**



UNITED NATIONS DEVELOPMENT PROGRAMME



FOOD AND AGRICULTURE ORGANIZATION  
OF THE UNITED NATIONS

LEGAL AND INSTITUTIONAL ASPECTS OF THE  
MANAGEMENT OF FISHERIES IN THE BANGLADESH EXCLUSIVE ECONOMIC ZONE

by

W.R. Edeson  
Consultant

International Indian Ocean Fishery Survey and Development Programme  
under the direction of the FAO Legislation Branch

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS  
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## 1. INTRODUCTION AND TERMS OF REFERENCE

In 1974 the Government of Bangladesh declared a 200-mile Exclusive Economic Zone, although no action was taken by the fisheries authorities at the time to set down detailed legal controls over the management of fisheries in that zone. In August 1978, however, the Bangladesh Government made initial enquiries regarding the possibility of legal assistance being provided by FAO in adapting its laws to cover foreign fishing operations in its Exclusive Economic Zone. Because Bangladesh had earlier in 1978 signed a joint venture agreement with Thailand there was expressed an urgent need for assistance of this kind. As a result, an initial visit by an FAO Headquarters staff member (Mr. Gerald Moore, Chief, Forestry, Wildlife and Fisheries Legislation Section, Legislation Branch, Legal Office) to Bangladesh was arranged for the period 12-15 September 1978, to assess the type and scope of assistance required<sup>1/</sup>.

Following discussions with Ministers and officials of the concerned Ministries and departments, it was agreed that the services of a fisheries lawyer be made available to the Bangladesh Government for a period of 3-4 months to advise on legal and institutional aspects of monitoring and control systems for fishing operations in the economic zone, and in particular to:

- (a) assist in the drafting of legislation and/or regulations for the control of foreign fishing operations in the economic zone;
- (b) assist in the revision of the fisheries legislation and the extension of controls over local fishing operations to the economic zone;
- (c) advise, as requested, on the formulation of principles or guidelines for the formation, operation and control of joint venture arrangements including foreign fishing companies;
- (d) advise, as requested, on the establishment of the necessary administrative machinery and procedures for the implementation of controls over fishing operations in the economic zone.

Operating under these terms of reference, the present consultant visited Bangladesh during the periods 29 November 1978 to 6 January 1979, and 6 January to 11 February 1979.

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## 2. BACKGROUND

Bangladesh is almost entirely situated across the deltas of several mighty rivers, of which the main ones are the Meghna, the Padma and the Brahmaputra, while many lesser rivers and streams thread their way through the country. It is about 143 998 km<sup>2</sup> in size (55 596 mi<sup>2</sup>). It has an estimated population in excess of 82 million along with one of the highest population growth rates in the world. The major source of animal protein (about 80 percent of total animal protein intake) is derived from fisheries, though the level of protein intake is amongst the lowest in the world.

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<sup>1/</sup> IOP Technical Report No. 23 "Monitoring and Control Systems for Fisheries in the Exclusive Economic Zone of Bangladesh".

The coastline displays classic deltaic characteristics. The meeting point of land and sea is constantly shifting, with new islands being created off the mouths of its rivers, while others disappear. The continental shelf of Bangladesh is estimated variously to be 67 000 km<sup>2</sup> or 69 000 km<sup>2</sup>. Of this, about 37 000 km<sup>2</sup> is no deeper than 50 metres.

Most of the fishing effort in Bangladesh is concentrated in inland waters and fish caught in these waters is thought to account for 80-90 percent of total production. Of the marine catch, about 90 percent is thought to be harvested from waters close to the shore by small-scale fishermen. Thus, the amount of fish caught by local fishermen in deeper marine waters is at the present time small. The development of the fishery resources of the economic zone of Bangladesh is more likely to be beneficial in the short term at least for the export earnings it will bring to Bangladesh than for any significant increase in local animal protein intake. In fact, fish exports constitute a significant source of foreign exchange earnings for Bangladesh, and in the early to mid-sixties fish was second only to jute as a foreign exchange earner for Bangladesh. It does not occupy this position at the present. Currently shrimp is the most important foreign exchange earner amongst local fishery products, both in terms of quantity and value.

Several estimates of the fishery resources in the Bay of Bengal have been made. From these surveys it is possible to identify three major fishing grounds which are known as "South Patches", "Middle Ground" and "Swath of No Ground". These grounds are relatively close to the land, and most parts of these grounds can be reached by boats of about 9-12 metres using 15-25 hp engines.

Although no precise figures are yet available on the total potential catch in the Bay of Bengal there are indications that the fish resources might be quite extensive. According to West (Fisheries Resources of the Upper Bay of Bengal, IOFC/DEW/73/28 (FAO/UNDP)), the standing stock of demersal fish on the continental shelf is between 264 000-273 000 tons, while a minimum sustainable yield of 57 000 tons of demersal fish is available in these surveyed areas.

There is believed to be a particularly valuable shrimp fishery in the Bay of Bengal, though the precise extent is not known. There is also thought to be a pelagic fish potential, though its precise extent is still not accurately known either.

## 2.1 Marine Fishing Activity

The Bangladesh marine fishery sector is largely made up of small unmechanized craft that operate close to the shore (i.e. no more than about 30 miles). The Bangladesh Fisheries Development Corporation owns and operates a harbour at Chittagong and owns about 15 trawlers, though only a few of these are operational at any moment. Foreign fishing is conducted in the waters of the Upper Bay of Bengal, though again the extent of foreign fishing operations is not accurately known.

Despite the present lack of complete information, there is sufficient evidence of foreign fishing activity in the Bay of Bengal for Bangladesh to require a set of laws governing marine fisheries in its adjacent maritime zones. Already, some Thai vessels have been confiscated, mainly under existing customs legislation for what are essentially fishing offences.

At the present time, a joint venture agreement between Thailand and Bangladesh is about to come into effect, and applications from Bangladesh and Thai companies are in the process of being considered. Other joint venture agreements in the private fisheries sector have been entered into, while a joint venture agreement between the Bangladesh Fisheries Development Corporation and the Iraqi State Department of Fisheries is presently under consideration. All of these agreements are intended to promote the exploitation of the fisheries resources of the Bay of Bengal.

## 2.2 General Legal Background

Until 1977 the Constitution of Bangladesh stated that the fundamental principles of the Constitution were: nationalism, socialism, democracy and secularism. In 1977 this was amended to be: "absolute trust and faith in the Almighty Allah, nationalism, democracy and socialism meaning economic and social justice".

The Constitution further pledges that "the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens". Certain fundamental rights are spelled out in the Constitution, the most important of them for present purposes being equality before the law, safeguards against arbitrary arrest and detention, the right of all citizens and other persons for the time being within Bangladesh to the protection of the law, prohibition of forced labour, prohibition of discrimination based on race, sex, place of birth, caste, religion, etc. The Constitution also requires that the State shall ensure the separation of the judiciary from the executive organs of the State. Finally, it should be noted that in 1977 the Constitution was amended to include a new clause which requires the State to "endeavour to consolidate, preserve and strengthen, fraternal relations among Muslim countries based on Islamic solidarity".

Since November 1975, law-making power has been vested in the President aided and advised by a Council of Ministers. Laws passed in this manner are known as Ordinances. Elections for a new Parliament are due to be held in late February 1979, and some law-making powers will be vested in this body. Laws passed by this body are known as Acts.

In addition to the Constitution, legislation, and certain personal laws based on religious prescriptions, another major source of law is the common law. In general, the approach to interpretation of legislation, the fundamental principles of administrative law, the applicability of the rules of natural justice, the doctrines of ultra vires and jurisdictional error closely parallel the jurisprudence of the common law world.

It is also important to note that legislative sources of law in Bangladesh derive from: former British laws extending to India that have not been repealed, laws passed with respect to East Bengal as part of British India, laws passed during the Pakistani period, and more recently laws passed by Bangladesh since 1971.

One local legislative practice requires specific mention. It is a well established practice in Bangladesh legislation to confer subordinate rule-making power where necessary on "the Government" as opposed to an individual "Minister". Where this is done, it is the practice that the Ministry with the dominant administrative role to play in relation to the legislation will in fact perform a role similar to that performed by a Minister. Furthermore, Article 56(1) of the Constitution vests the executive authority of the Republic in the President, while Article 56(5) allows the President to make rules for allocation and transaction of the business of the Government. It is therefore necessary to refer in the proposed Marine Fisheries Ordinance appended to this report to the "Government" where reference to a particular "Minister" might otherwise have been more aptly made. Nonetheless, it is permissible to refer specifically to other persons, e.g. Chairman of the Board, Director, and officers of certain rank, and this is done where appropriate in Bangladesh legislation.

## 3. INTERNATIONAL LAW AND AGREEMENTS

### 3.1 Multilateral Conventions on the Law of the Sea

Bangladesh has neither signed nor ratified any of the Geneva Conventions on the Law of the Sea 1958. Nor, it appears, has Bangladesh succeeded to any treaties concerning the Law of the Sea that were entered into by Pakistan prior to liberation.



Bangladesh is, however, participating in the Third United Nations Conference on the Law of the Sea, and in general terms its position can be identified with the "Group of 77". It is pressing for recognition of its method of delimiting the territorial waters, contiguous zone, and economic zone from a territorial waters baseline drawn along the ten-fathom line.

### 3.2 Membership of Regional Organizations

Bangladesh is a member of the Indo-Pacific Fisheries Council and the Indian Ocean Fishery Commission. It does not belong to any other regional fisheries body. To date, Bangladesh has resolved matters with its neighbours principally through bilateral negotiations.

### 3.3 Bilateral Agreements Regarding Fisheries

To date, one bilateral agreement regarding joint venture schemes has been entered into with Thailand, while it has been reported in the Dacca press (Bangladesh Observer, 23 December 1978) that another joint venture scheme with Iraq is likely.

At this stage it is not possible to comment on the details of the Bangladesh-Iraqi agreement as these are not available.

The Bangladesh-Thailand agreement was signed in March 1978. The parties agreed to cooperate in the rational exploitation of fisheries resources of the Bay of Bengal for the mutual benefit of the two countries. The agreement will allow Thai fishermen access to Bangladesh fisheries waters under the auspices of a joint venture company. The principle points of the agreement are: equity participation is to be in the ratio of 51 to 49 percent between Bangladesh and Thai partners respectively; the entire foreign exchange component of the joint venture company is to be provided by the Thai partners while any loans or suppliers' credit are to be subject to the approval of the Bangladesh Government; the import price of fishing vessels, gear, freezing and processing plants is to be at internationally competitive prices; permission is given for Thai partners to repatriate the foreign capital investment over a ten-year period and to remit post-tax dividend to Thailand; fish caught in Bangladesh waters are to be landed in Bangladesh for necessary customs formalities, or for sale on the local market, as and when local demand requires; the export price of fish caught is to be at internationally competitive prices and to be paid in freely convertible foreign currency; a progressive local employment clause, including provision for immediate acceptance of a key counterpart person to work on board the Thai vessel (e.g., Masterfisherman or skipper-engineer); permission to charter vessels from any source, but the terms and conditions are to be subject to the approval of the Bangladesh Government; catch information is to be given to both Governments. The agreement also sets up a Joint Ministerial Committee and a Joint Technical Sub-Committee.

The Joint Ministerial Committee has met twice and the parties appear to be moving towards a point where the agreement could become effectively operative. Largely because of the advanced stage that the negotiations have reached between Bangladesh and Thailand, the present consultant did not discuss in detail appropriate guidelines for joint venture fisheries agreements. Some discussions with the Ministry of Fisheries and Livestock did, however, take place on the form and content of an appropriate application form for completion by Thai companies wishing to participate in the joint venture.

### 3.4 Delimitation of Bangladesh Maritime Zones

Section 3 of the Territorial Waters and Maritime Zones Act, 1974, allows the Government by notification in the Official Gazette to declare the baseline from which territorial waters are to be measured, while Section 5 of the Act allows the Government to declare any zone of the high seas adjacent to the territorial waters to be the economic zone of Bangladesh, specifying in the notification the limits of the zone.

On 13 April 1974, the Bangladesh Government, by notification in the Official Gazette set out the baseline from which territorial waters are to be measured. It also declared that the economic zone would extend two hundred miles from this baseline. The baseline points, generally speaking, follow the ten-fathom line. The Bangladesh Government is aware that this method of delimiting the sea is not currently established international practice, and it is hoping that the special circumstances of deltaic states will be recognized at UNCLOS III.

The wording of the economic zone notification of 13 April 1974 causes some difficulty; it states that "the Zone of High Seas extending to 200 nautical miles measured from the baselines shall be the economic zone of Bangladesh". Clearly, in only one part of the Bay of Bengal can the zone extend in full for 200 miles without overlapping with the economic zone or potential economic zones of either India or Burma. It is recommended that the wording be adjusted to overcome this anomaly, as the delimitation of adjacent economic zone boundaries is likely to raise difficulties in itself.

On one map made available to the consultant the limits of the economic zone as between Bangladesh/Burma, Bangladesh/India are indicated and quite clearly a full 200-mile zone is not claimed at all points. It is understood that the lines thus indicated do not represent the result of negotiations between the three countries bordering the Bay of Bengal, rather, that it is Bangladesh's view of what is a fair and reasonable delimitation. It is also understood that the delimitation lines are the subject of negotiation between Bangladesh and its neighbours.

#### 4. CONSTITUTIONAL PROVISIONS AFFECTING FISHERIES

The Constitution itself makes no specific reference to fisheries, however Section 143 is clearly important in this context. This Section provides:

143. (1) There shall vest in the Republic, in addition to any other land or property lawfully vested:
- (a) all minerals and other things of value underlying any land of Bangladesh;
  - (b) all lands, minerals and other things of value underlying the ocean within the territorial waters, or the ocean over the continental shelf, of Bangladesh; and
  - (c) any property located in Bangladesh that has no rightful owner.
- (2) Parliament may from time to time by law provide for the determination of the boundaries of the territory of Bangladesh and of the territorial waters and the continental shelf of Bangladesh.

It will be noted that subsections (1) and (2) make no reference to an Exclusive Economic Zone, and that they seem to imply that the limit of the continental shelf provides the outer limit. No doubt this is so because at the time the constitutional text was being drafted, the concept of an economic zone was in its infancy, and the rights and responsibilities in such a zone awaited elaboration. Nonetheless, the Territorial Waters and Maritime Zones Act, 1974, proceeds on the assumption that sovereign rights in the economic zone and the power to determine the limits of that zone inhere in Bangladesh. This assumption is almost certainly correct. It can be argued that such powers, rights and responsibilities as are accorded to a fully sovereign state can be exercised by such a state as a matter of national law in the absence of any specific proscription in its Constitution.

