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fisheries legislation in somalia



FISHERIES LEGISLATION IN SOMALIA

by

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ABSTRACT

Since extending its fisheries jurisdiction to 200 miles, Somalia has started an industrial fishing fleet, begun licensing foreign fishing vessels, and dealt with a number of joint venture proposals, as well as continuing activities in the artisanal fishery, all on the basis of existing fisheries provisions of the maritime code. The present report reviews that legislation and recommends its replacement with a separate fisheries law providing explicitly for management and for licensing. A draft fisheries bill, subsidiary legislation, licence forms and catch reports are attached.

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I. INTRODUCTION

A. Purpose of the Mission

In December 1977 an FAO Mission visited Somalia to advise the Government on the implications for fisheries development of changes in the law of the sea. The Mission also assessed the impact of changes in bilateral assistance to Somalia and means of minimizing them. In its report, Development of Fisheries in the Exclusive Economic Zone of Somalia (IOP/TECH/78/19), the Mission reviewed the fisheries situation generally, including fisheries legislation, and made a number of recommendations, including the terms of reference for a legal consultant.

Following the issue of the report, the Government of Somalia requested FAO to provide advice on fisheries legislation. The present consultant was accordingly sent to Somalia from 27 October to 28 November 1979 and from 15 April to 20 May 1980 with the following terms of reference: "to assist the Government in drawing up a new Fisheries Act and implementing regulations, including provisions for the licensing of foreign vessels".

While in Somalia, the consultant also participated in a Mission to advise the Government on the management of industrial fishing vessels. The report of that Mission has been issued as Report on Management of Fishing Vessels (IOP/TECH/79/34).

FAO wishes to express its thanks to all of the Somali officials who generously supported and assisted the consultant, and especially to Osman Jama Ali, Minister of Fisheries, and staff of the Ministry; Hassan Mahmoud Sabriye of CDP; Abdulkadir Hassan Nur, Muriddi Ali Salah and staff of Somalfish; Yussuf Elmi, Legal Adviser to the Presidency; Abdirazak Ali Haji and staff of the Department for Legislation, Ministry of Justice.

B. Country Background

The Somali Democratic Republic is situated on the Horn of Africa between 11°30' North latitude and 1°30' South. It is bordered on the west by Djibouti, Ethiopia and Kenya, on the north for 1 000 kilometers by the Gulf of Aden and on southeast for 2 000 kilometers by the Indian Ocean. The land area is 638 000 square kilometers and the population is over 3 000 000. Mogadishu, the capital and principal port, has a population of 350 000. Other important towns and their populations are Hargeisa, capital of the northern regions (100 000), Kismayu, the principal southern port (60 000), Merca (56 000) and Berbera, the principal northern port (50 000).

The economy of Somalia is based on pastoralism, mainly nomadic, which occupies three quarters of the population and in 1978 provided 90 percent of the country's exports. Agriculture is practiced on about 700 000 hectares out of an estimated 8 million hectares of cultivable land. Principal crops are maize and sorghum. Bananas are the only significant export crop, comprising ten percent of total exports. The industrial sector is small and concentrated in food and clothing, although it includes an oil refinery as well. Somalia's net foreign trade position is heavily in deficit, exports comprising less than half the value of imports.

The livestock sector is extremely vulnerable to drought and to the disruption of normal migration routes. Drought in 1973 to 1975 and a combination of drought and military conflict in the neighbouring Ogaden in 1980 have driven large numbers of nomads into relief camps. In mid-1980 there were almost 700 000 people in camps; perhaps as many more original inhabitants of the Ogaden were inside Somalia but not in camps. During the 1973-1975 drought, permanent resettlement of nomads was undertaken, including the establishment of four coastal settlements designed to convert 15 000 ex-nomads into fishermen. The current relief effort has not yet gone beyond the primary intervention stage, so it is not known whether further resettlement will be attempted.

C. The Fisheries Sector

1. Resources

By most estimates, the resource potential of Somali fisheries is far from being realized, although the deepwater lobster and locally perhaps other stocks could be reaching full exploitation. The White Fish Authority has given the following estimates for potential annual catches (in live weight equivalent):

Tunas and mackerel	8 000 tonnes
Small pelagic species	100 000 "
Large demersal (other than sharks and rays)	40 000 "
Sharks and rays	30 000 "
Spiny lobsters	
(shallow water)	500 "
(deep water)	1 500 "
Shrimps	400 "
Turtles	Not known
Cephalopods	Not known
Mesopelagic species	Not known but large

2. Artisanal fisheries

Somali fisheries may be divided into artisanal and industrial, and each sector is characterized by quite different history. Artisanal fisheries involve approximately 4 000 fulltime and 10 000 part time fishermen using about 2 000 canoes and sailboats and perhaps 125 functioning motorboats. The fishermen include both traditional fishermen (the great majority) and former nomads resettled in the Coastal Development Project centres at Brava, El Ahmed, Adele and Eil. Total annual artisanal landings have risen from under 4 000 to almost 8 000 tons in recent years, dropping back below 4 000 tons in 1978. One reason for the decline appears to be the high incidence of breakdown of the mechanized fleet.

Artisanal production is consumed directly by the fishing communities and dried for both national consumption and export. Few fishing communities have access to significant fresh fish markets, the main exceptions being Mogadishu and other south coast centres. Berbera used to supply a ton a day to Hargeisa, but this has ceased with the breakdown of the Berbera ice plant.

3. Industrial fishing

The industrial fishery of Somalia has been even more erratic. It had its greatest development in the Somali-Soviet joint venture Somalfish, which between 1973 and 1977 deployed up to 10 trawlers at a time and in 1976 caught 3 400 tons of fish and 1 500 tons of lobster. The cessation of Soviet participation and withdrawal of the vessels in late 1977 temporarily eliminated industrial fishing in Somalia. In mid-1978 the first of an eventual group of seven Italian freezer-trawlers began to fish under licence. In late 1979 two 28-metre Australian-built shrimp trawlers, which had been purchased by Somalfish, began operations. By early 1980 nine Yugoslav-built multipurpose vessels owned by the Ministry of Fisheries had arrived in the country. There are no data yet on the catch of this varied fleet, but it is expected that the produce of the freezer vessels will consist in demersal fish, deep-water lobster and some shrimp, almost all for export.

4. Support facilities

The paucity of facilities for vessel berthing and maintenance and for preserving and handling catches is a severe limiting factor to the development of Somali fisheries. There are few natural harbours and the only ports suitable for larger vessels are Berbera, Mogadishu and Kismayu. All of these have limited mechanical and electrical repair facilities and modest ice plants, but only Kismayu ice plant is currently functioning.

Kismayo also has the only slipway, but it is used exclusively by the Somali Navy. Berthing for larger fishing vessels is very limited at Mogadishu and subject to the priority accorded to merchant shipping. Fishing vessels also have a low priority at Berbera and Kismayo.

Most of the smaller landing places suffer from very poor communications with possible markets, as well as from lack of facilities for boat maintenance and product preservation. Consequently, drying is the dominant form of processing and is conducted at all fishing centres. There are some facilities available to the fisheries sector, however, including higher-value methods of processing. The southeast coast fishing communities are receiving technical assistance from FAO, including maintenance services, and have better access to markets, both by road between Kismayu and Mogadishu and by the Prodma carrier vessel between Ras Chiambone and Kismayu. The factory at Kismayu has been overhauled and is once again being used to freeze spiny lobster from as far south as Ras Chiambone.

On the north coast, there are tuna canneries at Habo, Candela and Las Khoreh, none of which has operated to capacity in recent years, most importantly because of inadequate fish supplies. The combined design capacity of the three is 100 tons of round tuna a day. A factory at Bolimog was designed to freeze 50 tons of fish a day and convert 25 tons to meal and oil. It is currently closed for major overhaul of the plant and machinery. Of these places, only Bolimog offers a protected landing. All have mechanical facilities.

5. Fisheries policy

The objectives for fisheries in the current Three-Year Development Plan are stated as follows (p.118):

- (1) economic growth through utilization of the fishery resources;
- (2) the maximum increase in fish production and the income from it, consistent with sound fishery management principles;
- (3) increase of foreign exchange earnings through greater export of fish products;
- (4) through increased earnings, to improve the socio-economic conditions of the people generally and the people in fishing settlements in particular;
- (5) to create gainful employment for the greatest number of people that a viable fishing industry can sustain;
- (6) to increase the domestic consumption of fish as food.

"The second and third objectives can probably best be achieved through capital intensive industrial fisheries but they are applicable to the small-scale sector also. The fourth and fifth objectives will be achieved largely through the development of the artisanal or small-scale fisheries which are more labour-intensive and require less capital input."

In a general statement of Government policy on economic organization, the Plan states (pp.3-4):

It is intended that as far as possible the larger production schemes in agriculture, mining, industry and fisheries should be undertaken by the Government itself or by cooperatives. Nevertheless, in some specific cases, such as in oil prospecting and development, uranium production and the use of large fishing boats, it is clear that it will be necessary and desirable that local factors of production should be associated with foreign expertise and capital. There are many types of joint venture that this form of organization may take on mutually advantageous terms ranging from government-to-government assistance to direct participation by foreign private enterprise.

II. LEGISLATION

A. Constitution

The new Somali Constitution was adopted by referendum on 25 August 1979, and an unofficial translation appeared in Halgan for August-September 1979. The Constitution defines the Somali Democratic Republic as a Socialist State (art. 1) and establishes the Somali Revolutionary Socialist Party as the only legal political party (art. 7). The President of the Republic is also head of the Party, consistent with the constitutional principle of "the unitary system of political leadership of the party and state" (art. 8). The functions of Party and State are complementary, "each pursuing its own methods in order to accomplish the common objectives" (art. 10).

The Party exercises "supreme authority of political and socio-economic leadership" in the country (art. 7). It has important specific functions as well, including the power to nominate the President (art. 80), the power to approve any law concerning Party strategy (art. 71), the power together with the People's Assembly to review the programme of the Government (art. 91), the right to be consulted by the President before he dissolves the Assembly (art. 63) and the power to propose amendments to the Constitution (art. 112; see also arts. 62, 82).

Principal state institutions include the People's Assembly, the President, the Council of Ministers and the Judiciary. Legislative power is vested in the People's Assembly (art. 60), which may delegate this power for limited periods (art. 68). The President, who is elected by the People's Assembly on nomination of the Somali Revolutionary Party (art. 80), is the head of State (art. 79) with powers to appoint and dismiss Ministers (art. 82), convene and dissolve the People's Assembly (art. 63, 64), proclaim emergencies and exercise emergency powers (art. 83) and promulgate laws (art. 72). The President is empowered to issue Presidential Decrees (art. 82), which are the prescribed form for delegated legislation (art. 68), for decree-laws subject to parliamentary approval (art. 69), and for determining the "structure" of the Council of Ministers (art. 88). The Council of Ministers is described as the chief executive organ of the Government (art. 86) and is responsible for determining government policies and overseeing government operations (art. 87, 91). It comprises the Ministers and is chaired by the President of the Republic (art. 86). The Council of Ministers also has the power to issue decrees, but the nature of these decrees is not specified. A 1970 law provides that regulations are to be issued by the then President of the Supreme Revolutionary Council, generally on the proposal of the Minister (then Secretary of State) concerned (Law No. 47 of 18 August 1970, General Law Governing the Issue of Regulations). It is not clear from the Constitution whether this scheme is continued, or regulatory power is transferred to the Council of Ministers or even to individual Ministers.

The Constitution does not regulate fisheries as such, but it contains certain provisions of particular relevance to fisheries legislation. "Territorial sovereignty" is proclaimed "over land, the sea, the water column, sea bed and subsoil, continental shelf, islands and air space" (art. 4). The principle of territorial unity, which is not defined or used elsewhere in the Constitution, is not subject to constitutional amendment (art. 112). Although territorial unity and territorial extent are hardly the same concept, these provisions could make it difficult to modify the extent as well as the nature of Somalia's maritime jurisdiction. Both land and marine resources are declared to be state property, and the State is obligated to "promulgate a law prescribing the best methods for exploiting such resources" (art. 42). This provides a firm constitutional base, if not imperative, for fisheries legislation and management.