In the present situation, the constitutional text is merely silent or ambiguous in regard to the exercise of those sovereign rights in the economic zone other than property rights, and those rights can be attributed to Bangladesh as a matter of national law. Likewise the fact that certain of the sovereign rights claimed by Bangladesh may relate to areas beyond the continental shelf should not prevent those rights being attributed to Bangladesh as a matter of national law. Accordingly, there appears to be no basis for questioning the constitutional validity of laws such as the Territorial Waters and Maritime Zones Act, 1974, or the proposed Marine Fisheries Ordinance appended to this report.

## 5. LEGISLATIVE PROVISIONS DIRECTLY RELATING TO FISHERIES

The statutes that relate directly to fishing are the Private Fisheries Act, 1889, the Protection and Conservation of Fish Act, 1950, the Bangladesh Fisheries Development Corporation Act, 1973, the Territorial Waters and Maritime Zones Act, 1974, and certain rules made thereunder.

### 5.1 The Private Fisheries Act, 1889

This Act is aimed at protecting the right of fishing in private waters. Private waters are defined (in Section 2) as those which are (a) the exclusive property of any person, or (b) waters in which a person has an exclusive right of fishing and in which fish are not confined but have means of ingress or egress.

The Act prohibits fishing in private waters without a right to fish therein and prohibits (Section 3) the use of "fixed engines" (defined to "include a net cage, trap or other contrivance for taking fish") without the permission of the person to whom the right of fishing belongs. The penalty for a first offence is a maximum fine of 50 rupees, while subsequent offences may receive up to one month's imprisonment (either simple or rigorous) or a fine not exceeding 200 rupees, or both. Section 4 makes provision for forfeiture of fixed engines used in contravention of Section 3. The Act does not apply to persons exercising a "bona fide claim of right".

The Act is well drafted but some consideration may need to be given to the following:

1. The level of fines may need to be increased.
2. The definition of "private waters" overlaps with that provided in a later statute, the Protection and Conservation of Fish Act, 1950.

### 5.2 The Protection and Conservation of Fish Act, 1950

This Act was passed by the Assembly of East Bengal on 3 March 1950, and it applies to present day Bangladesh. Its general aim is to provide for the protection and conservation of fish, defined as including shellfish and fish at all stages of its life history. The Act applies to all waters in Bangladesh, except for "private waters". "Private waters" covers waters which are primarily used for domestic purposes and waters which are the exclusive property of any person or in which any person has an exclusive right of fishery whether as owner or lessee or any other capacity. It does not, however, include any river, canal, khal, beel or piece of water which ordinarily has direct communication with any river, canal, khal, or beel.

As mentioned earlier, there would appear to be an overlap between the definition of private waters in this Act, and the earlier Act of 1889.

The Act allows for rules to be made prohibiting and regulating the following matters: the erection and use of "fixed engines", the construction, temporary or permanent, of weirs, dams, bunds, embankments, and other structures, the use or method of operation of any kind of net and the size of the mesh of any net; prohibition of the destruction of fishes by explosives, gun or bow and arrow, in inland waters or within coastal territorial waters; prohibition of the destruction of fishes by the poisoning of water or the

depletion of fisheries by pollution, by trace effluents or otherwise. The Government may also prescribe the seasons during which the killing or catching of fishes of any prescribed species is to be prohibited, the minimum size below which no fish of any prescribed species shall be killed or sold; the Government may also prohibit fishing in "all waters" or in any specified waters for a specified period.

In addition, the Act makes provision for scientific research into fisheries subject to the permission of the Government.

Finally, the Act allows the Government to prohibit the offering or exposing or possession for sale or barter of fishes below the prescribed size.

Penalties are imposed. There is a fine of 100 taka or simple imprisonment or both for a breach of any rule or regulation, while second offenders are liable to a fine of two hundred takas or two months' imprisonment or both.

The Act also makes provision for seizure, etc., of "fixed engines" used in contravention of the rules.

Although it is not specifically stated, the Act appears to have been drafted primarily to regulate inland fisheries. Nonetheless, Section 3(2) allows the Government to make rules that apply in any "water or waters", while Section 3(3) (b) allows for rules prohibiting the use of explosives, etc., "inland waters and territorial waters", a distinction not drawn elsewhere in the Act. Because it is, however, primarily directed towards inland fisheries, it would seem advantageous to confine its provisions to inland waters and make all coastal marine waters to be subject to the proposed Marine Fisheries Ordinance.

Finally, there may be some advantage in the Act as a whole being revised or replaced as part of a general revision of all laws relating to inland fisheries. In particular, the level of fine provided by this Act needs updating.

### 5.3 The Territorial Waters and Maritime Zones Act, 1974

This Act is of considerable importance as it provides the legal basis for the Government to declare the limits of internal waters, territorial waters, the economic zone and conservation zones. It also establishes a contiguous zone of six miles from the outer limit of the territorial sea.

Section 3 allows the Government by notification to declare the limits of territorial waters; specific provision is made for measuring the territorial waters from "a single island, rock, or a composite group thereof constituting part of the territory of Bangladesh". Section 3 also deals with the question of innocent passage. The Section prohibits all foreign ships from passage through territorial waters except when enjoying the right of innocent passage. Provision is also made for the Government to suspend innocent passage if it is of the opinion that such suspension is necessary to the security of the Republic. Various powers are given to the Government including power to take such steps as may be necessary "to prevent and punish the contravention of any law or rule in force in Bangladesh by any foreign ship exercising the right of innocent passage" and to "prevent and punish any activity which is prejudicial to the security or interest of the Republic". These are very broad powers, and their compatibility with the right of innocent passage in territorial waters as defined by international law merits careful re-examination.

Section 4 declares a contiguous zone which extends six miles from the outer limits of the territorial waters. In this zone, the Government may exercise such powers and take such measures as it may consider necessary to prevent or punish the contravention of "a law or regulation in force in Bangladesh relating to:

- (a) the security of the Republic;

- (b) immigration and sanitation, and;
- (c) customs and other fiscal matters".

While (b) and (c) are well established heads of jurisdiction (a) may well go further in some of its aspects than the rights traditionally recognized by international law as exercisable by the coastal state in its contiguous zone.

Section 5(1) allows the Government by notification to declare any zone of the high seas adjacent to territorial waters to be the economic zone of Bangladesh, specifying the limits of such zone. Such a notification was made on 13 April 1974 and its terms are commented upon later in this report.

Section 5(2) vests exclusively in the Republic all living and non-living natural resources in the economic zone "on or under the seabed or on the water surface or within the water column". However, a saving is made in Section 5(3) that nothing in Section 5(2) is to affect fishing by Bangladesh citizens who use vessels which are not mechanically propelled.

Section 6 allows the Government to establish conservation zones in waters adjacent to territorial waters and further allows the Government to take such conservation measures as it deems appropriate, including measures to protect the zones "from indiscriminate exploitation, depletion or destruction".

Section 7 makes provision for licensing of exploration or exploitation of the resources of the continental shelf, subject to the proviso that no licence is to be required by a Bangladesh fisherman using a non-mechanized vessel.

Section 8 makes provision for protection of the marine environment in the "high seas adjacent to territorial waters". The compatibility of this section with similar powers under the Environment Pollution Control Ordinance 1977 is discussed later in this paper.

Section 9 allows the Government to make rules for carrying out the purposes of the Act and in particular to provide:

- "(a) for the regulation of the conduct of any person in or upon the territorial waters, contiguous zone, economic zone, conservation zone and continental shelf;
- (b) for measures to protect, use and exploit the resources of the economic zone;
- (c) for conservation measures to protect the living resources of the sea".

Other powers referred to in Section 9 relate to the continental shelf and control of marine pollution. Section 9 also provides for fines up to five thousand taka and imprisonment up to one year to be imposed as part of the rule-making power.

#### 5.4 The Territorial Waters and Maritime Zones Rules, 1977

There appears to be only one set of rules promulgated to date under this Section 9, namely the Territorial Waters and Maritime Zones Rules, 1977, which were published in the Gazette on 8 February 1978. These rules provide for some very wide powers, some of which directly relate to fishing. Section 3 of the Rules asserts that passage of foreign ships through the territorial waters shall be prejudicial to the security or interest of Bangladesh if it engages in certain prescribed activities, including "fishing". Other provisions relating to fishing are: Section 5, which requires licences to be issued in respect of, inter alia, fishing in the economic zone (provision is also made for appeal where a licence has been refused); Section 6 permits certain areas to be reserved in the national interest of Bangladesh and in such areas fishing is prohibited.

Section 8 subjects all ships used in fishing in the economic zone to any law relating to navigation for the time being in force. It is not entirely clear whether this refers to laws governing navigation in the economic zone or whether the intention of the Section is to extend all Bangladesh laws concerning navigation to fishing vessels in the economic zone.

Section 9 prohibits the use of dynamite or any other explosive substance or poison, lime or noxious material for fishing or destroying fish in the economic zone. It should be noted that the Section relates only to the economic zone. Under the Protection and Conservation of Fish Act, 1950, there is a power (Section 3) to prohibit the use of explosives, etc., in territorial waters, while poisons, etc., can be prohibited in any water or waters. It is clearly unsatisfactory that the use of explosives in territorial waters should be subject to one Act, while their use in the economic zone should be covered by a different set of provisions, including different fines and powers of confiscation. If the provisions regarding prohibited fishing methods in the proposed Marine Fisheries Ordinance are accepted, this should remove uncertainty as to the inter-relationship between Section 9 of the 1977 Rules and Section 3 of the Protection and Conservation of Fish Act. This will, of course, require the repeal of Section 9 of the 1977 Rules and an amendment to the 1950 Act.

Section 10 of the Rules gives powers of search in respect of any vessel that is contravening or is about to contravene any of the provisions of the Rules. Similar powers are provided for in the proposed Marine Fisheries Ordinance in respect of fisheries offences. So far as the Rules are concerned with fisheries offences, these are compatible with the provisions in the proposed Ordinance dealing with similar powers. Some doubt must exist, however, as to the validity of the power accorded in Section 10 when applied to some of the very wide powers claimed under the Rules. Section 15, for example, states that "all laws, rules and regulations in force in Bangladesh relating to customs and other fiscal matters shall apply in relation to all natural resources, including fish, within the economic zone, both living and non-living". The extension of such laws without any qualification to the economic zone may exceed in certain respects the powers accorded to the coastal state under international law in respect of customs and fiscal matters in its coastal waters and it is recommended that the Bangladesh Government gives consideration to the possibility of at least spelling out in particular which of its customs and fiscal laws it wishes to extend to the economic zone.

Section 14 of the Rules allows for seizure and disposal of a ship, including all its appliances and equipment, and any natural resources, including fish found on board, where the ship has been used in contravention of these Rules. This Section, at any rate to the extent that it permits confiscation, may be ultra vires. Nowhere in the 1974 Act under which these Rules are made is a power given regarding confiscation, while the maximum penalty that can be imposed by the rule-making power in Section 9 is stated to be five thousand takas or one year's imprisonment. The proposed Marine Fisheries Ordinance appended to this report makes provision for seizure and confiscation of fishing vessels in appropriate circumstances. It is therefore recommended that Section 14 of the Rules also be repealed.

#### 5.5 The Bangladesh Fisheries Development Corporation Act, 1973

This Act is the statutory successor to the East Pakistan Fisheries Development Corporation Ordinance, 1964. The Corporation is stated in the preamble to have as its purpose "the development of fishing industry in Bangladesh". The functions of the Corporation are stated in Section 9 to be to:

"(a) take measures for the development of fisheries and fishing industry; (b) establish fishing industry; (c) establish units for capture of fish and promote a better organisation for exploitation of fish wealth; (d) acquire, hold or dispose of fishing boats, fish carriers, road and river transports and all equipment and accessories necessary in connection with the development of fishing industry; (e) establish units for preservation, processing, distribution and marketing of fish and fish products;



(f) advance loans to fishing industries and to the fishermen's cooperative societies; (g) encourage establishment of fishermen's cooperative societies; (h) undertake survey and investigations of the fish resources; (i) establish institutes or make arrangements for the training and research in the methods of catching, processing, transport, preservation and marketing of fish; (j) set up organizations for export of fish and fish products; and (k) acquire, hold and dispose of such other properties as are required for carrying out all or any of these purposes".

The Act also accords a limited regulation-making power to the Corporation, with the prior approval of the Government.

The Act provides definitions (amongst others) of "fish", "fishing boat" and "fishing industry". The definition of "fish" includes whales, dolphins and porpoises, which may suggest that the latter may be target species for the Corporation's operations. This is directly in conflict with the Wildlife Preservation Order, 1973, which lists certain of those animals as protected. Clearly, it will be necessary for this inconsistency to be resolved one way or the other by the Bangladesh Government.

The functions of the Corporation are commented upon later in connection with institutions involved in fisheries.

## 6. OTHER LEGISLATION OF RELEVANCE TO FISHERIES

### 6.1 Merchant Shipping Legislation

At the present time, merchant shipping operates under the Merchant Shipping Act, 1923. That Act is based on assumptions more appropriate to a colonial era, while the legislation itself has to be seen in the context of the Merchant Shipping Act of 1894 (U.K.) which laid down the framework for the old Imperial shipping laws. It is understood that this anachronistic regime is about to be replaced by indigenous legislation, but until this takes place, local vessels continue to be registered under the old regime. Thus, vessels which are required to be registered are registered under the 1894 Act in a local register at Chittagong with the registration numbers being provided by the Registrar of Ships, Cardiff, Wales, U.K.

The provisions of the 1923 Act apply to all "steamships" and to ships "propelled by electricity or other mechanical power". Thus, all mechanized fishing vessels in theory come within the scope of the Act, if they are registered in accordance with the Merchant Shipping Act, 1894 (U.K.) or being unregistered are required by that Act to be registered. The 1923 Act has comprehensive provisions covering masters and seamen, passenger ships, berthed passenger ships, pilgrim ships, safety, navigation, special shipping enquiries and costs, wreck and salvage, legal proceedings and some supplemental provisions. All of these in general apply to mechanized vessels. Particular reference should be made, however, to the provisions dealing with loadlines, as Section 218(1) exempts from these provisions all sailing vessels of less than 150 tons gross tonnage employed in plying coastwise between ports situated within Bangladesh, Pakistan, India, Burma, Sri Lanka, and "any ship solely engaged in fishing".

Unseaworthy British vessels may be prevented from sailing if unsafe "having regard to the service for which she is intended" (Section 232), while Section 238 allows foreign ships that are in port to be detained if unseaworthy subject to certain special procedures being followed. Vessels above 300 tons are required to carry certain communication equipment. Section 289 places restrictions on the sale or mortgage or transfer of a vessel registered at a Bangladesh port to a foreign national or a bank or corporation, the majority of whose shares are held by foreign nationals. In such a situation the written permission of the Bangladesh Government is necessary, which may be subject to any terms and conditions the Government wishes to impose.

The proposed new legislation referred to above is intended to update the Merchant Shipping Laws of Bangladesh. The legislation is in the process of final preparation only, and it cannot be absolutely certain that the provisions referred to here will remain unchanged. Nor is it known when this new legislation will come into force.

Section 2 of the proposed legislation extends the Ordinance to the whole of Bangladesh, including the territorial waters, to all Bangladesh ships wherever they may be, to all ships deemed to be registered under this Ordinance wherever they may be, and to non-Bangladesh ships engaged in the coasting trade.

"Bangladesh ship" is defined as including a ship belonging to the Government, and a ship acquired and owned by a foreign company or national and leased out to the Government or to any person authorized by it under an agreement that the ownership of the ship shall be transferred to the Government or authorized person in accordance with the agreement after a specified period of time. It also includes ships owned wholly by persons each of whom is a citizen of Bangladesh, or by a company which has its principal place of business in Bangladesh and if shares more than 50 percent of the share capital of the company or shares carrying more than 50 percent of its total voting power are held by Bangladesh citizens (percentages can be altered by notification in the Gazette) and a majority of the directors of the company are Bangladesh citizens, and the Chairman of the Board of Directors of the company and the Managing Director, if any, are Bangladesh citizens.

"Fishing vessel" is defined as "a vessel of whatever size and by whatever means propelled, which is exclusively engaged in sea fishing for profit". "Ship" and "vessel" are also defined.

Of particular significance in the proposed legislation is Part 9 which deals with fishing and sailing vessels, one chapter of which (33) deals with fishing vessels and is restricted to "power driven sea-going vessels only". The part makes provision for ascertaining the tonnage of fishing vessels, but most importantly, it sets out the means by which fishing vessels are to be registered. These are too detailed to be discussed at length but some provisions merit further reference.

Section 411(2) makes provision for transfer of old registrations to the new scheme. Section 411(5) allows for the payment of a fee for licensing "according to such a scale as may be prescribed having regard to the tonnage of the vessel". Section 411(6) permits detention of a fishing vessel which should be registered but is not, a failure also punished by a fine not exceeding 1 000 takas (Section 411(7)).

Section 413(1) requires certain particulars to be painted conspicuously on the fishing vessel (i.e. the name, the port to which the vessel belongs, and the letter and number assigned to it). Section 415 requires the approval in writing by the Government of any change in ownership or interest. It is further provided that any transaction not complying with this requirement is "void". Provision is made for one year's imprisonment and/or a fine up to 2 000 takas for breach of the Section. Further, a fishing vessel is not allowed to proceed to sea unless there is a Certificate of Inspection relating to the vessel (Section 420). The Certificate of Inspection can also specify inter alia the limits within which the vessel may be used for purposes of fishing.

In general, the adoption of this legislation should prove to be a significant improvement in the legal regime governing shipping, including fishing vessels. The adoption of the criterion of "power driven" vessels for application of the provisions relating to fishing vessels ties in with the distinction between mechanized and non-mechanized fishing vessels used in nearly all Bangladesh fisheries legislation, non-mechanized vessels being exempt from most provisions governing fisheries.

## 6.2 Port Legislation

A limited control over fisheries can be exercised indirectly under legislations governing ports. Within the proclaimed limits of ports the movement and operation of fishing vessels can be restricted. The main legislation is the Chalna Port Authority Ordinance, 1976, and the Chittagong Port Authority Ordinance, 1976.

## 6.3 Customs Legislation

The Customs Act, 1969, provides a comprehensive set of laws dealing with the collection of customs duties. It is under this legislation that several foreign fishing vessels having been arrested by the Bangladesh Navy have been proceeded against on the basis that they were attempting to export dutiable products without paying the appropriate customs duties. The Act permits extensive powers of search of vessels believed to be engaged in smuggling, including a power to pursue and, if necessary, fire upon a fleeing vessel (Section 164).

Powers of adjudication for customs officers are set out, including provisions for hearings. There is one chapter (19) which deals with "Appeals and Revision", and which allows for appeals to be made to the National Board of Revenue and for an application for revision to be made to the Government in respect of a decision by the Board. Because the customs powers extend to seizure and confiscation of vessels, including foreign fishing vessels, challenges to the confiscation are quite common. With legal representation permitted under the Act, many of the arguments raised before the Board involve fairly complex questions of administrative law.

## 6.4 Legislation Regarding Companies, Partnerships, etc.

Business enterprises other than those specifically set up under their own legislation are governed by the Companies Act, 1913, or the Partnership Act, 1932. Both Acts are similar to counterpart legislation found in the common law world.

## 6.5 Exchange Control Regulations

As part of its policy to encourage exports, the Government of Bangladesh provides various incentives to develop exports in non-traditional areas and this would include marine fisheries. As part of this policy, according to the Bangladesh Bank, the Government makes deductions on the fee payable for import licences for necessary equipment in connection with certain export-oriented industries. This can amount up to 10-40 percent of the value of export earnings. The exact percentage is set out in paragraph 23 of the Import Policy Order, 1978/9, and in Annex 8.

The procedure that is followed is: applications go to the Ministry of Industry and then to the Investment Advisory Board. If clearance is granted, then an appropriate deduction is made. This procedure, the consultant was advised, should not be too lengthy.

As regards a joint venture agreement, such as the kind organized in the Bangladesh-Thai agreement, it would be regarded as involving foreign financing. No foreign exchange would be regarded as having been earned on an actual batch of fish caught. However, the overall profit and loss can be transmitted overseas (net of taxes, depreciation, etc.). Additionally, dividends can be transmitted overseas without the prior approval of the Bangladesh Bank, subject only to observance of guidelines handed down by the Bank from time to time.

## 6.6 Wildlife (Preservation) Order, 1973

In this Order, "wild animal" is defined to include "fish", while amongst the animals listed in the third schedule as protected are certain types of dolphins, porpoises and whales. As has already been mentioned, these animals are included within the definition of "fish" in the Bangladesh Fisheries Development Corporation Act, 1973.

The Order sets up the Bangladesh Wildlife Advisory Board which is to perform such functions as the Government assigns to it. At present, the following entities are represented on the Board: the Ministry of Agriculture and Forests, the Director of Fisheries, the General Secretary of the Bangladesh Wildlife Preservation Society, the Director of Livestock Services, the Ministry of Land Administration and Land Reform, the Ministry of Finance, the Ministry of Planning, the Chairman of the Department of Zoology, Dacca University, the Ministry of Communication, Civil Aviation and Tourism (Tourism Cell) and three private individuals. The Board was set up in 1977 (29 April) and it has met twice since that date.

#### 6.7 Marine Pollution Control

There are two legislative sources of marine pollution control: the Territorial Waters and Maritime Zones Act, 1974, and the Environment Pollution Control Ordinance, 1977.

The former Act (Section 8) allows the Government to take such measures as it deems appropriate for the purpose of preventing and controlling marine pollution and preserving the quality and ecological balance of the marine environment in the high seas adjacent to territorial waters, while Section 9 allows rules to be made in respect of the same matters. As it stands, this part of the legislation is of dubious value because it confers very wide and vague powers with little indication in the legislation itself as to how these powers should be exercised.

In addition to the 1974 Act, there is in force the Environmental Pollution Control Ordinance, 1977, which provides a better legal basis for control over pollution. The Ordinance, however, is not principally directed towards control of marine pollution, though its principal clauses contemplate such an application. "Environment" is defined to include surroundings consisting of inter alia waters which can support or influence all kinds of "flora and fauna". Pollution is defined so as to cover contamination, etc., that is harmful, etc., to inter alia "fish". "Waters" is defined as including "coastal waters".

The Ordinance provides for a Board to be set up (the Environmental Pollution Control Board) on which the Ministry of Fisheries is represented. The Board's functions are: to formulate policies for the control, prevention and abatement of pollution of the environment, though for the purposes of executing the policies of the Board there is to be an implementation cell consisting of such officers as the Government may appoint. This cell is to be headed by the Director, who is to be a senior official not below a certain rank with training, skill and experience in environmental pollution control.

The Director is to be responsible for implementing projects duly approved by the Government and the policies formulated by the Board for adoption. For these purposes, the Director is given powers to order compliance with certain pollution abatement measures, and although these appear to be directed principally towards land-based pollution, they could apply to coastal waters. Whether "coastal waters" includes the waters of the economic zone is not clear from the Ordinance, and it is doubtful if it can be interpreted as having that effect.

Penalties for offences against the Ordinance are laid down as being imprisonment up to one year, or a fine up to 5 000 takas for every day the negligence or failure constituting the offence continues.

Clearly, having regard to the vagueness of the terms of the Territorial Waters and Maritime Zones Act, 1974, insofar as it deals with marine pollution, and the doubt whether the 1977 Ordinance extends to cover the economic zone, there is a measure of uncertainty regarding the existing legal regime governing marine environmental pollution. It is recommended that this matter is given further consideration by the Bangladesh Government.

## 7. INSTITUTIONS INVOLVED IN THE MANAGEMENT OF MARINE FISHERIES

### 7.1 Ministry of Fisheries and Livestock

The most important body involved in management of fisheries is the Ministry of Fisheries and Livestock. The responsibilities of this Ministry cover both inland and marine fisheries. The amalgamation of both types of fisheries is a fairly recent development, and dates from December 1977. There seems to be general agreement that it is a beneficial move that will considerably assist the management of fisheries in Bangladesh.

### 7.2 The Directorate of Fisheries

The Directorate is primarily concerned with the development of extension, research and training, the promotion of production-oriented research, and generally the promotion of fishery development. It is under the general control of the Ministry of Fisheries and Livestock.

### 7.3 The Bangladesh Fisheries Development Corporation

This entity is the successor to the East Pakistan Fisheries Development Corporation. The Corporation is subject to the general control of the Ministry of Fisheries and Livestock. The functions accorded to the Corporation under Section 6 of the Bangladesh Fisheries Development Corporation Act, 1973, have been outlined earlier in this report. The following activities may be referred to as being conducted by the Corporation.

It operates a number of fishing vessels of its own, it has established units for the capture of fish, it has acquired a number of fishing boats and transport equipment as part of a plan to develop a fishing industry, it has established units for the preservation, processing, distribution and marketing of fish and fish products at Chittagong, Cox's Bazar and Khulna, it is now advancing loans to parts of the fishing industry, it has undertaken a survey of fish resources in the Bay of Bengal, it has set up training institutes, but to date no research has been undertaken into methods of catching, processing, transport, preservation and marketing of fish, and it has set up a shrimp export industry at its Chittagong harbour.

At the present time, the harbour at Chittagong has a serious siltation problem which is impeding its efficient operation quite significantly. Consideration is being given to how this problem can best be overcome.

### 7.4 The Planning Commission

The Planning Commission has a broad responsibility for national planning and coordination of all development activities. Within the Planning Commission there is an Agriculture Division, and within that Division is a Fisheries Section. The functions of the fisheries section have been conveniently summarized by the Section itself as follows:

- "(i) (a) Formulation of national policies, objectives and strategies, for fisheries development.
- (b) Determination of priority areas for development.
- (c) Preparation of national plans.
- (d) Feasibility studies for formulation and preparation of projects, programmes, etc.
- (e) Appraisal of development scheme sponsored by fisheries agencies/ministries and processing of the same for approval.
- (f) Allocation of funds for the projects.

- (g) Exploring foreign assistance support, technical and financial.
  - (h) Examination of aid proposals from various countries and international organizations.
  - (i) Field supervision and monitoring of project implementation and coordination of on-going and completed projects.
  - (j) Quarterly, half-yearly and annual economic review of the development projects.
  - (k) Periodical evaluation of the plan and performances of the projects.
- (ii) Fisheries Section looks after the fisheries development activities mainly of the following public sector agencies:
- (a) Fisheries Development Corporation of which main functions relate to commercial aspects of fisheries, including harvesting of marine fish, marketing distribution, processing, and establishment of infrastructure of facilities.
  - (b) Fisheries development which is concerned with research, development, training, extension, fishermen's welfare and enforcement of fisheries regulations and overall management of resources.
  - (c) Technical evaluation of the fisheries project of (i) Cooperative Sector (coastal fishing with mechanized boats, operating cold storage, marketing, etc.); (ii) Integrated Rural Development Programme (fish culture in derelict tanks and ponds); (iii) Private sector including joint venture with foreign firms (marine fishing, processing, marketing, etc.).
  - (d) This Section is also responsible at planning stage for study of (i) implications of water development projects (irrigation, flood control embankment, damming, poldering, barraging, diversion of rivers, etc.) on fish habitats and resources of both inland as well as coastal waters; (ii) implications of agricultural projects (e.g. reclamation of low-lying areas for production of crops, surface water irrigation, plant production, etc.) on fish resources; (iii) implications of industrial projects (fertilizer factory, paper mill, sugar mill, etc.) on fisheries resources".

As can be seen from this summary, the Planning Commission's involvement in fisheries is extensive.

The Planning Commission has no direct sanctions that it can impose on Ministries. It does, however, have the power to evaluate activities of Ministries; furthermore no development project that concerns a matter dealt with in the annual development plan should commence without the approval of the Commission. It can, as a last resort, request the Ministry of Finance not to issue the necessary funds. Thus, although the Planning Commission has no power of veto, it can influence decisions quite significantly.

#### 7.5 Other Institutions

The following institutions are also involved in fisheries management activities: the Directorate of Cooperatives, the Ministry of Land Administration and Land Reforms, the Ministry of Local Government, Rural Development and Cooperatives, Integrated Rural Development Programme (IRDP), the B.J.M.S.S. (Bangladesh Jatiya Matshyajibi Sambhaya Samity), which is concerned with fishermen's cooperatives and has done much to revitalize them, the Bangladesh Sugar and Food Industries Corporation (BSFIC), and some private charitable organizations. Further, the Bangladesh Agricultural University at Mymensingh offers an under-graduate and a post-graduate degree in fisheries.