Provisions on the economic organization of Somalia, beginning with the declaration of a socialist state (art. 1), indicate quite clearly the dominant role of the State in economic development (art. 40). The State sector is to be the vanguard of development and to receive "special priority"; the cooperative sector is described as "instrumental"; the private sector is to be based on non-exploiting ownership; and a mixed sector is to

be based on joint ownership between the State and others (art. 41). The operation of all of these sectors is subordinated to socialist state planning, and the plan has "juridical authority superior to other laws" (art. 43). These provisions would suggest a rather narrow scope for private fishing activity, especially that conducted by large (foreign) vessels. In actual application, however, these provisions should probably be interpreted in light of the goals of economic development, increased production and equitable distribution (art. 40). In particular, the role of the State in fisheries should be defined at least in part as a function of State's ability to assume a vanguard role and to use that position to achieve developmental and other economic goals (cf. Three-Year Development Plan, pp. 3-4).

The chapter of the Constitution dealing with fundamental rights affects the ways in which fisheries legislation can be enforced. Criminal liability is personal, and the accused is presumed innocent until final conviction (art. 33). This would limit the use of some of the brisker procedures for confiscation (cf. art. 28 on private property). Arrest and other restrictions of liberty are only permitted in cases of flagrante delicto or pursuant to an act of the competent judicial authority (art. 26). This is - and is intended to be - a severe restriction on the practice of arrest without a warrant.

Searches of persons and dwellings are permitted in the same cases as arrest, as well as "under other laws relating to judicial, sanitary, fiscal and security matters". (arts. 26, 29). A law expressly providing a procedure for searches in aid of criminal law enforcement would be a law "relating to judicial matters" and thus constitutionally permissible. Searches not related to court proceedings, and not concerned with sanitary, fiscal or security matters seem to fall outside the permitted scope of personal and residential searches. It would not therefore be permissible to search a fisherman's house just for a routine check on the gear in his possession. Vessels, vehicles and industrial and commercial premises, on the other hand, seem to lie outside the area protected by the constitutional limitation on searches, and routine inspections would therefore be permissible in such places if authorized by appropriate legislation.

B. Fisheries legislation

Basic marine fisheries legislation is contained in the Maritime Code of 1959 (Legislative Decree No. 1 of 31 February 1959, amended by Decree Law No. 7 of 1 November 1966 converted and amended by Law No. 3 of 7 January 1967), which entrusts fisheries regulation to the "maritime authority" (art. 72), which now falls under the Ministry of Marine Transport and Ports. In 1977, however, the Ministry of Fisheries was established with the following functions, which comprise most of what might be understood as fisheries administration (Law No. 17 of 3 February 1977 on Establishment of the Ministry of Fisheries):

1. To formulate the fisheries programme of the Party.
2. To build a socialist maritime economy.
3. To obtain benefits from marine resources.
4. To improve the gear and other material of the co-operatives.
5. To develop a programme to make the coastal settlements self-supporting.
6. To organize and operate all maritime schools.
7. To organize fishing support industries such as boatyards, and to make new types of vessels.
8. To construct technical infrastructure such as ports and cold storage.
9. To build a sea fishing fleet.
10. To disseminate information on the preparation and consumption of fish.

11. To expand foreign marketing of fish for hard currency.
12. To prevent pollution through the international law of the sea.
13. To formulate laws regulating fishing in Somali waters and to organize fishing rights.

Since 1977, the Ministry of Fisheries has effectively exercised the fisheries regulatory functions of the Maritime Code, although it has not necessarily done so by explicit reference to the Code.

The Maritime Code divides fishing into the two principal categories of major and minor fishing activities. Major fishing activities are defined as those "carried out exclusively by means of fixed plants or large nets for catching large-sized fish, including trawling on the high sea carried out with any mechanically propelled vessel". Minor fishing activities include all the rest, although those that use "conventional means", which apparently refers to traditional artisanal fishing, are exempted from the license applicable to minor fishing activities. Read strictly, these definitions seem to place seining for small pelagics among the minor fishing activities, a result probably not intended by the legislator.

Major fishing activities, whether conducted by Somali or foreign nationals, may only be conducted pursuant to a concession. The concession is a non-exclusive permission to fish in a specified area (which must be beyond 500 meters from shore). It is subject to the payment of "rent" which is determined case by case. The duration of a concession can extend up to nine years. It may be subject to conditions (art. 68), and must be subject to "express reservation" for "conventional fishing" (art. 67). (The reservation provision is in terms of "uses referred to in the preceding paragraph", which is an apparent error; the uses referred to in the preceding sentence, however, are "fishing with conventional means"). Concessions for large-scale trawling require adequate shore facilities for product preservation and processing.

Concessions may also be granted for aquaculture purposes (art. 67) as well as for the shore facilities required for large-scale trawling (art. 68).

Concessions may be revoked at any time the public interest requires, in which case an indemnity is due for the loss of use of fixed installations during the unexpired portion of the concession (art. 19). Concessions may also be cancelled for reasons attributable to fault of the concessionaire, in which case no indemnity is due (art. 20).

Minor fishing activities require an annual licence (issued by the maritime authority) subject to the payment of the "relative duty" (art. 67). (It does not appear that licence fees have in fact been established). The licence is subject to the same "express reservation" for fishing with conventional means, and in turn benefits from the provision that major fishing activities not prejudice the right to engage in minor fishing activities.

Fishing in "ports and other places of call or passage of ships" is "subject to the authorization of the maritime authority, at its judgement" (Art. 30).

The Minister (then of Economic Affairs) has general power without paying any indemnity to prohibit fishing in any area for "reasons connected with public needs or with sailing or maritime signal requirements" (art. 70). There is no power to prohibit fishing with particular methods or otherwise to impose management measures, although the law does contain a general prohibition of fishing with explosives, electricity or poisons (art. 71); it is also prohibited to catch and sell animals stunned or killed by illegal means (id.).

The only reference in the legislation to marine mammals provides for state ownership of stranded cetaceans and a reward of five percent of the value to the finder (art. 159).

Fishing without a concession or licence is punishable with a fine of 80 to 800 shillings for major activities, 30 to 300 shillings for minor activities and 30 to 80 shillings for aquaculture (art. 234). The latter case might also constitute illegal occupation of maritime demesne, which is punishable with six months imprisonment and a fine of 400 shillings (art. 215). Unauthorized fishing in ports and related areas is punishable with a fine of 40 shillings (art. 218). Fishing with prohibited means is subject to penalties of three months' imprisonment and a fine of 160 shillings; catching and selling the product of illegal means is punishable with a fine of 30 to 80 shillings (art. 235).

So far as is known, no regulations concerning fisheries have been made under the Maritime Code. Several licences have, however, been issued, and these seem tacitly to fulfil the role of concessions under the Code. In basic outline, existing licences permit specified vessels to fish in Somali waters for periods of one year. The licensee is required to land 20 percent of the catch for the Ministry of Fisheries, or at the Ministry's option to pay 20 percent of the value. In practice payment has been made in cash; current posted values are \$ 600 per ton of fish, \$ 1 500 per ton of shrimp and \$ 4 500 per ton of lobster, for effective payments respectively of \$ 120, \$ 300 and \$ 900 per ton of catch. The vessels are required to carry a 50 percent Somali crew. The licensee is required to radio daily reports as well as to maintain - and permit inspection of - ships' and fishing logs and other data.

C. Maritime jurisdiction

1. Law on the Somali Territorial Sea and Ports, Law No. 37 of 10 September 1972

This law establishes a territorial sea of 200 nautical miles, generally measured from the low water mark although "where the coastline is deeply indented or if there is a fringe of islands along, the method of straight baseline joining appropriate points may be employed" (art. 2). There are provisions of somewhat uncertain effect for a 200-mile territorial sea surrounding islands that are themselves within "the 200-mile limit", the former distance to be measured from the low-water mark in the case of single islands and from the "centre of the archipelago" in the case of a group of islands (art. 3).

Fishing and coastal shipping in the territorial sea are reserved to Somali "and other authorized vessels" (art. 5). Violation of this provision is punishable with a fine of 5 000 to 100 000 shillings and on repetition by the same vessel or operator, the fine may be doubled, the vessel confiscated and the master liable to prosecution under unspecified penal laws. There is evident similarity between the Informal Composite Negotiating Text and Somali provisions governing navigation in the territorial sea, with the major difference that the ICNT provisions would only apply to a 12-mile territorial sea and more liberal navigation rights would be recognized in a 200-mile exclusive economic zone. General criminal and civil jurisdiction over foreign merchant ships generally follows the language of the ICNT (cf. art. 15-16). Innocent passage is defined in similar terms to the ICNT except for two cases: ships of states not recognized by Somalia are forbidden passage, and warships must be authorized by the Somali Government (art. 9-10). There is a general requirement that ships exercising the right of innocent passage obey Somali laws and regulations and orders of the responsible authorities (art. 11). The penalty for disobedience is a fine of 1 000 to 100 000 shillings and would presumably apply both to permitted ships that violate the conditions of innocent passage and to ships to which passage is forbidden.

2. Law on Offences by Foreign Ships in Somali Territorial Waters, Law No. 6 of 1 January 1974 as amended by Law No. 15 of 15 April 1974

This law makes it a crime for a foreign ship to enter Somali ports without the necessary authorization, although it makes no reference to any law requiring an authorization, and neither the Maritime Code nor the Territorial Sea and Ports Law requires one. The penalty for violation, as well as for illegal entry into territorial waters, is

a fine of 10 000 to 100 000 shillings. In addition, a "foreign ship that commits acts that directly or indirectly damage the political and economic interests, or the general interests of the Somali Government" may be punished with a fine up to three times the amount of the damage and the ship may be confiscated.

D. Navigation

Maritime Code, Legislative Decree No. 1 of 21 February 1959, amended by Decree Law No. 7 of 1 November 1966, converted and amended by Law No. 3 of 7 January 1967

All vessels, including fishing craft, must be registered in order to be "admitted to navigation" (art. 39-40), although in practice smaller vessels have not been registered. Registration is available to vessels built anywhere, owned by Somali or foreign citizens (art. 41). This has given rise to a modest flag-of-convenience activity, but so far it does not appear that any foreign-owned fishing vessel has sought registration.

Vessel standards for ships over 1 000 net register tons are those set by any of several classification bureaus. General requirements applicable to all vessels are seaworthiness and adequate crew and equipment for their intended use (art. 49; D.L. No. 7, art. 56, 58). Different crew qualifications are defined (art. 38), but the imposition of crew requirements, including the proportion of Somali nationals, is left to the maritime authorities (art. 98). In particular they have the sole authority to issue officers' certificates and corresponding responsibility to make certification regulations and conduct examinations (Law No. 42 of 26 May 1977). There seems to be some limitation on the formal requirements that can be set for officers, but the relevant provision is not very clear: "Any person may be engaged as captain, officer or member of the crew provided he has the experience and aptitude to fulfil those tasks designated to him." (D.L. No. 7, art. 58).

E. Ports

1. Maritime Code

The Maritime Code provides generally for the administration of ports and harbours and governs such matters as entry and exit, pilotage and the provision of port services. In particular, port operations for third parties may only be conducted under a concession.

2. Law on Establishment of Somali Ports Agency, Law No. 1 of 7 January 1973

The Ports Agency, originally established in 1970, is responsible for operation of ports and port services. To this end it has a free concession of the maritime demesne within port areas. In the main ports, the director of the Agency has the responsibilities of harbour master.

The charges levied by the Ports Agency are determined by a tariff issued by the Minister of Marine Transport and Ports. The most significant charges for fishing boats are the General Service Charge of 1 500 shillings and the Entrance Fee of 5 000 shillings, both levied on each call of a ship under 2 000 net register tons. There is also a mooring charge of 150 shillings per call, as well as anchorage, berthing and cargo handling fees. Fishing boats are exempt from compulsory pilotage and towage. Wholly state-owned ships pay only one half of the General Service Charge and Entrance Fee. Ships using the port exclusively for bunkering or provisioning pay one third, and ships putting in for shelter, repairs, health requirements and similar reasons pay one fourth of the General Service Charge and Entrance Fee.

3. Law Establishing the National Shipping Line, Law No. 59 of 20 September 1972, as amended by Law No. 13 of 24 January 1975

Besides operating its own ships, the line is empowered to provide services to other ships, including "any auxiliary activity connected in any way with the shipping trade"

(art. 3). In the absence of any reference to the concession provisions of the Maritime Code, it is not apparent whether this law operates to exempt the line from the requirement to hold a concession in order to provide port services.