The activities of the National Wildlife Advisory Board and the Environmental Pollution Control Board could also indirectly impinge on fisheries management. These have been referred to earlier.

#### 7.6 Surveillance and Enforcement Systems

One of the terms of the consultancy was to "advise as requested on the establishment of the necessary administrative machinery and procedures for the implementation of controls over fishing operations in the economic zone". Discussions took place with members of the Bangladesh Navy on various methods of enforcement of Bangladesh laws in Bangladesh fisheries waters. The proposed legislation is intended to give Bangladesh the legal basis for exercising control over all fishing activities in these waters should the need arise. The present surveillance and enforcement capacity of Bangladesh and some discussion of the basis on which decisions regarding surveillance and enforcement expenditure should be made can be found in "Monitoring and control systems for fisheries in the Exclusive Economic Zone of Bangladesh" (IOP/TECH/79/23).

#### 8. RECOMMENDATIONS REGARDING LEGISLATION

Various suggestions involving minor alterations to existing legislation that indirectly relates to fisheries have been made earlier in this report and these will not be repeated here.

With regard to the existing legal regime governing fisheries, it is clearly inadequate to deal with the complex problems that can arise in attempting to manage the fisheries resources of an Exclusive Economic Zone. There is a clear need for a comprehensive set of laws to allow for the management of local and foreign fishing in Bangladesh fisheries waters and to provide a sound basis for the control of fishing operations including illegal fishing activities. At the present time only the customs legislation provides a really effective legislative sanction against such fishing; however, that legislation and its implementation are not designed with fisheries management in mind. Its value is therefore obviously limited. In any event, it can only deal with fish caught by foreign fishing vessels in territorial waters.

It is therefore recommended that the Draft Marine Fisheries Ordinance be adopted in order to overcome the existing hiatus in Bangladesh fisheries laws. It is also recommended that it is adopted as quickly as possible in order to place beyond doubt the powers of enforcement officers in dealing with illegal foreign fishing, and to provide the Government with the necessary machinery to manage effectively its fisheries resources in the Bay of Bengal. It is worth recalling that it was in fact the absence of such machinery that led the Bangladesh Government to make its urgent request to the FAO for legal assistance.

Certain repeals and amendments to existing legislation will be necessary. In particular it will be necessary to repeal those provisions of the Territorial Waters and Maritime Zones Act, 1974, and the Territorial Waters and Maritime Zones Rules, 1977, which directly relate to fisheries in order to ensure that there is no overlapping power. The Protection and Conservation of Fish Act, 1950, will need to be restricted to inland waters, and minor amendments to it will be necessary to achieve this.

It is also recommended that the level of fines provided for in the Private Fishery Act, 1889, and the Protection and Conservation of Fish Act, 1950, be reviewed with a view to their being made more appropriate to today's conditions.

It is also recommended that inconsistencies in the definition of prohibited fishing methods, and the area of application of the prohibitions be resolved. This can best be achieved by the repeal of the Territorial Waters and Maritime Zones Rules so far as they relate to prohibited fishing methods, the restriction of the Protection and Conservation of Fish Act, 1950, to inland waters, and the application of the provisions regarding prohibited fishing methods in the proposed Marine Fisheries Ordinance to all marine waters.

It is also recommended that consideration be given to reducing the Territorial Waters and Maritime Zones Act, 1974, to an Act which merely provides the basis for the declaration by the Government from time to time of internal waters, territorial waters, contiguous zone, economic zone, conservation zones, and the continental shelf. As it stands, the Act does not only do this, but provides extremely vague rule-making powers which are almost valueless legally. In regard to fisheries, for example, it is very doubtful whether the 1974 Act would provide an adequate basis for the kinds of extensive controls that are provided for in the proposed Marine Fisheries Ordinance, and which are needed to provide a sound legal regime for the management and development of coastal fisheries.

A better approach, it is suggested, would be to repeal all substantive provisions other than those relating to the declaration of zones and enact separate substantive legislation for e.g. offshore mining, marine pollution, etc., on much the same lines as the proposed marine fisheries legislation. In any event, it will be necessary to repeal those parts of the Territorial Waters and Maritime Zones Rules, 1977, which provide for confiscation of a vessel. Such a power is ultra vires the parent Act, which provides merely for fines (up to approximately U.S.\$ 330) and imprisonment.

#### 9. RECOMMENDATIONS REGARDING INSTITUTIONS

It has already been indicated that there are many institutions involved in fisheries management in Bangladesh. Unfortunately, there does not appear to be much coordination between them. In this context the following comment in the Bangladesh Two-Year Plan for the years 1978-80 published by the Planning Commission is relevant. The report refers to a complete absence of any central control and coordination (in the fisheries sector):

"At least eight organizations, viz. Directorate of Fisheries, BFDC, Cooperatives Directorate, Ministry of Land Administration, Ministry of Rural Development, Ministry of Industries, IRDP, Bangladesh Sugar and Food Industries Corporation, are directly involved in the implementation of fisheries projects. In the Planning Commission at least three Divisions under various Members are separately and independently responsible for planning and coordinating the activities of the above-mentioned agencies. This sort of uncoordinated and incoherent planning and implementation does not only unnecessarily and undesirably result in duplication of national efforts but also frequently givesrise to misunderstanding among the various concerned agencies." (paragraph 2, p. 93).

Although this comment primarily relates to the inland fisheries sector, similar difficulties are to be expected in the marine fisheries sector. Once the proposed Marine Fisheries Ordinance comes into force it will be necessary to ensure, in addition to the institutions directly involved in fisheries management decisions, that there is adequate coordination of decisions with the enforcement agencies (principally the Bangladesh Navy and Customs), the Ministry of Foreign Affairs, and the Ministry of Ports, Shipping and Inland Water Transport.

The lack of coordination presently existing in the marine fisheries sector is demonstrated by the fact that since early 1978 there has been in existence a set of rules governing various operations, including fisheries, in the territorial sea and economic zone which has been enacted under the auspices of the Ministry of Ports, Shipping and Inland Water Transport. However, it was not until February 1979 that this became widely known, despite the fact that these Rules dealt with matters of direct concern to the Ministry of Fisheries and Livestock, the Ministry of Foreign Affairs, and several other Ministries.

There is, therefore, a demonstrated need for coordination of decision making with respect to marine fisheries on at least two levels. First, at the legislative or rule-making level, to ensure that subsequent legislation or rules do not undermine the effectiveness of the basic marine fisheries law. Secondly, at the management level to ensure that the various institutions whose decisions can impinge on fisheries do not formulate inconsistent policies.

It is therefore recommended that a Board be set up with a view to providing the opportunity for the coordination necessary to successful marine fisheries management and development. The major functions of this Board should be:

1. To provide a forum to which important marine fisheries management decisions can be submitted and be subjected to comment by persons representing certain institutions. In the proposed Marine Fisheries Ordinance it is contemplated that a marine fisheries management and development plan would be submitted regularly to the Board for its comments. Furthermore, the person with predominant responsibility for the administration of marine fisheries would be required to submit annually a report to the Board on the operation of the management and development plan.
2. Any rules passed under the proposed Marine Fisheries Ordinance should be submitted to the Board for consideration. It is not suggested that the Board should have a power of veto over any rules submitted. It is thought, however, that the procedure proposed for such rules could lessen the likelihood of different Ministries formulating conflicting or diverging rules under different legislative powers.

The recommended composition of the Board is set out in the proposed legislation. The membership is intended to be sufficiently wide to ensure that all Ministries and institutions are represented which are either directly involved in making fisheries management and development decisions, or are involved in the implementation of those decisions, or are likely to be significantly affected by those decisions.

## 10. GENERAL PRINCIPLES UNDERLYING THE PROPOSED MARINE FISHERIES ORDINANCE

### 10.1 General

The proposed Marine Fisheries Ordinance is intended to provide a comprehensive framework within which decisions regarding the management and development of marine fisheries can be made. This requires legislation that on the one hand is sufficiently flexible to enable these decisions to be made in a constantly altering environment, while on the other hand the legislation itself has to provide a measure of guidance to the administrators in order to ensure that it is a legally effective document.

### 10.2 Geographical Application

The proposed Ordinance is intended to operate in an area to be known as Bangladesh fisheries waters. This area embraces the marine internal waters, the territorial waters, and the economic zone of Bangladesh. The legislation does make provision for the extension of this zone to include rivers if the Government so wishes. The distinctions between coastal state fishing rights in these zones have been subsumed under the one fisheries management and development regime. In any event, given that Bangladesh internal waters extend some considerable distance from the shore, extending up to the 10-fathom line for the most part, it would be very difficult to manage separate fisheries regimes based on any of the zones now embraced by Bangladesh fisheries waters. This approach leaves untouched, however, any other rights and responsibilities that Bangladesh may have or exercise in these zones.

### 10.3 Application by Class of Vessel

The proposed legislation is intended to control all marine fishing by local and foreign fishermen in Bangladesh fisheries waters. An exception is made, however, for local small-scale marine fishing operations. These are exempted from the licensing provisions until such time as the Government chooses to regulate such fishing operations.

#### 10.4 Marine Fisheries Advisory Board

There is constituted under the proposed Ordinance a Marine Fisheries Advisory Board. The necessity for such a Board as a coordinating mechanism has been commented upon earlier.

#### 10.5 Basis for Management Measures

The Fisheries Management and Development Plan is designed to ensure that decisions taken regarding management and development measures are based on the best available information. The plan is also intended to be consistent with the requirements and objectives of the provisions of the Informal Composite Negotiating Text relating to the conservation and management of the living resources of the Exclusive Economic Zone, bearing in mind the extent to which that part of the Negotiating Text has been accepted in international practice.

Furthermore, different criteria are laid down in the proposed Ordinance regarding the issue, cancellation, suspension and non-renewal of licences as between local and foreign fishing operations.

#### 10.6 Licensing

Central to the proposed legislation is the licensing system it provides. In general terms, the conditions which the legislation allows to be imposed on all fishing operations in Bangladesh fisheries waters will provide the necessary mechanisms for managing and developing marine fisheries in those waters. The range of conditions provided for coupled with the rule-making power should provide the necessary flexibility required for management and development.

Although the licensing system applies to both local and foreign fishing vessels, the legislation allows for more stringent conditions to be imposed on foreign fishing, including different criteria in respect of non-issue of licences, etc. This change was discussed with some members of the Inter-Ministerial Committee which met to discuss the proposed draft laws, and there was agreement with the proposed change.

#### 10.7 Appeals

Because the Bangladesh legal system is in part based on the common law, and because the common law makes provision for the application of the rules of natural justice in respect of certain classes of administrative proceedings, in particular the audi alteram partem rule, it was thought appropriate to make provision for appeals against decisions cancelling, suspending, refusing to issue or not renewing licences. This approach was also recommended by the representative of the Ministry of Law. Furthermore, the pattern adopted in the proposed legislation is not dissimilar to that found in the existing Bangladesh customs legislation.

#### 10.8 Marine Reserves

There was general agreement that a part on marine reserves should be included in the legislation. This is dealt with in Part IX of the proposed legislation.

#### 10.9 Prohibited Fishing Methods

Because certain methods of fishing can cause considerable damage to fishing stocks, there is a separate part dealing with prohibited methods of fishing. This part covers all fishing operations. An exception is made, however, for persons carrying out marine scientific research with the permission of the Director.

#### 10.10 Powers of Authorized Officers, Offences and Legal Proceedings

Parts dealing with these matters are included in order to ensure that the substantive provisions regarding management can be given legal effect. In particular, it has been necessary to ensure that enforcement measures taken by authorized officers have a sound legal basis.

10.11 Rule-Making Power

An extensive rule-making power is provided for.

10.12 Punishments

Except for obstructing an authorized officer in the course of his duties, the proposed legislation makes provision only for the imposition of fines. The precise level of fine has not been indicated. An Inter-Ministerial Committee meeting, held to consider draft legislation, was of the opinion that imprisonment should be provided for. The present consultant is not, however, able to recommend imprisonment as a suitable punishment for essentially fisheries offences in the economic zone. Such a punishment has been proscribed in Article 73(3) of the Informal Composite Negotiating Text, which states: "Coastal State penalties for violations of fisheries regulations in the Exclusive Economic Zone may not include imprisonment in the absence of agreement to the contrary of the States concerned or any other form of corporal punishment".

Given that the provisions of the Informal Composite Negotiating Text insofar as they relate to fisheries are receiving acceptance in international practice, it is recommended that imprisonment is not included as a general punishment for fisheries offences, except, for example, obstructing an authorized officer in the course of his duties.

DRAFT MARINE FISHERIES ORDINANCE

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DRAFT MARINE FISHERIES ORDINANCE, 1979

An  
Ordinance

to make provision for the Marine Fisheries of Bangladesh

WHEREAS it is expedient to provide for the management, conservation and development of the marine living resources in Bangladesh fisheries waters and to deal with certain matters connected therewith;

NOW, THEREFORE, in pursuance of the Proclamations of the 20th August 1975, and 8th November 1975, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:-

It is hereby enacted as follows:

PART I - Preliminary

1. Short Title and Commencement. - This Ordinance may be cited as the Marine Fisheries Ordinance, 1979, and shall come into force on such day as the Government may, by notification in the Official Gazette, appoint.

2. Government may extend Ordinance to Rivers. - The Government may by notification in the Official Gazette extend the provisions of this Ordinance to apply to any rivers or parts of rivers as may be specified in the notification.

3. Non-mechanized local fishing vessels and local vessels with limited horse-power. -

(1) The licensing provisions of this Ordinance shall not apply to fishing operations conducted by any non-mechanized local fishing vessel or by any mechanized local fishing vessel which has a motor less than ... horse-power unless or until the Government by notification in the Official Gazette declares that the licensing provisions of this Ordinance shall apply to such fishing operations.

(2) The Government may by notification in the Official Gazette declare zones in which only non-mechanized local fishing vessels or mechanized local fishing vessels with a motor less than ... horse-power may engage in fishing operations or in which fishing operations by other fishing vessels may be restricted.

(3) The Government may by notification in the Official Gazette alter the horse-power required for mechanized local fishing vessels referred to in sub-sections (1) and (2) of this Section.

(4) Nothing in this Section shall be construed as exempting any fishing vessel from the provisions of PART VIII of this Ordinance concerning prohibited fishing methods.