F. Communications

Law on Telecommunications, Law No. 1 of 22 December

The installation and operation of radios aboard "mercantile ships" requires a concession from the Minister for Telecommunications and Posts (art. 2), who also establishes the conditions which such radios must satisfy (art. 35). Other radios for private use require a licence, which may be granted if there are reasons of public interest (art. 32). Amateur radio, on the other hand, is prohibited (id.).

G. Cooperatives

1. Law on Cooperative Development in the Somali Democratic Republic, Law No. 40 of 4 October 1973

The basic cooperatives law provides for two different grades of co-operatives, "semi-collective" and "collective" ones. The former are promoted as a transitional measure where conditions for a fully collective cooperative are lacking, the latter are characterized as the final stage of cooperative development (art. 3). This division is reflected in fisheries with somewhat different terminology. The transitional phase is represented by the Fishery Service and Marketing Cooperative, concerned with supply, processing and marketing; the more advanced Fishery Production Cooperative is a collective fishing enterprise (art. 9).

The different sectoral Ministries are responsible for organizing, assisting and guiding cooperatives in their sectors (art. 17-18). All parastatal bodies are obliged to grant cooperatives priority in the supply of services. The cooperatives for their part "are bound to carry out their activities in close cooperation or in contract with the competent State Organizations" (art. 5). Fishery Production Cooperatives are required to purchase inputs and market catches through state organizations and cooperative shops (art. 9).

The co-ordination of co-operative and state activities, as well as the supervision of co-operatives at the local level, is the responsibility of Regional and District Co-operative Councils (art. 19). The Councils comprise elected representatives of the primary co-operatives as well as the delegates of the state, and the regional councils also have representatives of the district councils (id.).

2. Law on the Union of Somali Cooperative Movement, Law No. 41 of 8 October 1979

This law implicitly amends the basic cooperatives law, confiding the supervision of cooperatives to the Union, presumably replacing the Ministries' roles described above. So far the Union has assumed the supervision of agricultural but not fisheries co-operatives.

3. Terms and Regulations for Cooperatives

An annex to the Cooperatives Law contains basic regulations for co-operatives. Members of fishery co-operatives must be at least 18 years old and personally engaged in fishing. At least 20 members are required to form a Fishery Production Cooperative (art. 3); the number required for a Fishery Service and Marketing Cooperative is not specified. Relations between members and a Fishery Service and Marketing Cooperative are relatively simple, based on the purchase of a 100-shilling share and such services as the cooperative may provide (by Law No. 38 of 1 October 1974, however, fishermen are required to sell their catch to the local co-operative). Production remains in individual hands.

With Fishery Production Cooperatives things are more complex. "All members of a Fishery Production Cooperative contribute all their boats, nets, processing and storage facilities and other means of production suitable for cooperative usage into the cooperative pool"

(art. 40). Members are compensated for the value of their contributions. The work of the cooperative is to be performed entirely by the members (except where they lack certain skills such as accountancy) on a collective basis (art. 43). Remuneration may be based on time or piece rates (arts. 33, 39, 44). Any profits are distributed 60 percent to the "accumulation fund" for investment and 40 percent to the "distribution fund" for "payments of production bonds" to members as well as social and mutual aid purposes (arts. 34, 44). There does not seem to be a provision for distribution of profits as such.

H. Law Establishing the Coastal Development Project, Law No. 36 of 16 April 1977

The Coastal Development Project is an autonomous agency, subject to the relevant administrative, financial and personnel provisions, attached to the Ministry of Fisheries (art. 1). Its functions are to teach resettled nomads how to fish, to organize co-operatives, to construct fishing centres and to supply boats and fishing gear (art. 3). Its powers are not specified beyond "the power, without going beyond the limits of the law, to realize (its) purposes and functions" (art. 4). The Director-General, appointed by the President of the Republic (art. 6), is responsible for the functioning of the Project, subject to the oversight and, to a lesser degree, the approval of the Minister of Fisheries (art. 5, 7). The Project maintains separate accounts and has the power to engage its own personnel (art. 9 - 14).

I. Legislation Governing Parastatal Bodies

The extensive parastatal sector in Somalia (which includes the Coastal Development Project, Somalfish, the factory at Las Khoreh and probably Bolimog and Prodma) is governed by general provisions on organization, finance and personnel, as well as particular legislation establishing some of the entities (cf. Establishment of Ente Nazionale Industria Pesce - ENIP, Law No. 32 of 10 March 1973).

1. Law Governing Autonomous Agencies and Audit of Industrial and Commercial Undertakings and Credit Institutions with State Participation, Law No. 16 of 1 April 1970, amended by Law No. 57 of 14 September 1970

This law applies to all "autonomous agencies" (not otherwise defined) except the Somali National Bank and the National University (art. 1). It provides that every autonomous agency shall be managed by a general manager, although it does not indicate how the general manager is appointed (art. 4). Each agency is under a Ministry, and the Minister "may give the agency such directions as he may consider necessary from time to time to ensure that it acts in accordance with the best interests of the State" (art. 2). The Minister also has power of approval over the budget and accounts (art. 8). Audit functions are given to the Magistrate of Accounts (art. 7; Law No. 34 of 14 April 1972, Law on the Magistrate of Accounts, art. 9). The President is empowered to establish a Special Enquiry Committee to investigate the management of an agency (art. 10); he may also dissolve an agency, but only on the proposal of the responsible Minister (art. 11).

2. Law on Finance of Public Enterprises and Agencies, Law No. 58 of 31 July 1972

This law imposes some standardized financial rules on all autonomous agencies except banks, insurance companies and the National University (art. 21). It provides for a financial year beginning January 1 (art. 16), for annual budgets (art. 13 - 14) and for audit by the Magistrate of Accounts (art. 18). Each agency is to have a chief accountant appointed by the responsible Minister on nomination of the general manager.

3. Financial Regulations of State Agencies, Law No. 54 of 5 October 1975

This law is apparently an attempt to untangle the financial affairs of the autonomous agencies. It provides for the banking system to take over all debts the agencies owe to other agencies or to the state (art. 1). Loan capital obtained from the savings banks is guaranteed by the Central Bank and converted into ten-year loans at 2.5 percent interest (art. 3). The right of the credit institutions to oversee the financial regularity of

their debtors' operations is established at the same time (art. 5).

The law also establishes a more businesslike basis for dealings between the agencies and the Government. It requires that all amounts owed to agencies by the Ministries be paid by the Government, and further that the Government reimburse agencies for the difference between uneconomic sales prices that it might impose on them and the presumably economic prices they otherwise would charge (art. 2). Dealings between agencies and Ministries are required to be in writing (art. 6).

4. Personnel of Autonomous Agencies, Law No. 36 and Decree of the President of the Supreme Revolutionary Council No. 74 of 22 April 1972, amended by Law No. 17 of 21 April 1974 and Law No. 3 of 10 January 1975

Autonomous agencies, except companies of which the state is not the sole shareholder, are subject to the personnel regulations contained in this legislation (Decree No. 74 art. 48). They provide for the grading of posts in terms of an established salary scale (which is considerably higher than that of the civil service) (art. 3). Permanent staff is hired by examination (art. 4) and temporary staff from the labour office (art. 7). Promotions are based upon proposals of each agency's Training Committee and subject to the approval of the Minister (art. 15 bis).

J. Trade

1. Law on Control over Economic Activities, Law No. 10 of 16 January 1969

This law subjects a variety of economic activities to authorization (art. 2). The responsible Ministries authorize importation, exportation, sea transport, stevedoring and all industries employing over 20 persons (art. 3), while the chairmen of local councils authorize food production employing less than 20 persons as well as retail sale of food.

2. Law on the Control of Prices of Essential Articles, Law No. 17 of 17 June 1967, consolidated text of Law No. 15 of 14 June 1967 and Law No. 14 of 15 February 1967

This law authorizes price control.

3. Foreign Trade

- (a) Foreign Economic Transactions - Decree Law No. 12 of 26 September 1964, converted and modified by Law No. 8 of 29 October 1964

This law allows foreign economic transactions to be restricted, prohibited, or subject to licence or authorization. Only registered traders are permitted to import or export "goods of a commercial nature" (art. 3). Imports, exports and service transactions may be subject to a licence from the Minister of Commerce (art. 5, 19, 20, 22), and regulations have been issued to implement this (Presidential Decree No. 203 of 26 September 1964). All transactions requiring a licence are subject to the implied condition of the licence's being granted (art. 6). Whether or not a licence is required for a transaction the Central Bank must authorize any payment abroad or to a non-resident or in convertible currency; "documentary evidence" is needed for the authorization (art. 11, 12, 13, 14, 16). Foreign currency dealings are allowed only through the Central Bank and its authorized exchange dealers (art. 9). Residents are required to surrender gold and foreign assets within a stipulated period (art. 15).

- (b) Exclusive rights

The National Agency for Foreign Trade, governed by Law No. 33 of 7 July 1970 has the exclusive right to import certain articles, including animal and vegetable fats (Decree of the Chairman of the Supreme Revolutionary Council No. 163 of 5 June 1971). The importation of fuels and lubricants is reserved to the Ente Nazionale Petrolio and the Somali Petroleum Agency (Decree of the Chairman of the Supreme Revolutionary Council No. 34 of 10 February 1972). Distribution of these products is reserved to state agencies (Law No. 10 of 10 January 1972).

(c) Trade in fishery products

Law No. 38 of 1 October 1974 governs the sale and export of fish. It provides that individual fishermen may only sell their catch to the fisheries cooperative in whose territory it was caught. The cooperatives have the corresponding duty to purchase all such fish. The price is established by the Ministry of Fisheries in consultation with the Ministry of Commerce and the local Revolutionary Committee. Fishing companies are permitted to export their catch directly, but if they wish to sell within Somalia, they must sell to the cooperatives.

Law No. 38 of 1 October 1974 suggests that cooperatives and fishing companies can export fish without further authorization, while other legislation makes the export of dried fish a state monopoly (Law No. 9 of 15 January 1973) and subjects the export of crustacea to licence (Decree No. 4 of 10 December 1972). It is not clear how these opposing provisions are to be interpreted. In the case of dried fish, Somalfish exercises the state monopoly to the point of collecting all dried fish for export, but it then sells the product to private exporters. So far as is known, the licensed foreign vessels export their catch, including crustacea, on the authority of their fishing licence alone.

K. Customs

The Customs Tariff of Somalia (Legislative Decree No. 5 of 11 December 1968) comprises import and export duties, administration and statistical duty, stamp duty, wharfage, warehouse dues, and taxes on sugar and alcohol. Of principal importance for fisheries are import duty, administration and statistical duty, and wharfage.

The basic tariffs on imports are as follows:

Fish and crustacea (except canned)	50%
Fish waste and fishmeal	30%
Fats and oils	30%
Canned fish and crustacea	60%
Salt	100%
Nets, netting, cordage	30%
Fish hooks	50%
Vessels (except pleasure craft)	free
Internal combustion engines	35%
Motor spirit	S. Sh. .72/litre
Heavy fuel oil and lubricants	" .60/litre
(import and distribution of fuel and lubricating oils are state monopolies - the current price of diesel fuel is S. Shs. 2.15/litre)	
Refrigeration equipment	30%
Food processing machinery	10%
Tinplate	10%
Cans	30%
Paper packaging	50%

In addition, all imported goods are subject to an administrative and statistical duty of 10%, and wharfage at the rate of 1.5% of value is due on all goods loaded and unloaded in ports.

Cutting across the import tariff is a series of exemptions of great relevance to the fishing industry. Equipment for the establishment or expansion of productive or socially beneficial activities is exempt from import duty (Law No. 26 of 10 November 1961; Presidential Decree No. 294 of 10 November 1961). In addition, the following categories

of goods, by whomever imported, are exempted from import and administration and statistical duties:

- Machinery, parts thereof, and ship-building materials
- Professional fishing equipment
- Ships stores
- Jars, boxes, cans and other containers for foodstuffs to be exported
- Fuels and lubricants for ships operating outside territorial waters.

There is no exemption from wharfage, except pursuant to special legislation, but coastal trade and transshipment are only subject to wharfage at the point of loading.

L. Foreign Investment, Law No. 7 of 29 January 1977

This law applies to investments made in Somalia by a foreign person or entity or a Somali residing abroad. The investment may be in the form of cash including reinvested profits, goods (such as fishing boats and gear) or rights such as patents and trade marks (art. 1). The investment must be for the purpose of establishing, enlarging, renewing, transforming or re-activating an enterprise (art. 6) and to enjoy the major benefits of the law the enterprise should be "productive", which includes, amongst others, "any enterprise that produces goods or services from which economic benefits can be derived" (art. 5).

Applications to invest foreign capital are subject to approval of the Committee on Foreign Investments, which comprises representatives of the banks, and the Ministries of Planning, Finance, Industry, Commerce, Agriculture, Livestock and Fisheries (art. 3). Approved applications are then subject to the Ministry of Planning's determination that "the proposed investment will bring about the establishment, enlargement, renovation, transformation or re-activation of an enterprise" (art. 6). Foreign loans are also subject to approval by the Committee on Foreign Investments (art. 13).

The principal benefits of the law regard repatriation of capital and profits, tax exemptions and employment of foreigners. Productive enterprises can repatriate 30% of the investment annually in the form of profits and payments of loan principal and interest. If profits are less than 30 percent in one year, the shortfall may be carried over to the entitlement for the three succeeding years (art. 8; interestingly the carry-over provision makes no reference to loan repayments). Special privileges for investments in agriculture, industry, livestock and fisheries include accumulation of repatriation rights for two years and the extension of their carry-over to the five succeeding years (art. 10). Capital may normally be repatriated after five years, although the Committee on Foreign Investments can set a different term of from three to seven years (art. 8). Non-productive investments are limited to a combined repatriation allowance for profits and loan payments of ten percent annually with no carry-over, and they cannot repatriate capital before seven years - at which time it appears that the investment must be entirely liquidated within a further three years (art. 14; "the transfer itself shall occur ... within the following three years").

Productive investments enjoy a general ten-year freeze of duties and taxes at the level obtaining when the investment is registered ("unless otherwise provided by law", art. 15). In addition, the Minister of Finance may grant total or partial exemption from duties and taxes for up to five years (id.).

Foreign investors are only allowed to employ foreigners when no qualified Somalis are available, and after one year they are required to submit a plan for the replacement of foreign personnel with Somalis. But expediting the issue of permits and visas for foreign personnel and their families remains one of the responsibilities of the Committee on Foreign

Investments (art. 19). Foreign personnel can freely transfer abroad half of payments received in Somalia, and transfer of three fourths can be authorized by the Committee on Foreign Investments (id.).

Disputes over interpretation of the law are to be settled amicably if possible, otherwise by arbitration. If agreement cannot be reached on a neutral arbitrator, he is appointed by the President of the Supreme Court of Somalia (art. 18). Somalia has also ratified the Convention on the Settlement of Investment Disputes between States and Citizens of other States (Law No. 11 of 8 February 1967), but it is not known if the relative arbitration provisions have been included in any investment agreement.

M. Immigration Law, Law No. 9 of 27 June 1966, amended by Decree of the Supreme Revolutionary Council No. 32 of 25 December 1969

The law forbids entry into Somalia without a pass, permit or endorsement (art. 4), although an immigration officer may permit disembarkation without any endorsement (art. 8). The law does not define Somali territory for purposes of entry. Immigration officers are empowered, "in case of urgent necessity," to search any ship, aircraft or vehicle in "the territory of the Republic without a warrant" (art. 2).

The Immigration Law also regulates the employment of foreigners. None may be employed in a post for which a qualified Somali is available (art. 24), and Somalis must be paid the same salary (presumably for similar work) as foreigners (art. 29 bis). Foreigners that are employed must have a work permit (art. 24).

N. Labour Code, Law No. 65 of 18 October 1972

The Labour Code applies to all employers except military and paramilitary organizations (art. 2). The provisions of main concern to fisheries are those regulating wages and hours. Pay may be based on time or production and may include a share of profits or other bonus (art. 71). Whatever the basis of remuneration, normal hours of work are limited to eight per day (48 per week) with a maximum of 12 hours a week overtime (art. 86). "In occupations that involve intermittent duties or mere presence or caretaker authority the normal hours of work will be ten a day and sixty a week" (art. 87). One day of rest per week is the norm, but the Minister of Labour may establish other rotations for particular occupations (art. 96).

Hiring is governed by Law No. 66 of 29 October 1972 on Employment by State Organs and Private Entities. Requests for personnel are to be submitted to the Directorate of the Personnel and Establishments Division (art. 2), although in practice this is handled by the local labour office. Hiring of non-high school graduates must be done by examination (art. 4), although again the labour office has apparently taken the responsibility of selection. High school graduates can be hired on the basis of their diplomas, without examination (art. 3). A requirement peculiar to public employment (state and local administration, public bodies) is a knowledge of written and spoken Somali (Law No. 14 of 15 January 1973 on Public Employment in Relation to the Introduction of Writing of the National Language).

O. Code of Criminal Procedure, Legislative Decree No. 1 of 1 June 1963, F. Mantovani ed. 1973

Arrest is closely regulated by the Code of Criminal Procedure (cf. art. 28). Normally arrest must be authorized by a warrant, which may only be issued in certain cases, of which the main ones are crimes punishable by at least six months' imprisonment, other crimes for which the law authorizes arrest, and where a summons has been issued and the accused has fled or failed to appear or given indications of flight or non-appearance (art. 42, 43). Arrest of persons caught in flagrante delicto is permitted without a warrant where the crime carries a maximum penalty of at least one year's imprisonment or is a crime for which such arrest is authorized by law (art. 35-37). Suspects may also be arrested without a

warrant by a police officer in urgent cases involving serious crimes or where a warrant cannot be obtained in time or where it is unlikely that the suspect can be found again (art. 38). It is not specified whether the last case applies to all crimes or only to those for which an arrest warrant could have been issued. A final instance of warrantless arrest is where a suspect refuses to reveal his name and address (art. 38, 50).

Arrested persons must be brought before a judge without delay (art. 39, 45, 50). If the arrest without a warrant was improperly made, or if the crime is not one for which a warrant may be issued, the judge orders the release of the arrested person. If the person was arrested for failure to give his name and address, he must be released as soon as the required information becomes known (art. 50). Otherwise the arrested person may be released pending trial only if the term of pretrial detention has expired or if the offence is not one of the generally serious crimes for which arrest of the suspect is mandatory (art. 35, 42, 59).

Normally, the accused must be present for trial, but there is a procedure for trial in absentia where an arrest warrant has not been able to be executed (art. 128D - 128H). Since an arrest warrant can be issued even for minor offences if the accused ignores the summons, trial in absentia could apparently be used for any crime. Perhaps most important for fisheries enforcement, goods can be seized and eventually confiscated under these provisions (art. 128H).

Searches are permitted without a warrant in the case of an arrest and may extend to the person arrested and any places where the arrest took place and where the person hid while fleeing arrest (art. 34). A warrantless search is also permitted in urgent cases where there is reason to believe that evidence may be destroyed or altered or that persons sought may disappear before a warrant can be obtained (art. 58). The competent court may issue search warrants for objects relating to the offence or necessary to the investigation, for the inspection of persons, places and things and that bear signs of the crime, and for finding suspects and illegally detained persons (art. 55).

Seized objects may be released by the court "on conditions that it may think fit" (art. 131A). If the objects are livestock, or are subject to rapid deterioration, and the legitimate possessor is unknown or absent, the objects may be sold at auction and the proceeds retained in their place. At the conclusion of the trial, the court can dispose of property as it considers fit, but an order of forfeiture cannot be executed until any appeal has been decided (art. 131C).

P. Penal Code, Legislative Decree No. 5 of 16 December 1962, F. Mantovani ed. 1973

Two provisions of existing penal law have potential complementary utility to fisheries legislation. Article 374 makes it an offence to make false entries in required records and reports concerning business operations. Article 505 makes it an offence to disobey lawful orders of public authorities.

Q. Statistics Law, Law No. 35 of 18 June 1970

The Law applies to "designated statistics", which include those relating to agriculture, "including ... fishing" (art. 1.2 sched.). The Central Statistical Department, now in the Ministry of Planning, is charged with collecting and compiling designated statistics and with supervising and coordinating the statistical work of Ministries, autonomous agencies and local administrations (art. 4). Authorized officers of the Central Statistical Department may enter any place during hours of daylight to collect statistics, except that they may be required to give 48 hours notice if the place is a dwelling (art. 5). There are penalties for refusing to give information or for giving false information (art. 8).

R. Health

There is no national public health law, but the Italian Health Code is in force in the Southern Regions. In practice, it is the municipal authorities that undertake inspection of premises and occasionally certify the quality of shellfish.

S. International Law

International treaty law governing fisheries is largely found in regional and bilateral agreements and the 1958 Geneva Conventions. Somalia is not a party to any fisheries convention or agreement as such, but it is a member of the Indian Ocean Fishery Commission. The Commission was established in 1967 by resolution of the FAO Council and its terms of reference include the promotion of national and regional fisheries development programmes and the examination of management problems, "with particular reference ... to the management of offshore resources."

Somalia is also a participant at the Third United Nations Conference on the Law of the Sea, which has been convened to negotiate a comprehensive agreement on a new legal regime for the oceans. Although the negotiations have not yet concluded, there is broad consensus on most of the main issues affecting fisheries, and this is embodied in the Informal Text of a Draft Convention on the Law of the Sea. If adopted, the Informal Text would recognize coastal state sovereignty over a 12-mile territorial sea and the resources of the continental shelf, and in addition the right of a coastal state to establish an Exclusive Economic Zone (EEZ) extending up to 200 miles (art. 57). Delimitation of the EEZ between adjacent or opposite states is to be effected by agreement based on "equitable principles", "the median or equidistant line", and "all the relevant circumstances" (art. 74).

Within the EEZ, according to article 56, the coastal state would have:

- (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the sea-bed and subsoil and the superjacent waters, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, current and winds;
- (b) jurisdiction as provided for in the relevant provisions of the present Convention with regard to:
 - (i) the establishment and use of artificial islands, installations and structures;
 - (ii) marine scientific research;
 - (iii) the preservation of the marine environment;
- (c) other rights and duties provided for in the present Convention.

In exercise of its sovereign rights over living marine resources in the EEZ, the coastal state would be required to determine the "allowable catch" of the resources (art. 61), to determine its own capacity to harvest them, and where this does not exceed the allowable catch, to give other states access to the surplus, subject to coastal state conservation and management regulations and other conditions. These may include licensing; "payment of fees and other forms of remuneration, which in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry;" provision of information; conduct of specified research; placing observers or trainees on board vessels; landing some or all of the catch in the coastal state; joint-venture and other co-operative arrangements; training personnel and transferring technology; and enforcement procedures (art. 62).

Where a stock or related stocks of fish occur in the EEZs of two or more states, the states would be required to seek agreement on appropriate management measures (art. 63). Similar provisions apply to coastal and fishing states with respect to stocks occurring

both in the EEZ and beyond (id.) and with respect to highly migratory species (art. 64). Special provisions are made for marine mammals (art. 65), anadromous (art. 66), catadromous (art. 67) and sedentary species (art. 68, 77), land-locked states (art. 69) and geographically disadvantaged developing coastal states (art. 70).

The coastal state would be authorized to take necessary enforcement measures in the EEZ, "including boarding, inspection, arrest and judicial proceedings" (art. 73). Arrested vessels and their crews are to be released on bond and penalties for violation of fisheries regulations could not include imprisonment (id.).

III. FISHERIES ADMINISTRATION

Fisheries administration in the narrowest sense is fairly straightforward in Somalia, based as it is on a single Ministry with few significant internal divisions. But the role of the state is so pervasive in the Somali economy that many non-fisheries bodies must be counted as having a role in fisheries administration. The consultant's investigations were not always adequate to elucidate the roles and relationships of these bodies; in such cases they are merely identified with minimal description.