(5) Nothing in this Section shall be construed as exempting the master of any fishing vessel from the obligation to operate that vessel so as not to interfere with navigational aids or with shipping in established shipping routes.

4. Interpretation. - In this Ordinance, unless there is anything repugnant in the subject or context,

"Authorized officer" means a person appointed or otherwise qualified in accordance with Section 38 of this Ordinance;

"Bangladesh fisheries waters" means the marine internal waters, the territorial waters and waters of the economic zone of Bangladesh as defined by or notified in accordance with the Territorial Waters and Maritime Zones Act, 1974, any other marine waters over which Bangladesh claims jurisdiction by law with respect to the management and conservation of the marine living resources, and any river or part of a river to which the provisions of this Ordinance have been extended under Section 2.

"Director" means the person appointed or designated under Section 5;

"Fish" means any aquatic animal, whether piscine or not, and includes any shellfish, crustacean, turtle, or aquatic mammal, and the young, fry, eggs and spawn thereof;

"Fishery" means one or more stocks of fish that can be treated as a unit for the purposes of conservation and management;

"Fishing" means fishing for, catching, taking, or killing fish by any method, and includes attempting to catch, take or kill fish by any method;

"Fishing vessel" means any vessel used for fishing or for the processing, carriage or storage of fish and includes any vessel used in support of or ancillary to fishing operations but does not include any vessel carrying fish as part of a general cargo unless that vessel is engaged in operations in support of or ancillary to fishing operations;

"Foreign fishing vessel" means any fishing vessel other than a local fishing vessel;

"Local fishing vessel" means any fishing vessel:

- (a) wholly owned by one or more persons who are citizens of Bangladesh; or
- (b) wholly owned by any company, society or other association of persons established under the law of Bangladesh, of which at least 51 percent of the shares are held by citizens of Bangladesh; or
- (c) wholly owned by a statutory corporation established under the laws of Bangladesh, or by the Government of Bangladesh.

"Master", in relation to a fishing vessel, means the person for the time being having command or charge of the vessel.

## PART II - Administration

5. Government may appoint Director and fisheries officers. - The Government may appoint or designate a Director and such other fisheries officers as may be necessary for the purposes of implementing the provisions of this Ordinance.

6. Director responsible for management, etc. - The Director shall have responsibility for the management, supervision and development of marine fisheries and the implementation of the objectives of this Ordinance.

7. Delegation of powers of Government and the Director. -

(1) The Government may delegate any or all of its functions other than making rules to the Director.

(2) The Director may delegate any or all of his functions to fisheries officers appointed by the Government pursuant to Section 5 of this Ordinance.

8. Marine Fisheries Advisory Board. -

- (1) There shall be established a Marine Fisheries Advisory Board.
- (2) The membership of the Board shall be as follows:
  - (a) The Secretary of the Ministry of Fisheries and Livestock who shall be its Chairman;
  - (b) The Director who shall be its Secretary;
  - (c) The Secretary, Ministry of Law and Parliamentary Affairs or his nominee;
  - (d) The Secretary, Ministry of Foreign Affairs or his nominee;
  - (e) The Secretary, Ministry of Ports, Shipping and Inland Water Transport or his nominee;
  - (f) One representative from the Ministry of Defence with experience in maritime enforcement matters appointed by the Minister of Defence;
  - (g) One representative from the National Board of Revenue with experience in customs appointed by the Chairman of the National Board of Revenue;
  - (h) The Chairman of the Bangladesh Fisheries Development Corporation or his nominee;
  - (i) One representative from the Planning Commission with experience in fisheries appointed by the Minister of Planning;
  - (j) Two persons appointed by the Government who shall represent the marine commercial fishing industry;
  - (k) Such other persons as the Government may from time to time appoint.
- (3) The Board shall meet at least twice annually.
- (4) The Ministry of Fisheries and Livestock shall undertake responsibility for the administration of the Board.
- (5) Four members of the Board shall constitute a quorum.

9. Functions of the Board. - The Marine Fisheries Advisory Board shall fulfil the following functions:

- (a) it shall consider the fisheries management and development plan prepared by the Director in accordance with Section 10 of this Ordinance and make such comments as it considers appropriate;
- (b) it shall consider any rules proposed by the Government to be passed under the provisions of this Ordinance and shall make such comments as it considers appropriate;
- (c) it shall consider the annual report prepared by the Director in accordance with Section 11;
- (d) it shall consider such other matters as the Government or the Director may submit to it.

PART III - The Management and Development  
of Marine Fisheries

10. The Fisheries Management and Development Plan. -

- (1) The Director shall prepare and keep under continual review a plan for the management and development of marine fisheries in Bangladesh fisheries waters.
- (2) The marine fisheries management and development plan shall be based upon the best scientific information available and shall be designed to ensure the optimum utilization of the fisheries resources of Bangladesh.
- (3) The plan shall take into account as far as possible the need to ensure integrated management of individual and inter-related stocks of fish throughout their range. To this end, the Government shall, where appropriate, consult with the Governments of other nations sharing the same or inter-related stocks, either directly or through the appropriate regional or sub-regional organizations, in order to ensure the closest practicable harmonization or coordination of their respective fisheries management and development plans.
- (4) Each marine fisheries management and development plan shall:
  - (a) identify the resources and estimate, as far as possible, the potential average annual yields that can be taken from them;
  - (b) assess the present state of exploitation of each resource and, taking into account all relevant biological, social and economic factors, determine the opportunities for expansion of, or the need for, restrictions on the extent of fishing in respect of each resource;
  - (c) indicate the measures, if any, taken or proposed to be taken to develop the marine fisheries of Bangladesh;
  - (d) estimate the number of licences that may be issued in any twelve-month period consistently with the state of exploitation of each resource including the number of licences that can be issued to foreign fishing vessels in any one year.
- (5) The fisheries management and development plan shall be submitted at least once a year to the Marine Fisheries Advisory Board for consideration and the Director may if he thinks fit take into account any comments that the Board may wish to make concerning the plan and the Director shall then submit the plan to the Government for approval.

11. Director shall make annual report. - The Director shall report annually to the Marine Fisheries Advisory Board specifying in that report:

- (a) the number of licences issued in respect of local fishing vessels;
- (b) the number of licences issued to foreign fishing vessels;
- (c) the extent to which the fisheries management and development plan was adhered to in the twelve-month period to which the report relates;
- (d) such other matters as the Government or the Marine Fisheries Advisory Board requires to be reported on.

12. Construction, importation, etc., of fishing vessels. - The Government may by notification in the Official Gazette specify that no fishing vessel may be constructed or that no vessel may be adapted for use as a fishing vessel or that no further fishing vessels shall be brought into Bangladesh except with the written permission of the Director

if it becomes necessary or desirable to restrict the number of vessels that may be used for fishing in Bangladesh fisheries waters having regard to the requirements of any fisheries management and development plan.

PART IV - General Provisions Governing Licences

13. Director to issue licences. - The Director shall be responsible for issuing licences in respect of all marine fishing to which this Ordinance applies.

14. Applications for licences. - Applications for licences shall be made in such form as the Director designates or as may be designated in any rules made under this Ordinance.

15. Licences valid for one year. - Any licence issued in accordance with the provisions of this Ordinance shall be valid for a period of not more than one year.

16. Licences not transferable except with written permission. - No licence issued under this Ordinance or in accordance with any rules made thereunder shall be transferable except with the written permission of the Director endorsed upon such licence.

17. Local fishing vessel licence valid only if vessel remains local. - Where any local fishing vessel ceases at any time to be a local fishing vessel as defined in Section 4, any licence issued to such fishing vessel shall cease to be valid forthwith.

18. Matters for which licence is valid. - Each licence issued under this Ordinance shall be valid only with respect to the species of fish and the type of fishing gear or method of fishing or the location specified in the licence.

19. Duty to provide information regarding catches. - The holder of any licence issued under this Ordinance or in accordance with any rules made thereunder shall keep detailed information of catches made in such form as the Director may designate and shall make this information freely available to the Director on request.

20. Fishing vessels not to interfere with navigation. - No fishing vessel shall be operated so as to interfere with navigational aids or with shipping in established shipping routes.

21. Licence to be subject to conditions and rules. -

(1) Any licence issued under this Ordinance or in accordance with any rules made thereunder shall be subject to such conditions as may be designated in this Ordinance and in any rules made thereunder, and as may be otherwise endorsed upon such licence by the Director.

(2) In particular, without limiting the generality of the foregoing sub-section, the Director may attach any or all of the following terms and conditions to any licence issued under this Ordinance:

- (a) the areas within which fishing is authorized;
- (b) the period during which fishing is authorized;
- (c) the species, size, sex, age and quantities of fish that may be taken;
- (d) the methods by which fish may be taken;
- (e) the types, size, and amount of fishing gear that may be used by the fishing vessel;



- (f) statistical and other information required to be given by the fishing vessel to the Government, including statistics relating to catch and effort, and reports as to the position of the vessel;
- (g) the keeping on board the fishing vessel of the licence issued in respect of it;
- (h) the marking of the fishing vessel and other means for its identification;
- (i) such other matters as the Director may consider necessary or expedient for the conservation and management of fisheries resources of Bangladesh.

(3) In addition to the terms and conditions which may be imposed on any licence under the preceding sub-section, the Director may make applicable to foreign fishing vessels the following terms and conditions:

- (a) entry by foreign fishing vessels to Bangladesh ports, whether for the inspection of its catch or for any other purpose;
- (b) the specification of points of entry into and departure from Bangladesh fisheries waters;
- (c) the protection of local fisheries;
- (d) the posting of bonds or other forms of security for the duration of the licence;
- (e) the reporting of the position of the foreign fishing vessel while within or about to enter Bangladesh fisheries waters;
- (f) directions, instructions and other requirements given or made by Government ships or aircraft to a foreign fishing vessel that shall be complied with by the vessel;
- (g) the installation on the foreign fishing vessel and maintenance in working order of a transponder or other equipment for the identification and location of the vessel and of adequate navigational equipment to enable its position to be fixed from the vessel;
- (h) the carriage on board a foreign fishing vessel of specified communication equipment, specified nautical charts, nautical publications, and nautical instruments;
- (i) the placing of observers on a foreign fishing vessel and the reimbursement to the Government of the costs of doing so;
- (j) the training of citizens of Bangladesh in the methods of fishing employed by a foreign fishing vessel and the transfer to Bangladesh of technology relating to fisheries;
- (k) the conduct by the foreign fishing vessel of specified programmes of fisheries research.

22. Fees. -

(1) The Director shall determine the fees, if any, to be paid by holders of licences.

(2) Any fee determined by the Director may be based on fixed amounts or calculated on the basis of estimates of the total catch or profits of the vessel (or vessels if operating as a team) or on any other basis that the Director designates.

PART V - Local Marine Fishing Operations

23. Local fishing vessels to be registered. - No licence shall be issued in respect of a local fishing vessel that is required to be registered under the laws governing merchant shipping unless the vessel has been registered.

24. Local fishing vessels to hold valid certificate of inspection. - No licence shall be issued in respect of a local fishing vessel that is required to hold a valid certificate of inspection under the laws governing merchant shipping unless such a certificate is issued in respect of that vessel.

25. Grounds for refusing to issue, etc., local fishing vessel licences. -

(1) The Director may refuse to issue a licence in respect of a local fishing vessel or he may suspend or cancel or refuse to renew any licence that has been issued in respect of a local fishing vessel where he is satisfied:

- (a) that it is necessary to do so in order to allow for the proper management and development of any particular fishery in accordance with the terms of any fisheries management and development plan prepared under Section 10 of this Ordinance; or
- (b) that it is otherwise in the best interests of the marine fisheries industry to do so; or
- (c) that the vessel in respect of which the licence has been issued has been used in contravention of this Ordinance or of any rules made thereunder or of any conditions of the licence; or
- (d) that the person applying for or holding the licence is unfitted to hold a licence.

(2) Where any licence has been suspended or cancelled for the reason set out in either paragraph (a) or paragraph (b) of sub-section (1) of this Section, a proportion of any fees paid for the licence representing the unexpired period shall be reimbursed to the licensee at his request.

PART VI - Foreign Marine Fishing Operations

26. No foreign fishing in Bangladesh fisheries waters except with licence. - No foreign fishing vessel shall:

- (a) enter Bangladesh fisheries waters except for any purpose set out in Section 27; or
- (b) within Bangladesh fisheries waters:
  - (i) fish or attempt to fish;
  - (ii) load, unload or tranship any fish; or
  - (iii) load or unload any fuel supplies,

unless a licence has been issued in respect of that vessel.

27. Entry by unlicensed foreign fishing vessels into Bangladesh fisheries waters. -

(1) Subject to sub-section (2) a foreign fishing vessel may enter Bangladesh fisheries waters without a licence having been issued under PART IV for the purpose of:

- (a) passage through such waters in the course of a voyage to a destination outside such waters;

- (b) where the vessel is in distress, averting imminent danger to the safety of the vessel or its crew;
- (c) rendering assistance to persons, ships or aircraft in danger or distress;
- (d) obtaining emergency medical assistance for a member of the crew; or
- (e) for any other such purpose recognized by international law.

(2) Any foreign fishing vessel entering Bangladesh fisheries waters for any purpose set out in the preceding sub-section shall:

- (a) observe such rules as may be made under Section 61 including rules regarding the stowage of fishing gear; and
- (b) return outside such waters as soon as the purpose for which it entered has been fulfilled.

28. Foreign fishing vessels liable to fine and forfeiture if found in Bangladesh fisheries waters illegally. - Where any foreign fishing vessel enters Bangladesh fisheries waters except in accordance with Section 27 or except in accordance with a licence issued under this Ordinance the master, owner and charterer, if any, of such vessel shall be guilty of an offence and shall be liable to a fine not exceeding ..... and the vessel may be subject to forfeiture in accordance with provisions of PART XII.

29. Foreign fishing vessels to observe navigation, customs laws, etc. - No licence issued under this Ordinance shall relieve any foreign fishing vessel or its master or crew of any obligation or requirement imposed by law concerning navigation, customs, immigration, health or other matters.

30. Grounds for refusing to issue, etc., foreign fishing vessel licences. -

(1) The Director may refuse to issue or renew a licence in respect of a foreign fishing vessel on any ground that he thinks fit.