A. Ministry of Fisheries

The Ministry, created in 1977 out of the former Ministry of Fisheries and Marine Transport, is the Ministry primarily responsible for all fisheries matters, both developmental and regulatory. The Ministry counts over 300 established posts, but it appears that less than half of these are filled. In Mogadishu, the Ministry headquarters has a staff of 44 actually employed, including clerks and typists, but apparently excluding drivers and labourers. This staff is distributed as follows:

Cooperative Development	5
Research	7
Financial Administration	18
Planning	4
Manpower and Training	4
Industrialization	1
Minister's and Deputy	
Minister's Offices	5

In the field the Ministry has four regional officers, each of whom is responsible for several co-operatives. One of these is also assigned as resident supervisor of the Merca cooperative. Another is general manager of the Prodma plant in Kismayu. A fifth officer is assigned exclusively to the Mogadishu cooperative. In addition the Ministry pays the chairman and cashier (each on a half-time basis) and driver of each co-operative, although the chairman and cashier are usually members of the local community who are elected to the post, and they cannot be considered as staff of the Ministry.

Some of the units of the Ministry are more active than others, in particular direction, administration and, through the field staff, cooperatives. Besides supervision and salaries to co-operative employees, the Ministry also supplies boats and gear, but the institutional mechanism for distribution is not apparent. Besides the four regional officers there is no extension capability in the Ministry. The other functions the Ministry might be supposed to have, especially fisheries management, do not seem to be performed at all.

B. Coastal Development Project

The Coastal Development Project is formally under the Ministry of Fisheries, but in practice it seems to operate quite independently. Its main centres of operation are the four coastal resettlement projects at Eil, Adale, El Ahmed and Brava. Here the CDP has complete charge not only of fishery development, but of community administration and of feeding, clothing and housing the inhabitants. The Project employs about 400 staff organized into five departments for fisheries (supplying boats and gear), transport, construction, social affairs, and administration. The Project has supplied vessels and fishing gear, built housing, schools and other structures, supplied food, other essentials and cash subsidies, and organized training, work and community administration. Doctors, teachers and similar personnel are supplied by other Ministries.

Originally 15 000 nomads were settled in three locations, later expanded to four. About a fourth of these were adult males. The

settlements absorbed existing cooperatives in Eil, Adale and Brava (there was none at El Ahmed) and employed some of the indigenous fishermen as instructors in fishing, swimming and other related skills. Perhaps 150 motorboats had been distributed to the settlements by the end of 1977, but only 55 were operational at that time. Since then some additional boats have been distributed (Brava), but the operational number has probably declined. The fishermen receive a salary variously reported as 150 to 300 shillings per month plus a share of the 80 cents per kilo of catch paid to the whole boat. In the off-season they receive a sort of dole of 150 shillings monthly. In addition, all receive free housing, food and other items supplied by the Project. Skippers and motorists receive higher salaries and shares.

Notwithstanding a relatively high income in cash and kind, unknown but significant numbers of adult males have left the resettlement communities, some to resume herding, others for unknown destinations. Whether they would be attracted back if more boats were operational is not known, but this factor will be very important in determining the long-term viability of the settlements. As it is, none of them approaches economic viability, or even self-responsibility for community administration.

C. Somalfish

Somalfish was originally established as a joint venture between the then Ministry of Fisheries and Marine Transport and the Soviet Ministry of Fisheries. With the cessation of Soviet technical co-operation, the Somali Ministry of Fisheries has become the de facto sole owner of Somalfish. It is apparent that Somalfish has little independence of the Minister, even in small matters, but it does retain a separate identity from the rest of the Ministry.

Somalfish greatest responsibility is the national fleet of 11 fishing vessels. Arrangements with foreign interests have generally been relied on to provide key crew, while local deckhands have been supplied by Somalfish, although for a brief period one of the 28-metre vessels was operated entirely by Somalis. Overall fleet management has been rather lacking so far, since neither Somalfish nor any foreign concern has assumed active management functions. If the fleet is to operate at an economical level, it will be necessary to introduce qualified management (see Report No. 34 on Management of Fishing Vessels).

Somalfish also operates a modest trade in dried shark and shark fins. Co-operatives are required to deliver their product at Somalfish's store in Mogadishu, from which Somalfish resells to exporters (Somalfish used to handle exports itself, but had too great difficulty in identifying markets). There are two big obstacles to the expansion of this activity. One is the low quality of much of the dried shark offered to Somalfish and the other is the low price relative to processing and transport costs. It appears that some cooperatives as well as the Coastal Development Project lose money on product delivered to Somalfish.

Somalfish also has a role in regard to the licensed Italian vessels. Each carries a fifty-per-cent Somali crew, which is not supplied by Somalfish but is under its tutelage as far as terms of employment go. The boats are also required to radio daily catch reports to Somalfish. Finally, the royalty payments are collected and retained by Somalfish, which in this connection also checks the quantities transshipped.

D. Cooperatives

1. Fishermen's Cooperatives

There are 18 fishermen's cooperatives (three others were absorbed by CDP settlements), which cover the entire coastline except for CDP areas. The cooperatives perform a variety of functions, supplying boats and gear (on rental or sale), providing processing facilities, marketing catches both of members and of all others in the cooperatives' district, maintaining boats and equipment and organizing work where there are insufficient boats and consequently a rotation system for their distribution. The cooperatives charge fees for boat and gear

rental (typically five to ten percent of the catch) and maintain a differential between buying and selling prices for fish, which is designed to cover administrative costs. Typical differentials are the following for Mogadishu:

<u>Grade</u>	<u>Buying</u>	<u>Selling</u>
A	Sh. 4.00/kilo	Sh. 5.25/kilo
B	3.00	4.25
C	2.00	3.25
D	1.20	2.45
Lobster	12.00	16.00

Cooperatives are governed by an elected committee of seven members. Executive management is in the hands of a chairman and an accountant who, along with the driver, are paid a salary by the Ministry of Fisheries. The chairman and accountant are both supposed to be local fishermen, although it is not always possible to find one with accountant's qualifications.

Most co-operatives are thought to be operating at a considerable loss, although there are no available records of their financial situation. A very few apparently have their books in proper order and are in a position to calculate and balance their operating costs and income. The others will require assistance to reach this point.

2. Union of the Somali Cooperative Movement

The Union of the Somali Cooperative Movement is responsible for the supervision of all cooperatives (Law No. 41 of 8 October 1979 on the Union of the Somali Cooperative Movement). It appears that eventually the Union would provide cooperatives the sort of guidance and services they now receive from the Ministries. It would also channel all foreign technical assistance to cooperatives. The Union will have six sectoral divisions comprising agriculture, fisheries, transportation, consumers, building materials and services. The chairman of the fishermen's cooperatives at Mogadishu, Ras Chiambone and Bender Beila are on the executive committee of the Union. It is not easy to foresee the eventual relationship between the Union and the Ministry of Fisheries.

E. Industrial Fisheries

1. Fishing Joint Ventures

Somalia has no active fishing joint ventures, but it is a partner in several entities that could spring to life. One is SIADCO, a Somali-Iraqi agricultural sector joint venture that at one time intended to introduce Spanish shrimp trawlers and Polish freezer trawlers, but has now apparently abandoned any fishing plans. Somalia is a one percent shareholder in the Arab Fisheries Company, but there is no sign of this pan-Arab joint venture becoming operational. Finally there is Somsec, a joint venture with Italian interests based on Italian Government financing for the construction of three 50-metre trawlers. The constitutive meeting of Somsec had not yet been held at the time of the consultant's last visit, but apparently the first of the vessels is nearing completion.

2. Processing Plants

A somewhat jumbled institutional structure governs the five processing plants at Las Khereh, Candala, Habo, Bolimog and Kismayu. All fall under the sectoral responsibility of the Ministry of Fisheries, although Las Khereh was originally (and by its statute still is) under the Ministry of Industry (Law No. 32 of 10 March 1973, art. 2), which also apparently would have jurisdiction over fishmeal plants if there were any in operation.

Las Khoreh is owned and operated with Dutch technical advice by ENIP, an autonomous agency. Habo and Candala are owned by the Government in partnership with Italian interests who manage them. Bolimog is 51 per cent owned by the Somali Development Bank. Simmenthal retains a 49 percent, but is apparently an inactive partner. The Kismayu plant is wholly owned by the Government and operated by the Ministry of Fisheries with technical assistance from FAO.

Between technical and supply problems, none of the processing facilities has operated at a very high rate in recent years. Major reconditioning efforts are under way or just completed at Kismayu (completed), Bolimog and Las Khoreh. At that time, if the Government wishes to run any of the facilities on a commercial basis, it will be desirable to adapt the institutional structures to actual conditions. In particular, Kismayu's status as part of the Ministry would have to be altered, and Bolimog would probably need to re-enlist the active participation of Simmenthal or reorganize the corporation. In all cases, it might be necessary to create civil law corporations (as already exists at Bolimog) to provide for the possibility of joint ventures with partners who could improve the management of the facilities.

F. Ministry of Marine Transport and Ports

The Ministry is generally responsible for navigation and ports. In 1977 it apparently also granted fishing concessions but this seems no longer to be the case. The Ministry is responsible for two autonomous agencies, the Somali Ports Agency and the National Shipping Line. The Ports Agency is responsible for harbour management at all recognized ports, in particular Berbera, Kismayu and Mogadishu. The National Shipping Line, besides operating its own vessels, acts as local agent for foreign shipping lines and is empowered to provide other ancillary services to shipping.

G. Training Institutions

The National Fisheries and Marine Institute in Mogadishu is the only one devoted specifically to fisheries and maritime training. It is a four-year post-intermediate school offering courses in mechanics, navigation and fish processing. Until now the institute has not emphasized either the practical or fisheries side of its subjects. Its new location near the Mogadishu Fishermen's Cooperative may encourage a shift to more practically oriented instruction in fisheries. Other training programmes of potential relevance to fisheries are conducted by the Somali Institute of Development, Administration and Management, the Mogadishu and Hargeisa Technical Institutes, and the Afgoi Agricultural Institute. There are proposals in the Three Year Development Plan for a Maritime School at Kismayu, a Faculty of Marine Science at the National University, and a Marine Research Centre, but it is not known if any of these will be funded.

H. Financial Institutions

1. Ministry of National Planning and Coordination

The Ministry of Planning has succeeded the State Planning Commission as the agency responsible for development planning (cf. Three Year Plan), for examining development projects submitted by other parts of Government, for commissioning feasibility studies and for seeking foreign finance. In the past it has frequently occurred that projects were developed and financing secured without involvement of the Ministry or its predecessor. The Ministry is making a determined effort to curb this practice.

2. Central Economic Committee

This is a committee of the Somali Revolutionary Party composed of the members of the Party Central Committee, the Chairman of the Central Bank and the Minister of Finance. It is generally responsible for economic policy, and has responsibility for approving development projects.

3. Ministry of Finance

The Ministry of Finance is responsible for the current - as opposed to the development - budget. It is also the parent Ministry of the state-owned banks.

4. Central Bank

The Central Bank controls access to foreign exchange and therefore plays a crucial role in the operation of any enterprise, such as a fishing company, that requires foreign supplies, such as spare parts. The procedure it has established for approval for foreign exchange applications is so time-consuming that quotations can become outdated before approval, thus requiring the whole process to commence again. A "franco valuta" system (the consultant was unable to locate published copies of the applicable regulations) has recently been established, whereby foreign exchange can be used or traded privately. This would ease the administrative problem for a fishing operation that managed to accumulate sufficient foreign exchange through sales.

5. Somali Development Bank

Somali Development Bank's greatest involvement in fisheries has been through its acquisition of the majority shareholding in Bolimog, which it is in the process of restoring to operational condition. It then intends to operate the plant in conjunction with chartered vessels for two seasons to determine the feasibility of building a proper port. The Bank would not ordinarily finance port construction itself but would seek long-term low-interest financing. Medium-term financing of fishing enterprises would on the other hand be within the Bank's normal lending policy, but only if the particular loans were commercially viable.

The Somali Development Bank had a brief involvement with fishery co-operatives when it managed a 1 000 000-shilling loan fund which had an unsatisfactory repayment experience. The Bank does not regard cooperative loans as very bankable propositions, so it seems unlikely to take a significant role in their financing.

IV. DISCUSSION AND RECOMMENDATIONS

A. General Fisheries Legislation

1. Maritime Code

The provisions of the Maritime Code that relate to sea fishing are an inadequate basis for proper management of Somalia's fishery resources. They are also not a very useful basis for securing revenue from the fishery. Perhaps for these reasons they have passed into desuetude. The Ministry of Fisheries has, on the other hand, found it possible to draw up licences which contain useful management provisions and secure a high rate of royalty from licensed vessels. These licences, however, as well-conceived as they are, rest on uncertain legal authority which should be strengthened by appropriate legislation.

The most conspicuous lack in the sea fishing provisions is that they contain no power to impose general management measures. The Minister (of Marine Transport) can suspend fishing "for reasons connected with public needs or with sailing or maritime signal requirements" (art. 70), and he can revoke concessions for reasons of public interest, either of which provision could perhaps be interpreted to apply to over-fishing; even if this were so, revocation or suspension would not be sufficient as the only available management measure. As with other areas of the law, this lack can be compensated to some extent by conditions included in concessions or licences (cf. the power to "fix other special rules necessary to the public interest", art. 68), but these would have no effect on local fishermen, who are not licensed.

The Maritime Code is equally weak in not providing for reporting and collecting information on fishing. To some extent this is covered by the Statistics Law, which empowers statistics officers to collect statistics. But the Statistics Law does not provide for the Ministry of Fisheries to receive the information, nor does it authorize the Ministry itself to gather it. Fishing reports have nonetheless been required of licensed vessels, but they have been made to Somalfish, as during the period of Soviet partnership, and not to the Ministry. As a result they have never been analysed, nor have they been used for management purposes.

The Maritime Code does contain a useful idea in the division of fishing activities into categories and in the preferences accorded to the smaller-scale categories. The definition of major fishing activities is no longer appropriate, however, since it would apparently exclude the potential Northeastern sardinella fishery. It is also questionable whether three categories (major, minor and conventional) of domestic fishing are necessary.

2. Recommendations

Articles 66-72 and 234-235 of the Maritime Code should be repealed and replaced with a fisheries law designed for two main purposes: the management of fishery resources, and the control and licensing of foreign vessels. A third, perhaps greater, purpose of fisheries administration is to develop the fisheries sector, but this is more a matter of finance, technology and administration than of legislation. Still a fisheries law should contain certain provisions designed to facilitate the development task.

The amount of fishing in Somalia has so far been small enough that resource management is not a critical problem. But local over-fishing does exist, and the rapidly expanding industrial fleet is likely to concentrate its efforts on a few of the most valuable resources, such as the deep-water lobster, which could easily damage stocks if no management is exercised. In the longer term, success in the development of both industrial and artisanal fisheries is sure to lead to great pressure on the resources as well as conflict between fishermen over access to the resources. Both the short- and long-term needs require that the basis of fisheries management be laid now. The short-term response is fairly obvious: the Ministry must monitor the critical fisheries

closely and have the power to take appropriate protective measures when required. The Ministry will no doubt feel it does not have enough information to act on, but it cannot risk the destruction of a resource or, more likely, the collapse of a fishery while it gathers data. This indicates the reason for beginning now to manage the long-term, merely potentially problem fisheries: the quality of management decisions, their fairness, economic efficiency and administrative feasibility depend greatly on the information on which they are based. It is especially important to have a sufficient series of fishing data, not just one or two years of partially reported catches. Legislation can help provide the data.

A complete list of management measures cannot be prescribed in legislation, but the law can establish a general framework for management and empower the Minister to impose detailed measures as they are required. This scheme should also permit local fisheries officers, when they exist, to impose local measures.

The two main categories of fisheries management measures are those that regulate the way fishing is conducted and those that limit the amount of fishing. A minor example of the first category is the Maritime Code's prohibition of certain methods of fishing (art.71). What is required is more flexible powers to control fishing practices (including mesh size and other gear specifications, places and times of fishing, composition and quantity of catch) and to adjust the controls as conditions require.

Controls on the number of fishermen potentially exist in the concession and licensing provisions of the Maritime Code, although there is no indication in the Code itself that permission to fish is to be determined by resource management considerations. A new fisheries law should make the connections between licensing and resources management more explicit, for the guidance of both fisheries administrators and the regulated sector.

The use of licensing to limit the units engaged in a fishery is unlikely to have broad application in the immediate future. It may be used to limit the number of large vessels fishing for deep-water lobster, but probably not to limit the overall number of large vessels in Somali waters. Even this restricted application will be worthwhile. At the same time, licensing is an unusually convenient administrative tool for securing information about a fishery. The licensing process itself provides a good picture of the fishing power employed, and catch and effort statistics can be required as a condition of licensing and integrated with the information from licensing. It must be said that current practice in licensing foreign vessels is based on this model, and that the weakness of the current practice is not in the licence but in the subsequent compilation and use of the data received.

In the new law it will be better not to rely on licensing conditions as the only tool for obtaining information from fishermen. Many fishermen, especially local ones, will probably not be required to hold a licence, yet they will be able to provide useful information on landings. Co-operatives should also be a good source of information on landings, and the law should provide for this to be transmitted to the Ministry. Even for licensed fishermen, a provision in the law itself will help to strengthen and systematize the obligation to give the Ministry the information it requires. It will also indicate to the fisheries administration the priority to be given to its information-gathering function. The Statistics Law is no substitute for proper provision in a fisheries law for several reasons: it does not provide for data collection by fisheries officers, it does not provide for gathering of non-statistical data, it does not provide adequately for boarding vessels, and it does not provide for spontaneous reports without the intervention of a statistical officer.

Management measures, licensing and data collection constitute the essential outline of a fisheries law. They should be connected by an element of planning and strengthened by basic enforcement measures. "Planning" need not be anything as elaborate as a complete management plan for every identifiable fishery in Somalia. Rather it is the logical step of relating management actions to goals and to knowledge about a fishery. In most early instances the plan will be simply to learn more about a fishery in order to determine whether further action is necessary and if so, what measures are likely to be the most effective. Where information is more complete or a situation appears critical, the plan

might state a precise level of catch permitted in a particular fishery and the licensing and other measures designed to keep below the permitted level. The definition of "fishery" for planning purposes will also vary according to knowledge and perceived needs.

Bearing these variations in mind, a fisheries management plan would normally include some assessment of the state of the fisheries in terms of resources, fishing effort and, where information existed, social and economic values. The plan should address the questions of whether it is desirable to increase or decrease the amount - or change the quality - of fishing and what measures might be useful to accomplish the desired changes. The plan should also address the desirability of allowing foreign vessels to harvest some of the catch in a fishery and the measures that should be taken to avoid conflict between fishermen, especially between modern and traditional vessels.

Enforcement is a necessary residual power in any regulatory scheme, although direct coercion is not recommended as the primary instrument of fisheries regulation. There are special needs for enforcement where foreign vessels are concerned, and these are discussed below. For general application, legal provisions for enforcement must define what is prohibited, prescribe appropriate punishments for transgressions, and authorize necessary enforcement proceedings, including most importantly stopping and boarding vessels for routine surveillance. The power of hot pursuit of fishery violators beyond Somali waters can be included but this is truly peripheral to the main enforcement problems Somalia faces. It is also a power that must be used with caution given the lack of both definition and recognition of Somalia's sea boundaries. In the light of current indications that an eventual convention on the law of the sea will not favour prison sentences for fishery offences committed in exclusive economic zones, the new fishery law should rely generally on non-prison sanctions for punishment of offences.

B. Legislation for the Licensing and Control of Foreign Fishing

1. The Problem

Besides the general management issues applicable to all fishing, there are issues peculiar to the control of foreign fishing vessels. The main ones are establishing jurisdiction over foreign fishing while respecting internationally recognized rights of innocent passage, enforcing this jurisdiction where surveillance is difficult, and establishing appropriate terms for access of foreign vessels. These issues are very minor or simply non-existent in the case of domestic fishing.

Existing legislation does not deal with any of these issues very well. Jurisdiction over foreign fishing is founded on a 200-mile territorial sea. As other writers have pointed out, an exclusive economic zone can accord adequate jurisdiction to govern fisheries and it may have the advantage of greater international acceptability. By a recent count, of 77 states claiming 200-mile fishery jurisdiction, 13 express the claim in terms of territorial sea, 23 claim 200-mile fishing zones, 38 claim EEZs and three claim "offshore waters", "patrimonial sea" and "sovereignty and jurisdiction over the sea" respectively (Moore, National Legislation for the Management of Fisheries Under Extended Coastal State Jurisdiction, Journal of Maritime Law and Commerce, January 1980). Many of the countries that claim fishing zones have viewed them as provisional measures pending the adoption of a convention on the law of the sea. At the Law of the Sea Conference, a quite stable consensus on a 200-mile EEZ has developed and is embodied in the Informal Text of a Draft Convention on the Law of the Sea.

Whatever terms Somalia's claim is couched in, it should be as precise as circumstances allow. The law on the territorial sea contains no principle of delimitation restricting the basic claim of 200 miles from the shore. This gives rise to conflicting claims with South Yemen, Djibouti and Kenya, and creates uncertainty where the limits of the territorial sea actually lie. It then becomes impractical to define offences in terms of illegally entering Somali waters, which is in fact one of the offences under the Law on Offences by Foreign Ships in Somali Territorial Waters.

The terms of access by foreign fishing vessels are not dealt with at all by the legislation in force. The sea fishing provisions of the Maritime Code make no distinction between Somali- and foreign-owned vessels. This is of course consistent with the fact that Somali registration is available to foreign ships. Since the terms of major fishing concessions are left open by the Code, the Minister could draw a distinction in practice. Something like this, although not necessarily based on the Maritime Code, can be seen in the different treatment of the licensed Italian vessels, which pay royalties, and the Somali-owned vessels purchased from Singapore and Yugoslavia, which are not even licensed.

2. Recommendations

The vague provisions and ad hoc procedures of the current system are probably being applied as well as possible, but they are approaching the limits of their usefulness. The current licensing procedure is extremely burdensome on scarce administrative resources and should be regularized so it can be operated more easily. Fair and effective provisions for dealing with conflicts with either licensed or unlicensed vessels should be in force before they are needed. (Good provisions should not only resolve conflicts, but by clearly indicating what is required, they should help prevent them). In other words, legislation is needed to deal appropriately with problems of foreign fishing.

A law to regulate foreign fishing must define the area and the vessels (or persons or other units) to which it applies. It must define terms of access or provide a framework for their formulation. If distinctive procedures apply to foreign licensing, these must be indicated. As with other laws, offences should be defined with precision and enforcement powers granted where those created by existing legislation do not suffice.

a. Areas of application

The law governing foreign fishing would apply to all waters over which Somalia claims jurisdiction, whether territorial or other. It is understood that Somalia does not wish to modify its territorial waters claim at present, but if it did, the law would continue to apply to an EEZ or fishing zone, as well as to a more precisely defined territorial sea.

b. Definition of foreign vessel

The vessels to which foreign fishing provisions should apply must also be specially defined for the purposes of the fishery law. The general Maritime Code provisions on registration allow vessels owned by nationals of any country to be registered in Somalia and to fly the Somali flag. This will not be suitable for a law that seeks to distinguish foreign from local vessels. It is recommended instead that Somali fishing vessels be defined in terms of ownership by Somalis.

The question of what proportion of Somali ownership a local vessel should have is not easy. Many countries include among local vessels those owned to a specified extent (almost always less than 50 per cent) by foreigners, or those owned by local companies which in turn may be owned - sometimes entirely - by foreigners. Others exclude all foreign interest in local vessels. In general, it has been very difficult to ensure that fishing operations with foreign participation are genuinely controlled by national interests. Rules designed to do this are easily evaded with the co-operation of compliant local partners; then further rules are promulgated to outlaw particular evasive devices, and new ways are discovered to evade the new rules.

Where the purpose of defining nationality is not to exclude foreigners, but to subject their participation to greater scrutiny and different conditions, it serves the purpose to require exclusively local ownership of local vessels. Then the foreign vessels that best serve national policy, including those with greatest local participation and control, can be preferred in granting licences and setting conditions. Where the purpose of the definition is to exclude foreign vessels from the fishery, it is not wise to require 100 per cent local ownership because this would exclude potential genuine

partnerships that might provide development opportunities for the national industry.