(2) The Director may suspend or cancel any licence that has been issued in respect of a foreign fishing vessel where he is satisfied:

- (a) that it is necessary to do so in order to allow for the proper management and development of any particular fishery in accordance with the terms of any fisheries management and development plan prepared under Section 10 of this Ordinance; or
- (b) that it is otherwise in the best interests of the marine fisheries industry to do so; or
- (c) that the vessel in respect of which the licence has been issued has been used in contravention of this Ordinance or of any rules made thereunder, or of any conditions of the licence; or
- (d) that the person holding the licence is unfitted to hold a licence.

(3) Where any licence has been suspended or cancelled for the reason set out in either paragraph (a) or paragraph (b) of sub-section (2) of this Section, a proportion of any fees paid for the licence representing the unexpired period shall be reimbursed to the licensee at his request.

PART VII - Appeals

31. Appeals. -

(1) Any Bangladesh citizen aggrieved by a refusal by the Director to grant a licence or any person aggrieved by the cancellation or suspension of any licence may appeal against such refusal, cancellation or suspension.

(2) An appeal shall be lodged within thirty days of the decision to refuse or cancel or suspend the licence having being made.

(3) Where an appeal is made by a person who has been refused a licence, such appeal shall be made in writing only.

(4) Where an appeal is made by a person who had held a licence for one year or more or by a person whose licence has been cancelled or suspended such appeal may be made orally or in writing or both, and such person shall be entitled to appoint a representative for the purpose of making an appeal.

(5) Where the decision appealed against has been made by the Director, appeal shall lie to the Government.

(6) Where the decision appealed against has been made by a fisheries officer appointed pursuant to Section 5 of this Ordinance, then appeal shall lie to the Director.

PART VIII - Prohibited Fishing Methods

32. Use of explosives, etc., an offence. -

(1) Any person other than a person authorized in writing by the Director, who in Bangladesh fisheries waters:

- (a) uses, or attempts to use, any explosive, poison or other noxious substance for the purpose of killing, stunning, disabling or catching fish, or in any other way rendering such fish more easily caught; or
- (b) carries or has in his possession or control any explosives, poison or other noxious substance with the intention of using such explosive, poison or other noxious substance for any of the purposes referred to in the preceding sub-sections; or
- (c) uses or attempts to use any such other prohibited methods of fishing as may be designated in any rules made under this Ordinance, or carries or has in his possession or control on board any vessel, any fishing gear prohibited under such rules; or
- (d) knowing or having reasonable cause to believe that any fish has been taken in contravention of the provisions of this Section, receives or is found in possession of such fish, without lawful excuse

shall be guilty of an offence and shall be liable to a fine not exceeding .....

(2) Any explosive, poison or other noxious substance, or apparatus referred to in the preceding sub-section found on board any vessel shall be presumed to be intended for the purposes referred to in that sub-section unless the contrary is proved.

33. Small meshes, etc. - Any person who uses or has in his possession or has on board any vessel within Bangladesh fisheries waters any fishing net which has a mesh size less than the size specified for that type of net in any rules made under this Ordinance or any other nets or fishing gear or fishing appliances that have been prohibited under any rules made under this Ordinance shall be guilty of an offence and liable to a fine not exceeding .....

PART IX - Marine Reserves

34. Government may declare marine reserves. - The Government may, by notice published in the Official Gazette, declare any area of Bangladesh fisheries waters and, as appropriate, any adjacent or surrounding land, to be a marine reserve where it considers that special measures are necessary:

- (a) to afford special protection to the aquatic flora and fauna or such areas and to protect and preserve the natural breeding grounds and habitats of aquatic life, with particular regard to flora and fauna in danger of extinction;
- (b) to allow for the natural regeneration of aquatic life in areas where such life has been depleted;
- (c) to promote scientific study and research in respect of such areas; or
- (d) to preserve and enhance the natural beauty of such areas.

35. Fishing, dredging, etc., prohibited in marine reserves. -

(1) Any person who, in any marine reserve, without permission granted under this Section:

- (a) fishes or attempts to fish;
- (b) dredges, extracts sand or gravel, discharges or deposits waste or any other polluting matter, or in any other way disturbs, alters or destroys fish or their natural breeding grounds or habitats; or
- (c) constructs or erects any buildings or other structures on or over any land or waters within such reserve

shall be guilty of an offence and liable to a fine not exceeding .....

(2) The Director, or a person authorized by him in writing, may give permission to do any of the things prohibited under this Section where the doing of such things may be required for the proper management of the reserve or for any of the purposes referred to in the preceding Section.

36. Government may make rules for marine reserves. - The Government may, in consultation with the National Wildlife Advisory Board, make rules generally for the management, regulation and protection of marine reserves.

PART X - Marine Scientific Research

37. Director may permit scientific research. -

(1) The Director may exempt from any or all of the provisions of this Ordinance any vessel or person undertaking research into marine fisheries or other marine living resources in Bangladesh fisheries waters.

(2) The Director may attach such conditions as he may think fit to any exemption granted for research into marine fisheries or into any other marine living resources in Bangladesh fisheries waters.

(3) Any exemption granted by the Director for research and any conditions that he may impose on the conduct of that research shall be in writing.

PART XI - Powers of Authorized Officers

38. Authorized officers. -

(1) Members of the Bangladesh Navy of the rank of Petty Officer or above, any customs officer, any fisheries officer appointed pursuant to Section 5 of this Ordinance and any other person or class of persons appointed by the Government shall be authorized officers for the purpose of this Ordinance.

(2) The Government shall publish in the Official Gazette the name of any person or the designation of any class of persons appointed under sub-section (1).

39. An authorized officer may stop, etc., examine, etc., any fishing vessel. - For the purpose of enforcing this Ordinance, an authorized officer may, without a warrant:

- (a) stop and board any fishing vessel within Bangladesh fisheries waters and make any examination concerning that vessel, its equipment, fishing gear, crew or fish carried on board that vessel;
- (b) stop and inspect any vehicle transporting fish;
- (c) require to be produced, examine and take copies of any licence or other document required under this Ordinance or any rules made thereunder;
- (d) require to be produced and examine any fishing gear, nets or other fishing appliance, whether at sea or on land.

40. Authorized officer may enter premises without warrant. -

(1) Any authorized officer, where he has reasonable grounds to believe that an offence has been committed against the provisions of this Ordinance or any rules made thereunder, may, without a warrant:

- (a) enter any premises other than premises used exclusively as a dwelling house, in which he has reason to believe that such offence has been committed, or fish taken in contravention of such provisions are being stored, and search such premises;
- (b) take samples of any fish found in any vessel or vehicle inspected under Section 39 or any premises searched under the preceding paragraph;
- (c) arrest any person whom he has reason to believe has committed such offence;
- (d) seize any vessel (including its fishing gear, furniture, appurtenances, stores and cargo), vehicle, fishing gear, nets or other fishing appliances which he has reason to believe has been used in the commission of such offence or in respect of which the offence has been committed;
- (e) seize any fish which he has reason to believe has been caught in the commission of an offence, or is possessed in contravention of this Ordinance or any rules made thereunder;
- (f) seize any explosive, poison or other noxious substances which he has reason to believe has been used or is possessed in contravention of Section 32.

(2) A written receipt shall wherever feasible be given for any article or thing seized under the preceding sub-section and the grounds for such seizure shall be stated in such receipt.

41. Power to stop and search vessels. - Where it becomes necessary for an authorized officer to stop any vessel for the purposes of enforcing this Ordinance, it shall be lawful for any vessel or aircraft under the command of an authorized officer to summon such vessel to stop by means of an international signal, code, or other recognized means, and if it fails to do so, the vessel may be pursued and a gun fired as a warning to the vessel to stop, and if it fails to stop after such a warning such force may be used as may be reasonably necessary to cause the vessel to stop.

42. Hot pursuit of foreign fishing vessels. - Any authorized officer where he has reasonable grounds for believing that a foreign fishing vessel has committed an offence against the provisions of this Ordinance within Bangladesh fisheries waters may pursue that vessel from those waters to a place outside Bangladesh fisheries waters provided that the pursuit is hot pursuit as recognized in international law or is in accordance with any relevant international agreement in force and exercise in respect of that vessel outside the limits of Bangladesh fisheries waters the powers set out in Sections 39, 40 and 41.

43. Vessel and crew to be taken to nearest port. - Any vessel seized under Sections 40 and 42 and the crew thereof shall be taken to the nearest or most convenient port, and dealt with in accordance with the provisions of this Ordinance.

44. Persons arrested without warrant to be taken to police station. - Any person arrested without a warrant for the purposes of enforcing this Ordinance shall be taken to a police station forthwith or as soon as possible after arriving at a port and shall be dealt with in accordance with the provisions of the Code of Criminal Procedure, 1898.

45. Authorized officer not to enter dwelling houses without warrant. - No authorized officer may enter premises used solely as a dwelling house for the purposes of enforcing this Ordinance except when authorized to do so by a warrant.

46. Perishables may be sold by the Director. - Any fish or other articles of a perishable nature seized under the provisions of this Ordinance may, on the direction of the Director, be sold and the proceeds of sale shall be held and dealt with in accordance with the provisions of PART XII of this Ordinance.

47. Authorized officer not in uniform to produce identification. -

(1) Any authorized officer not in uniform when acting under the provisions of this Ordinance shall, on demand, declare his office and produce to any person against whom he is taking action, such identification or written authority as may be reasonably sufficient to show that he is an authorized officer for the purposes of this Ordinance.

(2) It shall not be an offence for any person to refuse to comply with any request, demand, or order made by any authorized officer not in uniform, if such authorized officer refuses, on demand being made by such person, to declare his office or produce such identification or written authority.

48. No action against authorized officer for acts done in good faith. - No action shall be brought against any authorized officer or any person requested by him to assist him in respect of anything done or omitted to be done by such person in good faith in the execution or purported execution of his powers and duties under this Ordinance.

#### PART XII - Offences and Legal Procedures

49. Obstruction of authorized officer, etc. -

Any person who:

- (a) wilfully obstructs any authorized officer in the exercise of any of the powers conferred on him by this Ordinance; or



- (b) fails to comply with any lawful enquiry or requirement made by any authorized officer in accordance with the provisions of Section 39 shall be guilty of an offence and liable to a fine of ..... or to imprisonment for a term not exceeding ..... or both.

50. Wilful damage of fishing vessels, etc. - Any person who wilfully and unlawfully damages or destroys any fishing vessels, fishing stakes, fishing gear or fishing appliance, shall be guilty of an offence and liable to a fine of .....

51. Contravention of conditions of licence. - Any person who contravenes any condition of any licence issued under this Ordinance or any regulations made thereunder shall be guilty of an offence and liable to a fine of .....

52. Destruction to avoid seizure or detection. - Any person who destroys or abandons any fish, fishing gear or fishing appliance, explosive, poison or other noxious substance or any other thing, with intent to avoid their seizure or the detection of any offence against this Ordinance or any rules made thereunder, shall be guilty of an offence and liable to a fine of .....

53. Failure to mark vessel. - Any person who owns or operates a fishing vessel in Bangladesh fisheries waters which is not marked in such manner as may be prescribed under this Ordinance shall be guilty of an offence and liable to a fine of .....

54. Master also liable for offences committed by persons on board vessel. - Where an offence against this Ordinance has been committed by any person belonging to or on board a fishing vessel, the master of such vessel shall also be guilty of such offence and liable to a fine not exceeding .....

55. Compounding. - Any authorized officer may compound any offence against the provisions of this Ordinance or any rules made thereunder for a sum of money not less than one-tenth of the maximum fine provided for such offence provided that in no case shall the sum be less than .....

56. Forfeiture of vessels, etc., seized. -

(1) Any vessel, fishing gear or fishing appliance, fish or the proceeds of sale under Section 46, explosive, poison or other noxious substance or apparatus seized under Section 32, shall, subject to the provisions of sub-section (3):

- (a) if a prosecution is to be brought under this Ordinance, be held pending the outcome of such prosecution; or
- (b) if no prosecution is to be brought under this Ordinance, be held for a period of one month, at the end of which period they shall be deemed to be forfeited, unless during such period any written claim is received from the owner contesting such forfeiture.

(2) Where any written claim contesting forfeiture is received under the preceding sub-section, either:

- (a) the subject matter of the claim shall be released and delivered to the owner forthwith; or
- (b) the claim shall be referred to the Court for its decision in accordance with the provisions of Section 57.

(3) The provisions of sub-section (1), notwithstanding, the Court may order the release of any fishing vessel, fishing gear or fishing appliance seized under Sections 40 and 42, on receipt of a satisfactory bond or other security from any person claiming such property.

57. Court may order forfeiture in addition to any other penalty imposed. - Where any person is convicted of an offence against this Ordinance or any rules made thereunder, or where the Court finds that an offence has been committed against this Ordinance or any rules made thereunder, the Court, in addition to any other penalty imposed:

- (a) may order that any fishing vessel (including its fishing gear, furniture, appurtenances, stores and cargo), fishing gear or fishing appliances used in the commission of such offence shall be forfeited and that any licence issued under this Ordinance or any rules made thereunder shall be suspended for such period of time as the Court may think fit, or be cancelled, and
- (b) shall order that any fish caught in the commission of such offence or the proceeds of sale of any such fish under Section 46, and any explosives, poisons or other noxious substance used in the commission of such offence shall be forfeited.

58. Vessels, etc., forfeited may be disposed of by the Director. - Any vessel (including its fishing gear, furniture, appurtenances, stores and cargo), fishing gear, or fishing appliance, explosive, poison or other noxious substance, and any fish or proceeds of the sale of fish deemed or ordered forfeit under Sections 56 and 57 shall be disposed of in such manner as the Director may think fit.

59. Fish found on board fishing vessel presumed to be caught illegally. - All fish found on board any fishing vessel which has been used in the commission of an offence against this Ordinance or any rules made thereunder shall, unless the contrary is proved, be presumed to have been caught illegally in Bangladesh fisheries waters.

60. Offences triable as if committed within limits of local jurisdiction. - Any offence against any of the provisions of this Ordinance or any rules made thereunder committed within Bangladesh fisheries waters by any person, or any such offence committed outside such waters by any citizen of or person ordinarily resident in Bangladesh, or by any person on board any local fishing vessel, shall be triable in any Court of Bangladesh as if such offence had been committed in any place in Bangladesh within the local limits of the jurisdiction of such Court.

61. Service of documents. -

(1) Where, for the purposes of this Ordinance or any rules made thereunder, any document is to be served on any person, that document may be served:

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

(2) A document which is to be served on the master of a vessel registered in Bangladesh may, if the master cannot be found, be served on the managing owner of the vessel or, if there is no managing owner, on an agent of the owner residing in Bangladesh or, where no such agent is known or can be found, by affixing a copy thereof to the mast of the vessel.