In Somalia, all known foreign participation in fishing is already subject to special approval, indeed to negotiation with the Ministry. Neither in general economic policy nor in fisheries policy is there a suggestion that fishing should be "opened up" to foreigners. So the simplest conclusion is to define local vessels as those entirely owned by Somali citizens, the Government or entirely Somali-owned companies. Any vessel that did not meet the requirement, including joint venture vessels, would be treated as foreign although those with a high proportion of Somali ownership could be granted more favourable conditions.

c. Conditions of foreign fishing

The basic requirement applied to foreign vessels in the Somali jurisdictional waters would be that they not fish without a licence. The terms and conditions of foreign fishing licences would therefore become the terms and conditions of access to the Somali fishery. It may not be useful to state these in the law, since the situation tends to change rapidly and the best terms of one year may be too onerous or too easy the next. It is, however, worthwhile to consider the sort of terms that are sometimes agreed or imposed, by law, regulation, or in licensing, as conditions of foreign fishing.

The Draft Convention on the Law of the Sea (Informal Text) contains the following list of matters concerning which conditions may be applied to foreign fishing in an exclusive economic zone (art. 62):

- (a) Licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, which in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry;
- (b) Determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or groups of stocks or catch per vessel over a period of time or to the catch by nationals of any State during a specified period;
- (c) Regulating seasons and areas of fishing, the types, sizes and amount of gear, and the numbers, sizes and types of fishing vessels that may be used;
- (d) Fixing the age and size of fish and other species that may be caught;
- (e) Specifying information required of fishing vessels, including catch and effort statistics and vessel position reports;
- (f) Requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programmes and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data;
- (g) The placing of observers or trainees on board such vessels by the coastal State;
- (h) The landing of all or any part of the catch by such vessels in the ports of the coastal State;
- (i) Terms and conditions relating to joint ventures or other co-operative arrangements;
- (j) Requirements for training personnel and transfer of fisheries technology, including enhancement of the coastal State's capability of undertaking fisheries research;
- (k) Enforcement procedures.

In addition, some countries have required access to flag countries for coastal-state fishery products, financial and development assistance outside the fisheries sector, and other conditions.

Not all possible conditions are either applicable to Somalia or necessary to consider in formulating legislation. Others, such as licensing and management measures, have been discussed above. The following matters, on the other hand, may affect the contents of the proposed law and regulations.

(1) Fees. Fees should not be set by law, since they must constantly change, not only in amount, but also in the definitions of the fishery to which they apply. In Somalia, for example, the division of fees into two categories is no longer sufficient because of increasing catches of shrimp, which do not fit either category. The real question is whether fees should be negotiated on a case-by-case basis or be set periodically for general categories. The former allows greater flexibility in trading off monetary fees for other benefits, as well as in adjusting fees as appropriate for lower or higher value products, for unexplored fisheries and other factors. On the other hand, all case-by-case approaches require a greater administrative effort if they are to be successful. It will probably be found that fees for some products and forms of fishing can be set generally, whereas others, especially new ones, have to be negotiated individually. It is recommended that legislation authorize the Minister to set fees by simple orders and to vary them for different classes; this should provide the necessary flexibility.

(2) Reporting. Information is the fundamental prerequisite for fisheries regulations. Accurate, regular reports of catch and effort can easily be supplied by licensed vessels and should be required by law. The form and detailed contents of such reports can be prescribed by regulation, administrative order or as a licensing condition.

(3) Observers. One method of assuring the accuracy of reports is to require fishing vessels to carry observers. This is current practice in Somalia as well as several other countries. The practical value of such a requirement depends greatly on the availability of trained observers. In present circumstances, Somalia does not gain much from the presence of its observers on licensed vessels, so an absolute requirement to carry observers seems inadvisable. On the other hand, the law should empower the Ministry to place observers on licensed vessels from time to time, so that trained personnel, including staff of the Research Division, could observe the fishery as needs and means dictated.

(4) Employment of nationals. Somalia currently requires licensed vessels to carry 50 percent Somali crews. There are mixed reports on how effectively the Somali crew members are integrated into the work of the vessels. All Somalis are employed as deckhands or wipers and employment is not linked to any explicit training programme. On some vessels, in some jobs, 50 percent may be too high or too low a proportion of Somalis, and whatever the correct proportion at a given moment, one would expect it to rise with time. It is recommended that legislation empower the Ministry to establish standards for the employment of nationals on foreign fishing vessels, but that numerical proportions not be stated.

(5) Training. Training is one of the major benefits developing coastal states expect from foreign participation in their fisheries, but it seems one of the most difficult to realize. Training requirements can frequently only be stated in the most general terms, whereas a serious training programme would be rather detailed. A useful provision may be to require a licensee to prepare a training and employment programme for approval of the Ministry and to make periodic reports on progress in implementing the programme. A similar provision, but limited to employment, is already contained in the Foreign Investment Law.

(6) Landing of catch. One way of checking on catches as well as increasing local value added is to require catches to be landed in the coastal state, and this is required by law or otherwise in some countries. As a general requirement it is not very practical for Somalia because of the paucity of shore facilities. It should be available as an option to impose when necessary to assure the utilization of shore facilities whenever these were

in a position to handle catches. It may also be worthwhile as an aid to enforcement to require transshipment to take place in specified ports, but even this may not be practical for certain fisheries. Requirements for local processing of catches fall into the same category of only being practical if facilities exist.

One measure that can be considered on a case-by-case basis is to favour fishing proposals that include elements of infrastructure such as landing or processing facilities. These would most likely be forthcoming after a period of fishing had established the viability of the fishery and the economic feasibility of related facilities.

(7) Joint ventures. It is an extremely complex question whether foreign fishing vessels should be allowed to operate under a licence alone or whether some form of joint venture agreement should be required. The complexity is due partly to big issues such as national development strategy, economic policy and foreign relations, partly to the variety of ends that are sought through joint ventures. They are seen as sources of capital, technology, profits, employment, market access, management training and less tangible values such as the prestige of owning a share in the fleet, or the reassurance of having an experienced partner.

As a starting point, it is probably more practical to focus on the narrower issue of the commercial viability of the joint venture enterprise. After all, a fisheries joint venture is an economic entity which will not survive if it does not meet economic criteria. And a venture that does not survive will not produce, will not employ, and will not contribute to development.

One cannot be certain whether or not a particular joint venture will be successful, but it is possible to identify factors that have been associated with commercially viable joint ventures in other countries. The following appear most relevant to Somalia:

1. Viable resources and markets. Somalia boasts significant under-exploited resources that can be economically harvested and have a ready international market. This is the most important basis for the success of a fishing venture. On this point, the only caution is not to depend excessively on the more limited crustacea stocks.
2. Infrastructure and services. These are generally lacking, which means that fishing operations must either be quite self-contained or suffer high rates of idleness. Internationally and bilaterally assisted projects for improved port, handling and processing facilities are in various stages of preparation and execution. A continuation of this programme will do much to increase the feasibility of Somalia-based fishing operations.
3. Possession of necessary technical and managerial skills by at least one of the partners. Somalia has working relationships with several competent fishing companies. With proper selection, it should not be difficult to meet this criterion.
4. Modicum of trust between the partners. This is an area where improvement should be sought. As Somalia and its potential foreign partners become better acquainted with each other, a better basis for trust should form.
5. Clear objectives. Like trust, these come more easily with experience. The Ministry has acted consistently with this in first licensing vessels as a testing stage for joint ventures. It would now be useful for the Ministry to formulate its general joint venture objectives - what it expects to get out of them. For any particular joint venture, the Somali and foreign partners would have to agree on the objectives of that venture, including its development role.
6. Active local partner capable of absorbing expertise. This is a factor in the success of technology transfer, not viability. But technology transfer is such a universal objective of host-country joint-venture policy that it must succeed for the joint venture to be acceptable. No existing organization in Somalia is a good candidate for this role; sooner or later one will have to be created.

7. Sophisticated local partner, able to monitor conduct of the enterprise. The skills available in Somalfish and the Ministry may be more suited to monitoring, but Somalfish itself is not properly described as sophisticated. A new, initially very small company should be formed to manage Somalia's interests in fishing and provide the nucleus of the active local partner that would eventually be required. Detailed recommendations are given in Indian Ocean Programme Technical Report No. 34.

8. Genuineness of joint venture, with real sharing of risks and profits. If a joint venture is merely used to camouflage foreign fishing, there will not be the commitment and stability necessary to long-term success. Somalia's dilemma here is that, in the absence of so many of the other factors needed for success, genuinely sharing in a joint venture is likely to mean sharing in losses rather than profits.

It is apparent from the foregoing that Somalia should do several things before it enters into further joint ventures. It needs to accelerate the provision of infrastructure and to create a suitable Somali partner. As it happens these actions are also necessary to successful operation of the existing national fleet and the Somsec joint venture. Somalia then needs to master the problems of running its fleet, which will fully absorb the technical and managerial capacity of state fishery institutions for several years to come.

When Somalia is prepared to participate actively in new joint ventures, it is recommended that wherever feasible it continue the present pattern of first licensing a potential partner in order to test the resource, the technology, and the partner itself. This will strengthen the basis for joint-venture success and in the meantime royalty payments will be an assured source of revenue, as they are now.

A policy of gradualism is recommended for new joint ventures because the alternative of licensing exists. For the Somali-owned fleet, on the other hand, joint ventures may be the best choice. As discussed more fully in Indian Ocean Programme Technical Report No. 34 on management of fishing vessels, some outside expertise will be needed to manage and operate the Somali industrial fishing fleet. For vessels already wholly owned by Somalia, management can only be brought in under a contract or charter arrangement, since it is unlikely a foreign partner could be induced to invest significant capital in the existing fleet. But it is understood that vessels on order will be owned and operated by Somsec, a joint venture with Italian fishing interests. This may avoid the problems of installing management that the Australian and Yugoslav vessels have experienced.

The actual terms of any joint venture will have to be negotiated in each case. At that time, it will be especially important for the Somali side to have both a clear picture of its own objectives, and a thorough understanding of the positions and proposals of prospective partners. Expert negotiating technique will then be helpful to maximize realization of Somali objectives. FAO can offer assistance on analysis and negotiation of fisheries joint ventures, and it is recommended that this assistance be sought on the occasion of future negotiations.

(8) Bilateral agreements. A final issue is whether an agreement between Somalia and the flag state, which may provide for any of the foregoing matters, should be required as a condition of foreign fishing. Some countries only issue licences under a bilateral agreement, others grant more favourable terms to vessels operating under an agreement, others make no general provision.

There are basically two kinds of bilateral fishing agreements: that providing for reciprocal fishing rights and that governing access of the vessels of one party to the waters of the other. Sometimes the latter kind is disguised in terms of reciprocal fishing rights, but only one party has a fleet capable of fishing in the other's waters.

There is some possibility of exercising reciprocal fishing rights in the region, and this would probably be under an agreement with one or more neighbouring states. Legislation could provide explicitly for this situation by authorizing different licensing conditions

for vessels operated under a reciprocal agreement that provided access for Somali vessels to waters they were able effectively to exploit. Because licensing is intended to be central to the management and information system, it is not recommended that vessels operating under reciprocal agreement be exempted from licensing.

Most of the foreign fishing activities conducted or proposed in Somalia involve vessels from distant countries where Somali vessels would be unlikely to fish (Greece, Iraq, Italy, Japan, Soviet Union, Spain). Reciprocity is not an issue here, so the question is whether there are other reasons for which Somalia should require access agreements for distant-water vessels.

Bilateral access agreements can serve several purposes. One of the greatest is to support coastal state efforts to ensure compliance with its fishing regulations. A coastal state does not require flag-state agreement in order to exercise sovereign rights in areas under its fisheries jurisdiction, but where international law is in flux and boundaries are poorly defined, a bilateral agreement can usefully provide for the applicability of coastal state regulations and for coastal state enforcement powers even in an area where the two countries do not agree on the nature and extent of coastal state jurisdiction. An agreement can also provide the basis for diplomatic action by the coastal state to ensure that flag state vessels, especially unlicensed ones, respect coastal state regulations. The coastal state would not expect to relax its own surveillance and enforcement activities, but it might find them more effective when supported by the authority a flag state can exercise over its vessels. The value of this depends on the flag state, since not all of them have effective control over the actions of their distant-water vessels.

Bilateral access agreements can also be used to secure forms of co-operation that a single fishing company could not easily provide. Prime examples are training in flag-state institutions, which a bilateral agreement can provide for directly, or support to the development of artisanal fisheries, which is not likely to be among the fishing company's talents.