PART XIII - Rules

62. Rules. -

(1) The Government may make rules generally for the proper management, development, and regulation of marine fisheries.

(2) In particular, without limiting the generality of the foregoing sub-section the Government may make rules for all or any of the following purposes:

- (a) to provide for the licensing, regulation and management of any particular marine fishery;
- (b) to establish closed seasons for all areas or species of fish, or for designated areas or species;
- (c) to prescribe limitations on the amount, size and weight of fish caught and retained or traded;
- (d) to prescribe minimum mesh sizes;
- (e) to prescribe prohibited fishing areas for all fish or for certain species of fish, or for certain methods of fishing;
- (f) to prescribe certain prohibited methods of fishing;
- (g) to prescribe the amount of fish that may be caught incidentally when fishing for a species for which a licence has been issued;
- (h) to make provision for the management of marine living resources other than fish in Bangladesh fisheries waters;
- (i) to provide for the registration and licensing of marine fishermen, fishing gear and other fishing appliances;
- (j) to regulate or prohibit the erection, maintenance, working, repair and lighting of fishing stakes in Bangladesh fisheries waters;
- (k) to organize and regulate sport fishing in Bangladesh fisheries waters;
- (l) to establish the conditions to be observed by foreign fishing vessels while within Bangladesh fisheries waters;
- (m) to prescribe the procedures to be followed for joint venture proposals in fisheries, and the conditions to be fulfilled by such ventures;
- (n) to prescribe the nationality of persons permitted to be employed or carried in fishing vessels;
- (o) to make provision for the lodging of bonds and other forms of security for the fulfilment of any obligations attaching to a licence;
- (p) to make provision for points of entry, exit, and transit through Bangladesh fisheries waters by any fishing vessel licensed to fish by virtue of the provisions of this Ordinance;
- (q) to make provision for the installation and maintenance in working order of a transponder or other equipment for the identification and location of a fishing vessel, and of adequate navigational equipment to enable its position to be fixed from the vessel;

- (r) to make provision for the appointment by the owner of a foreign vessel of a legal representative or other authorized local agent in Bangladesh for the purpose of accepting responsibility for any matters arising under the provisions of this Ordinance;
- (s) to make provision for the stowing of fishing gear by foreign fishing vessels while in transit through Bangladesh fisheries waters;
- (t) to prescribe the powers to be exercised by authorized officers, and any other person to whom the Government delegates any or all of its powers under this Ordinance;
- (u) to make provision for rewards being made to authorized officers or Bangladesh fishermen for reporting the presence of foreign fishermen operating in Bangladesh fisheries waters;
- (v) to prescribe the conditions and procedures of application for any licences, certificates or other documents required under this Ordinance or any rules made thereunder, their form and the amount of fees and deposits payable therefore;
- (w) to improve the collection of statistics and to require any person engaged in marine fishing, marketing, processing or marine fish culture, including any fish dealer, to supply such information as may be necessary for the effective management and development of marine fisheries;
- (x) to provide for procedures to be followed in making appeals against a refusal to issue, cancellation, non-renewal or suspension of licences pursuant to Section 31;
- (y) to specify the appellate powers for any body under Section 31;
- (z) to prescribe any other matter required or authorized to be prescribed under this Ordinance.

(3) The Government may, by rule, provide that the breach of any rule shall constitute an offence and may provide for penalties by way of fine not exceeding .....

EXPLANATORY NOTES ON THE DRAFT MARINE  
FISHERIES ORDINANCE

Section 2 (Application)

This Section should be read in conjunction with the definition of "Bangladesh fisheries waters" in Section 4. Section 2 allows the Government to extend the provisions of the Ordinance to apply in "any rivers or parts of rivers". During discussions with the Inter-ministerial Committee which met to discuss marine fisheries laws, two possible methods of defining the inner limits of the Ordinance were considered. (1) The limit of sea water test, and (2) the point up to which regular seagoing vessels could go. There was some agreement on the second, though it was insufficiently discussed at the time. The first was not acceptable because it was thought to be too uncertain. It is thought that the second approach is also too uncertain.

Accordingly it has been proposed in the Draft Marine Fisheries Ordinance that the Government resolve the problems of the inner limits of "Bangladesh fisheries waters" by notifying in the Official Gazette those rivers to which the Ordinance extends. Until such a notification is made, the Ordinance will nonetheless apply in "marine" waters, and while this should not cause difficulties of interpretation for the most part, there could be doubts as to the dividing line between marine waters and inland waters until a notification has been made. The approach adopted in this proposed legislation is necessary having regard to the highly unstable character of so much of the Bangladesh coastline. It is hoped that the technique proposed will provide the necessary measure of certainty for the legislation to operate effectively, while giving also a measure of flexibility.

Section 3 (Exemption of small vessels)

It was generally agreed that small-scale or subsistence fishing should be protected under the proposed legislation. It has been found impossible to use such terms as "small-scale" or "subsistence" because they are from a legal point of view much too imprecise. Further, there is a well established practice in Bangladesh legislation concerned with merchant shipping and fisheries to make exemptions for "non-mechanized" vessels. Accordingly, it has been thought desirable to continue to employ that criterion, and to exempt such vessels from the licensing provisions of this Ordinance. However, because some mechanized vessels may be regarded as engaged in small-scale or subsistence fishing, it has been thought desirable to allow for small mechanized fishing boats to be exempted from the licensing provisions. This is to be determined by reference to the horse power of the engine, and the Bangladesh Government will need to consider an appropriate horse power size for this Section. Section 3(3) allows the Government to vary the horse power from time to time.

Section 4 (Interpretation)

"Bangladesh fisheries waters". This is defined by reference to the definitions of marine internal waters, territorial waters, and the economic zone as provided for in the Territorial Waters and Maritime Zones Act, 1974. Should any of these zones be extended or diminished in accordance with that Act, then that area of Bangladesh fisheries waters would be automatically adjusted. The definition also includes other Bangladesh legislation which claims other marine waters with respect to the management and conservation of the marine living resources. It should be noted that the definition only extends to "marine" waters except where the provisions of this Ordinance have been extended to rivers under Section 2.

"Director". The definition of "Director" should be read in conjunction with Section 5. The definition is intended to provide for flexibility. It would be possible for the Government to appoint a person who would have exclusive responsibility for marine fisheries, or to confer responsibility on an existing officer.

"Fishing vessel". This definition includes "mother" ships.

"Local fishing vessel". This definition is intended to ensure that only a vessel in which there is a substantial local interest can be regarded as local for the purpose of the legislation. The impending change in Bangladesh merchant shipping legislation may require the addition of a paragraph (d) as follows: "that is a vessel registered in accordance with laws governing merchant shipping".

#### Section 8 (The Marine Fisheries Advisory Board)

As has been commented upon earlier in this report, this Board is intended to ensure coordination in the formulation of marine fisheries policy. It should be noted that under Section 9 (the functions of the Board), the Board merely has the power to "consider" the fisheries management and development plan, rules proposed to be made by the Government under the Ordinance, the Director's annual report, and such other matters as the Government or Director may submit to it. With regard to the fisheries management and development plan, the provisions of Section 10(6) should be noted, as this Section spells out the roles of the Board, the Director, and the Government in dealing with the plan. The Director's report is dealt with in Section 11.

The membership of the Board is intended to be sufficiently wide to ensure that coordination will be achieved. Provision is made for further persons to be appointed to the Board (Section 8(1)). Section 8(5) sets the quorum at four; this is intended to be a low number as it is not thought likely that all Ministries and entities represented on the Board would want to be present at every meeting.

#### Section 10 (The Fisheries Management and Development Plan)

As has already been stated in this report, the object of the plan is to ensure that decisions taken regarding management and development are based upon the best available information. Section 10(5) spells out the information which is to be included within the plan.

Section 10 recognizes that there is a need for integrated management of fisheries resources and that this may involve intergovernmental cooperation. This could become important in the future in managing the living resources of the Bay of Bengal.

#### Section 11 (Reporting)

The Director's report is required to be annual, but the Section gives no indication of its timing within the year. This would be left to the Director's discretion.

#### Section 12 (Introduction of vessels)

This Section gives the Government the power to control the construction, etc., of fishing vessels. It was agreed that such a power would be included in the proposed legislation in the event that such action should become necessary in the future. Because such a power raises issues wider than fisheries management, it has been thought advisable to link its exercise to the requirements of a fisheries management and development plan.

#### Section 21 (Licence conditions)

This Section sets out the conditions that may be imposed by the Director on licences issued in respect of both foreign and local fishing vessels. In an earlier draft of the proposed legislation which was circulated while the present consultant was in Bangladesh,

the distinction between local and foreign fishing operations was achieved in large part by the device of providing for licences to be issued to local fishing vessels and permits to be issued to foreign vessels, with different conditions to be applied to licences and permits. In the proposed draft, the distinction has been abandoned, and a more simplified structure involving only licences has been adopted. However, because differing conditions apply to the two types of fishing operations, Section 21(2) sets those conditions which can be applied to both local and foreign fishing vessels while Section 21(3) sets out those conditions that can be applied only to foreign vessels. Those set out in Section 21(3) are designed to give Bangladesh the control that it may need over foreign fishing vessel operations in Bangladesh fisheries waters. This change from the earlier draft was discussed with some members of the Inter-ministerial Committee, and the proposed change was agreed to.

#### Sections 25 and 30 (Refusal of licences)

These two Sections set out the grounds on which fishing vessel licences may be refused or on which they may be cancelled or suspended. Section 25 deals with local licences and appears in Part V (Local Marine Fishing Operations) while Section 30 deals with foreign licences and appears in PART VI (Foreign Marine Fishing Operations).

The most important difference between the two sections is that a foreign fishing vessel licence may be refused on any ground whereas a local fishing vessel licence may be refused only if any of the criteria set out in Section 25 are fulfilled. With regard to cancellation, suspension and non-renewal, the same criteria apply to both local and foreign fishing vessel licences.

Sections 25 and 30 should also be read in conjunction with Section 31 (Appeals).

#### Sections 26, 27 and 28 (Entry of foreign fishing vessels)

These sections regulate the entry of foreign fishing vessels into Bangladesh fisheries waters.

Section 26 prohibits entry except for the purposes referred to in Section 27, or except with a licence.

Section 27 sets out the circumstances in which a foreign fishing vessel may enter Bangladesh fisheries waters without a licence. These include passage through Bangladesh fisheries waters in the course of a voyage to a destination outside those waters, and humanitarian grounds for entering those waters. Section 27(2) requires unlicensed foreign fishing vessels to observe rules made under Section 61, including rules regarding the stowage of fishing gear.

Section 28 subjects the master, owner, etc., of foreign fishing vessels entering Bangladesh fisheries waters except in accordance with Sections 26 and 27 to a fine, and the vessel to forfeiture.

#### Section 31 (Appeals)

This Section allows for appeals to be made in respect of certain licensing decisions. It should be noted that Bangladesh citizens only are given the right to appeal against a refusal to issue a licence while any person can appeal against cancellation, suspension or non-renewal. It is thought that it would be inappropriate if applicants for foreign fishing vessel licences could appeal against a refusal to issue a licence if the applicant had never previously held such a licence.



In paragraphs (3) and (4) of Section 31 another distinction is drawn between a refusal to issue a licence, and cancellation, suspension or non-renewal of a licence. A refusal to issue may be appealed against in writing only, whereas a cancellation, suspension or non-renewal may be appealed against, orally or in writing (or both), and representation is permitted. It is thought that these conditions meet, and elaborate on, the common law requirements of natural justice.

Section 41 (Power to stop and search vessels)

This provision is based on similar provisions in the Bangladesh Customs Act, 1969, Section 164, and the Territorial Waters and Maritime Zones Rules 1977, Section 11(2).

Section 42 (Hot pursuit)

This Section gives effect to the right of hot pursuit as recognized in international law. The Section is drafted to allow Bangladesh to benefit from possible future developments in international law regarding the right of hot pursuit.

Section 47 (Protection of officers)

This Section gives legal protection to authorized officers acting in good faith in executing the provisions of the Ordinance. This protection is extended to persons who are requested by an authorized officer to provide assistance.

PROPOSED CONSEQUENTIAL AMENDMENTS TO OTHER  
LEGISLATION AFFECTING FISHERIES

An  
Ordinance

to amend the Territorial Waters and Maritime Zones Act, 1974.

WHEREAS it is expedient to amend the Territorial Waters and Maritime Zones Act, 1974;

NOW, THEREFORE, in pursuance of the Proclamation of the 20th August 1975, and 8th November 1975, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:

1. Short title. - This Ordinance may be called the Territorial Waters and Maritime Zones (Amendment) Ordinance, 1979.
2. Amendment of Section 5. - Sub-section 3 of Section 5 of the Territorial Waters and Maritime Zones Act is repealed in its entirety.

Dacca  
Date

President  
Deputy Secretary

An  
Ordinance

to amend the Protection and Conservation of Fish Act, 1950.

WHEREAS it is expedient to amend the Protection and Conservation of Fish Act, 1950;

NOW, THEREFORE, in pursuance of the Proclamations of the 20th August 1975, and 8th November 1975, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:

1. Short title. - This Ordinance may be cited as the Protection and Conservation of Fish Act (Amendment) Ordinance, 1979.
2. Interpretation. - In this Ordinance, unless there is anything repugnant in the subject or context "the Act" means the Protection and Conservation of Fish Act, 1950.
3. Amendment of Section 3. -
  - (1) Section 3 of the Act is amended by adding to sub-section 2 of Section 3 after the words "or waters" the words "other than Bangladesh fisheries waters as defined under the Marine Fisheries Ordinance, 1979".
  - (2) Section 3 of the Act is amended by deleting from paragraph (b) of sub-section (3) of Section 3 the words "or within coastal territorial waters".

(3) Section 3 of the Act is amended by adding to paragraph (f) of sub-section (3) of Section 3 after the word "all" the word "inland" and by adding after the word "specified" the word "inland".

Dacca

President

Date

Deputy Secretary

GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH  
MINISTRY OF  
NOTIFICATION

Dacca, the 1979

In exercise of the powers conferred by Section 9 of the Territorial Waters and Maritime Zones Act, 1974, the Government is pleased to make the following rules, namely:

The Territorial Waters and Maritime Zones (Amendment)  
Rules, 1979.

1. Short title. - These Rules may be called the Territorial Waters and Maritime Zones (Amendment) Rules, 1979.
2. Definition. - In these Rules, unless there is anything repugnant in the subject or context "Rules" means the Territorial Waters and Maritime Zones Rules, 1977.
3. Amendment of Section 5. - Section 5 of the Rules is amended by deleting from sub-section 1 the word "fish" and by deleting the words "both living and non-living" and inserting before the words "natural resources" the words "non-living".
4. Repeal of Section 8. - Section 8 of the Rules is repealed in its entirety.
5. Repeal of Section 9. - Section 9 of the Rules is repealed in its entirety.
6. Repeal of Section 10. - Section 10 of the Rules is repealed in its entirety.
7. Amendment of Section 11. - Section 11 of the Rules is amended by deleting from paragraph (b) of sub-section 1 the words "including fish".
8. Repeal of Section 14. - Section 14 of the Rules is repealed in its entirety.

By order of the President

etc.

SUGGESTED FIRST DRAFT OF MARINE FISHERIES RULES  
UNDER THE PROPOSED MARINE FISHERIES ORDINANCE, 1979

In exercise of the powers conferred by Section 62 of the Marine Fisheries Ordinance, 1979, the President hereby makes the following Rules:

1. Citation. - These Rules may be cited as the Marine Fisheries Rules 1979.
2. Interpretation. - In these Rules, unless there is anything repugnant in the subject or context, "the Ordinance" means the Marine Fisheries Ordinance, 1979.
3. Application for licence. - An application for a licence in respect of either a local or a foreign fishing vessel shall be in writing by the owner of the fishing vessel in respect of which the licence is sought and shall contain the following information:
  - (a) the name and description of the vessel, its equipment, and crew complement;
  - (b) the home port of the vessel;
  - (c) the name of the owner and master of the vessel;
  - (d) the side number of the vessel, its radio frequencies, call sign and signal letters, if any;
  - (e) a description of the proposed fishing operations or related activities including:
    - (i) the species to be fished;
    - (ii) the method of fishing and type and dimensions of gear to be used;
    - (iii) the area or areas to be fished;
    - (iv) the amount of fish to be caught;
    - (v) the period of time for which the licence is sought;
    - (vi) the place in which the fish is to be landed and/or processed, and a description of the ultimate destination and use of the fish; and
    - (vii) a description of support operations, and the name and licence number (if any) of fishing vessels in support of which related activities are to be carried out;
  - (f) a description of any joint venture or other contractual arrangements with foreign or local business interests that have been or are proposed in connection with the fishing operations for which the licence is sought;
  - (g) a brief description of any related fishing operations sought to be undertaken in Bangladesh fisheries waters by other vessels belonging to or under the control of the fishing vessel owner;

- (h) such other information as may be requested by the Director in clarification or amplification of the information requested by the applicant.

4. Licence applications in respect of foreign fishing vessels. - An application for a licence in respect of fishing to be conducted by a foreign fishing vessel in Bangladesh fisheries waters, in addition to the information required under Section 3 of these Rules, shall contain the following information:

- (a) the flag state and home port of the vessel;
- (b) the name and address of the authorized local agent appointed by the owner to represent him in all dealings with officials of the Government, and evidence of the extent to which the local agent is authorized to undertake legal and financial obligations on behalf of the owner.

5. Form of licence. - Every licence required under the Ordinance shall be in the appropriate form set out in the Schedule to these Rules.

6. Fees. - The Director shall determine the fees payable, if any, in respect of any licence issued under the Ordinance.

7. Conditions applicable to all licences. - Any licence issued under the Ordinance shall be subject to the following conditions:

- (a) the licence shall be valid only for such activities, for such period and for such area or areas and such conditions, as are specified in the licence;
- (b) all relevant laws and rules regarding the conservation and management of fisheries in Bangladesh shall be complied with;
- (c) only such species of fish shall be fished for, in such quantities, using such methods of fishing and such fishing gear as are authorized in the licence;
- (d) no by-catch shall exceed such percentage as may be specified in the licence;
- (e) the master of the vessel shall cause written records to be maintained on a daily basis of the fishing effort and catch of the vessel, in the form specified by the Director;
- (f) the written records required to be maintained under paragraph (e) shall be transmitted by the master of the vessel to the Director:
  - (i) monthly or at the request of the Director, or of any person authorized on his behalf, or of any authorized officer, at any time during the term of the licence; and
  - (ii) in any event, not later than 30 days after the expiry of the licence;
  - (iii) any vessel licensed in accordance with the Ordinance shall display in places clearly visible from the air and from the sea the identification mark assigned to the vessel in the licence in (set out detailed marking provisions) .....

8. Conditions applicable to licences for foreign fishing vessels. - A foreign fishing vessel in respect of which a licence has been issued, in addition to the conditions set out in Section 7 of these Rules, shall be subject to the following conditions:

- (a) the owner of the vessel shall appoint and maintain a local authorized agent in Bangladesh who shall be authorized to accept legal and financial responsibility on behalf of the owner in respect of the operations undertaken by the vessel and to accept service of any notice, summons or other document on behalf of the owner in any legal proceedings arising out of the conduct of the fishing operations or related activities by the vessel; the local representative shall be a person resident in ..... and shall have a permanent office or establishment in .....
- (b) the owner of the vessel or the authorized local agent shall, if required by the Director, execute and maintain a bond in an amount and form satisfactory to the Director, to guarantee performance of the obligations under the licence;
- (c) the master of the vessel or the authorized local agent shall notify the Director of the estimated time and location of entry of the vessel into Bangladesh fisheries waters not less than 24 hours prior to such entry, and shall at the same time notify the Director of:
  - (i) the approximate fishing plan or schedule of activities to be carried out under the licence;
  - (ii) the date of arrival of the vessel at ..... for initial inspection unless exempted from such inspection;
- (d) after entry into Bangladesh fisheries waters, the vessel shall proceed directly and immediately to ..... for initial inspection by an authorized officer unless exempted from such inspection by the Director and shall not be used for fishing or related activities in such area until such time as such inspection has been carried out or such exemption has been given;
- (e) any transshipment of fish must be done in ..... under the control of an authorized officer unless otherwise authorized in the licence, or otherwise authorized in writing by the Director;
- (f) the master of the vessel shall, if required in the licence, cause radio reports to be made weekly to the Director or person authorized to receive such reports by him, and such reports shall contain the following information:
  - (i) the name of the vessel;
  - (ii) the licence number;
  - (iii) the precise geographical position of the vessel in terms of longitude and latitude;
  - (iv) the quantity in kilograms, of each species of fish caught in Bangladesh waters;
  - (v) the quantity in kilos/pounds of each species of fish caught since the last report or the last inspection by an authorized officer;
  - (vi) the quantity in kilos/pounds of each species of fish transferred, if such transfer is authorized, to other vessels since the last report or the last inspection by an authorized officer;

- (g) the master of the vessel shall bring the vessel into any Bangladesh port specified by the Director for inspection at any time when required to do so by the Director, or by persons authorized by him;
- (h) the vessel shall at all times while in Bangladesh fisheries waters fly the flag of its flag state;
- (i) the master of the vessel shall permit an observer or observers designated in writing by the Director to go on board and remain on board the vessel for any or all of the period of validity of the licence and shall:
  - (i) provide the observer or observers with food and accommodation while on board equivalent to that given to an officer;
  - (ii) cooperate fully with each observer in the performance of his duties; and
  - (iii) arrange for the observer or observers to send or receive messages by way of radio telegraph or radiotelephone facilities on board the vessel;
- (j) the master of the vessel shall at all times while in Bangladesh fisheries waters comply with any directions or instructions given to him by any authorized officer, and in particular shall bring the vessel to a halt when requested to do so and shall permit and facilitate any authorized officer to board the vessel and shall cooperate with such officer in any inspection carried out by him;
- (k) the vessel shall have on board at all times while in Bangladesh fisheries waters such communications and position-fixing equipment as may be specified in the licence as required equipment;
- (l) the master of the vessel or the authorized local agent shall notify the Director or person authorized by him, of the estimated time and location of the departure of the vessel from Bangladesh fisheries waters not less than 48 hours prior to such departure, and shall at the same time notify him of the following:
  - (i) the expected date of arrival of the vessel in ..... for final inspection unless exempted from such inspection; and
  - (ii) the species of fish on board the vessel, and the quantity and condition of each species;
- (m) before leaving Bangladesh fisheries waters the vessel shall proceed to a place specified by the Director, or by a person authorized by him for final inspection by an authorized officer, unless exempted from such final inspection by the Director, or person authorized by him;
- (n) after final inspection, the vessel shall depart directly from Bangladesh fisheries waters and shall not be used for fishing or related activities before such departure;
- (o) any records, reports or notifications required to be maintained or made under this Rule shall be maintained or made in the English language;
- (p) in every communication by radio, flag or light between any licensed vessel in Bangladesh fisheries waters and any Government authority the signals specified in the "International Code of Signals" published by the Inter-Governmental Maritime Consultative Organization Marine Safety Committee shall be used.



9. Signals. -

(1) For the purpose of sub-section (p) of Rule 8:

- (a) the signal to be used for requiring a foreign fishing vessel to bring to, is the International Code of Signals, Signal "L";
- (b) the signal to be used for requiring a foreign fishing vessel to bring to to be boarded, is the International Code of Signals, Signal "SQ.3".

(2) Signals may be given by flag, signal lamp, loud-speaker, horn, siren, message block, whistle or radio.

10. Prescribed manner of stowage of gear. - Any foreign fishing vessel that is not licensed to operate in Bangladesh fisheries waters or being licensed is not authorized to engage in fishing shall, while within such waters, stow its fishing gear in accordance with the following provisions:

- (a) all such gear shall be carried wholly inboard and shall be stowed below deck or otherwise removed from the place where it is normally used for fishing and placed where it cannot be readily used for fishing;
- (b) all nets, trawl boards and weights shall be disconnected from their towing or hauling wires, ropes or rigid frames; and
- (c) all fishing gear carried on deck shall be secured to some part of the super-structure of the vessel.

11. Expiry of licence. - Except as may otherwise be stated in the licence, every licence shall expire on the thirty-first day of December in the year in respect of which it was issued.

12. Penalties for contravention. - Where any provision of these Rules (except Rule 10) is contravened in respect of any foreign fishing vessel to which it applies the owner and the master shall each be guilty of an offence and liable to a fine of .....

13. Non-mechanized local fishing vessels and local vessels with limited horsepower. - These rules shall not apply to fishing operations conducted by non-mechanized local fishing vessels or by any mechanized local fishing vessel which has a motor less than ..... horse power.

THE SCHEDULE

MARINE FISHERIES RULES, 1979

LOCAL FISHING VESSEL LICENCE

LICENCE NO. ....

ISSUED TO .....  
(full name)

ADDRESS .....

NAME AND ADDRESS OF OWNER OF VESSEL IF DIFFERENT FROM ABOVE .....  
.....

NAME OF VESSEL ..... FISHING VESSEL IDENTIFICATION MARK .....

PORT OF REGISTRY (if any) ..... REGISTRATION NO. (if any) .....

RADIO CALL SIGN (if any) ..... FREQUENCY .....

DIMENSIONS OF VESSEL -

LENGTH ..... TONNAGE .....

METHOD OF PROPULSION -

INBOARD ENGINES, NO. OF ..... HORSE POWER .....

OUTBOARD ENGINES, HORSE POWER .....

TYPE OF FISHING EQUIPMENT .....

AREAS TO BE FISHED .....

SPECIES OF FISH TO BE TAKEN .....

FISH TO BE LANDED AT .....

FEE PAID .....

THIS LICENCE IS VALID FOR THE PERIOD COMMENCING .....

UNTIL .....

DATE OF ISSUE .....

.....  
SIGNATURE OF ISSUING OFFICER

THIS LICENCE IS GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. THE HOLDER SHALL COMPLY WITH AND ENSURE THAT THE VESSEL IS USED IN CONFORMITY WITH THE PROVISIONS OF THE MARINE FISHERIES ORDINANCE, 1979, AND ANY RULES MADE THEREUNDER.
2. (HERE INSERT ANY OTHER CONDITIONS TO WHICH LICENCE IS SUBJECT).

MARINE FISHERIES RULES, 1979

FOREIGN FISHING VESSEL LICENCE

NO. ....

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ISSUED TO .....  
 ADDRESS .....  
 NAME AND ADDRESS OF OWNER OF VESSEL IF DIFFERENT FROM ABOVE .....  
 .....  
 NAME AND ADDRESS OF AGENT OR OTHER LEGAL REPRESENTATIVE IN BANGLADESH .....  
 .....  
 NAME AND ADDRESS OF MASTER OF VESSEL .....  
 .....

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NAME OF VESSEL .....  
 TYPE OF VESSEL .....  
 PORT AND COUNTRY OF REGISTRY .....  
 REGISTRATION NUMBER .....  
 FISHING VESSEL IDENTIFICATION MARK .....  
 LENGTH ..... REGISTERED NET TONNAGE .....  
 ENGINE HORSE POWER .....  
 RADIO CALL SIGN ..... FREQUENCY .....

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THE VESSEL, DETAILS OF WHICH APPEAR ABOVE, IS HEREBY AUTHORIZED TO DO SUCH OF THE FOLLOWING AS MAY BE INDICATED ON THIS LICENCE:-

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PART I - AUTHORIZATION TO FISH WITHIN BANGLADESH FISHERIES WATERS

DESCRIPTION OF FISHING OPERATIONS AUTHORIZED .....  
 .....  
 AREAS TO BE FISHED .....  
 .....  
 SPECIES OF FISH TO BE TAKEN .....  
 .....  
 AUTHORIZED LANDING PLACES .....  
 .....  
 SPECIAL CONDITIONS .....  
 .....

---

THIS LICENCE IS VALID FOR THE PERIOD COMMENCING . . . . .  
UNTIL . . . . . DATE OF ISSUE . . . . .  
FEES PAID . . . . .

. . . . .  
SIGNATURE OF ISSUING OFFICER

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THIS PERMIT IS GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. THE HOLDER SHALL COMPLY WITH AND ENSURE THAT THE VESSEL IS USED IN CONFORMITY WITH THE PROVISIONS OF THE MARINE FISHERIES ORDINANCE, 1979, AND ANY RULES MADE THEREUNDER.
2. (HERE INSERT ANY OTHER CONDITIONS TO WHICH LICENCE IS SUBJECT).

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