The principal disadvantages in bilateral agreements lie in the possibility that the terms will not be appropriate to the needs of the coastal state. Reciprocal agreements where only one state has a distant-water fishing fleet are examples of inappropriateness. So are agreements (or licence terms) which imply exclusive fishing rights.

At the present time, when the extent of Somalia's fishery resources is not well known and when it is experimenting with different forms of industrial fishing, and with different foreign partners, it would not be very practical to require a bilateral agreement with every flag state. The law should not therefore require one, although preference can be accorded to vessels operating under an agreement. If a definite pro-agreement policy is adopted, licensing regulations can be amended to require bilateral agreements for the licensing of foreign vessels.

d. Enforcement

Practical issues of enforcement have already been analysed in the White Fish Authority report; here it is only necessary to add that proper penal measures can enhance the success of enforcement action. Unauthorized foreign fishing vessels should be forbidden to enter or remain in Somali waters except for purposes of innocent passage; they should also be forbidden to fish there. A presumption that fish found aboard a vessel engaged in illegal fishing were themselves caught illegally may be useful. Penalties for serious violations of the zone should be high enough to be an effective deterrent. They should include fines and - where circumstances warrant - confiscation of catch, vessels and gear. It is not recommended that imprisonment be included in the range of penalties, in accordance with the Draft Convention on the Law of the Sea. Procedures for rapid adjudication and release of seized items under bond are recommended.

When new penal provisions are introduced, the Law on Offences by Foreign Ships in Somali Territorial Waters should be repealed, and the Law on the Territorial Sea and Ports should be modified in accordance with the recommended fisheries law.

C. Legislation Affecting Fisheries Development

1. Artisanal

The legislation that deals most directly with artisanal fisheries development is that governing artisanal institutions, essentially cooperatives and the Coastal Development Project.

The cooperatives are the basic unit of the artisanal sector, both having a marketing monopoly and being the vehicle for development assistance. The co-operative law's division of co-operatives into two categories wisely allows the form of each cooperative to be adapted to the needs of the community. In practice it is unlikely that any fishing community is ready for the full collective form, which is probably better suited to activities other than fishing. As discussed in other reports successful fishing usually requires individual incentives and responsibility, for which there is ample scope in the service and marketing co-operative under present legislation. It is recommended that co-operative bye-laws emphasize the role of individually owned boats and gear, and that they mandate individual or crew responsibility for the proper use and - to the extent possible - for the cost of boats and other inputs supplied by the cooperative.

One legal provision that seems to discourage artisanal fisheries development is the state monopoly, exercised by Somalfish, over exporting dried fish. Since the actual export is conducted by the private sector clients of Somalfish, there seems no real purpose in retaining the monopoly.

The Coastal Development Project settlements are anomalous, as would be expected from the circumstances of their establishment. If the Project is ever to succeed in creating self-sustaining fishermen's communities, it must progressively withdraw from direct administration of the community's affairs. As it confines its activities to development assistance, even if on a larger scale than obtains in the normal cooperative communities, the Project will more appropriately operate as part of the Ministry instead of as the autonomous agency it is now. At this time, which is fast approaching, there will be no further need for a special law establishing the Project.

Although it does not directly provide for development, the Maritime Code's preference to traditional fishing should be retained in new legislation. The emphasis on development in the Ministry of Fisheries' statutory functions (Law No. 17 of 3 February 1977) should also be retained. It can be supplemented by requiring that fishery planning give particular consideration to the development of artisanal fishing.

2. Industrial fisheries development

At this stage in Somalia's fisheries development, industrial fishing is likely to involve a certain level of foreign participation, especially on the technical and management side, but also through some direct investment as foreseen in the Three Year Development Plan. The Foreign Investment Law is designed to facilitate foreign investment by freeing capital movements and employment of foreigners and by reducing or eliminating taxes and

duties. The tax concessions are potentially very great, depending partly on decisions of the Minister of Finance, and the provisions for employment of foreigners are fairly standard. The only matter that might deter desirable investment projects is the repatriation provision. Repatriation of profits, payment of foreign loan interest, and repayment of foreign loan principal are limited to a combined annual total of 30 per cent of capital invested. In practice, "capital invested" includes both foreign-source loans and equity capital, so the base for the repatriation calculation is broad enough. But in an age of 20 and 25 per cent commercial lending rates, the limit of 30 per cent could leave very little room after interest payments for repayments of principal and repatriation of shareholder profits. It may be useful to empower the Minister of Finance to adjust the repatriation limit in accordance with changes in prevailing rates of interest. A related problem that appears in the Foreign Investment Law is the lack of provisions to facilitate the allocation of foreign exchange for the importation of necessary equipment and supplies, but this may be solved for export-oriented enterprises with the franco valuta scheme. For others, the slowness of foreign exchange approvals is likely both to discourage investment and to reduce the efficiency of operations.

Even without the Foreign Investment Law, the Customs Tariff provides for duty-free entry of most equipment and supplies to be used in fishing. This does not include fuel, but the monopoly selling price of diesel fuel is currently lower than that in the major nearby bunkering ports.

V. SUMMARY OF RECOMMENDATIONS

Somalia's present fisheries legislation contained in the Maritime Code is not an adequate basis for fisheries management or for licensing of foreign fishing. It should be repealed and replaced with a separate fisheries law providing explicitly for management and licensing and containing adequate provisions for enforcement. At the same time legislation on the territorial sea should be modified to avoid overlap with the new fisheries law.

Proposed legislation is contained in Appendix I, followed by recommended drafts of regulations, licensing and reporting forms and a ministerial order. The idea that has guided this arrangement is to distinguish among matters of principle, technical matters of general application, and technical matters requiring local or individual treatment. These distinctions cannot be absolute; in particular it will be observed that many powers are proposed to be exercised either by regulation or by order. In fact they would generally be exercised by regulation at present, but when the fisheries administration is established at the local level, it would be useful for fisheries officers to have the power to impose local management measures and licensing conditions. This would be done by order under delegation from the Minister.

The following outline explains the main provisions of the proposed law, article by article:

Article 1 - Administration. The Minister is given broad powers of delegation so that he can gradually increase the responsibilities of subordinate officials as fisheries administration is strengthened.

Article 2 - Somali waters. Somali waters are defined to ensure that the proposed law will apply both to the territorial sea and to any future exclusive economic zone.

Article 3 - Fisheries Information. This article emphasizes the importance of information in fisheries management. It both grants the power to require information and imposes the duty on the Minister to gather it.

Article 4 - Fisheries Management and Development Plans. These plans can be quite simple, and they will necessarily be imprecise, but they will provide a logical basis for management measures under article 5, development measures under article 6, and licensing decisions under articles 7 through 9.

Article 5 - Fisheries Management Measures. This article permits restrictions to be imposed on the time, location and methods of fishing, on species caught, landed or traded, as well as on possession of prohibited gear.

Article 6 - Development of Fisheries. This article creates an obligation for the Minister to protect artisanal fishing while developing fisheries generally.

Article 7 - General Licensing Provisions. This article applies to all licences under articles 8, 9, 10 and 11, although the provisions in terms of vessels necessarily apply only to vessel licences.

Article 8 - Local Fishing Vessel Licence. This article authorizes but does not require licensing of 100 percent Somali-owned vessels. Proposed implementing regulations require local vessels over 12 metre to have a licence. Where an application meets all the criteria for a local licence, the Minister does not have discretion to deny it.

Article 9 - Foreign Fishing Vessel Licence. This article requires all vessels with even partial foreign ownership to have a licence for fishing and related activities, although the Minister could designate places for unlicensed vessels to load fish. The Minister has discretion to grant or refuse a licence under this article.

Article 10 - Other Licences. This article allows licensing of activities whose control may become more important in the future.

Article 11 - Inland Fisheries and Aquaculture. Most of the law is in terms of "fish and other marine organisms" and intended to regulate marine fishing. If inland fisheries or aquaculture become important, they can be regulated under this article.

Article 12 - Health Regulations. This article requires both the Minister of Health and the Minister of Fisheries to agree on health regulations.

Article 13 - Scientific Research and Fisheries Management. Instead of a general power of exemption, this article requires a specific written authorization for activities that might otherwise be prohibited and limits the purposes for which it may be granted to research and fisheries management.

Article 14 - Enforcement. Paragraph 1 authorizes routine inspections of documents, fish, gear, premises and vessels, including the power to stop and board vessels. Paragraph 2 additionally authorizes seizure of articles in certain cases where a crime has been committed. Other searches and seizures are to be conducted according to existing procedures in the Code of Criminal Procedure. Custody of seized goods is also to be regulated by that Code except that perishable goods, especially fish, may be disposed of by administrative authority instead of the court, and release of items against security is made mandatory instead of at the discretion of the court.

Article 15 - Enforcement Outside Somalia. This article provides for hot pursuit and for enforcement against Somali vessels in international waters.

Article 16 - Jurisdiction of the Courts. This article will settle the question of jurisdiction in most cases of crimes at sea which are not within the territorial jurisdiction of any court. It may also affect jurisdiction in a few cases of shore-based crimes involving a boat that is later brought into another court district.

Article 17 - Offences. The proposed penalties do not include incarceration; the amount of the fines must be inserted.

Article 18 - Forfeiture. This is the main penalty under the proposed law. Forfeiture of vessels is limited to cases of fishing with illegal substances and foreign vessels fishing without a licence. Paragraph 2 provides for the retention of seized articles until all fines, whether imposed on the owner or other persons, are paid.

Article 19 - Compounding of Offences. This procedure facilitates the quick release of seized vessels and the settlement of cases.

Article 20 - Regulations. This follows the constitutional procedure for the issue of regulations.

Article 21 - Amendments and Repeals. Existing fisheries provisions are removed from the Maritime Code and a provision is added to provide for consultation with the Minister of Fisheries in granting mariculture and coastal aquaculture concessions. The Law on Offences by Foreign Ships is repealed as unnecessary, the same reason for which the reference to fishing is removed from the Territorial Seas Law. The monopoly over dried fish sales is revoked.

APPENDIX I

Proposed Draft Fisheries Law

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Law No. of on Fisheries

Article 1

Administration

The Minister of Fisheries shall be responsible for the administration of this Law; he may in writing delegate any power conferred on him by this Law except the power to authorize persons to exercise enforcement powers under Article 14.

Article 2

Somali Waters

For the purposes of this Law, Somali waters include the territorial sea, internal waters and any other waters over which Somalia claims fisheries jurisdiction.

Article 3

Fisheries Information

The Minister of Fisheries shall gather statistical and other information on Somali fisheries, and for this purpose he may require any person or entity engaged in fishing or in trading or processing fish or other marine organisms, to supply any information that is reasonably related to such activities, including the nature and extent of fishing operations, quantity and other characteristics of catch, including by-catch, and landings, source and disposition of fish and other marine organisms traded or processed, and costs and revenues of operations.

Article 4

Fisheries Management and Development Plans

1. The Minister of Fisheries shall prepare and keep under review plans for the management and development of fisheries.
2. Each plan shall be based on the best information available, and be designed to ensure the optimum utilization of the fishery resources, consistent with sound management principles and the development of Somali fishing.
3. Each plan shall:
 - a) identify the fishery resources and estimate so far as feasible the average annual yields that can be harvested from them;
 - b) assess the state of exploitation of each resource and the desirability, taking into account all relevant biological, social and economic factors, of changes in the amount or nature of exploitation;
 - c) specify the measures to be taken to promote the development of local fishing activities;
 - d) determine the amount of resources, if any, to be made available to foreign fishing vessels on an annual basis;

- e) specify the management and licensing measures needed to improve the long-term utilization of the resource.

Article 5

Fisheries Management Measures

1. The Minister of Fisheries may by order in the Official Bulletin impose any of the following measures that are necessary for the proper management of any fishery:

- a) closed seasons for designated areas, species or methods of fishing;
- b) prohibited fishing areas for all or designated species or methods of fishing;
- c) limitations on the methods and gear, including mesh sizes of nets, that may be used for fishing;
- d) limitations on the amount, size, species and other characteristics of fish and other marine organisms that may be caught, retained, landed or traded.

2. An order prohibiting the use of any gear in any area may also prohibit the possession of such gear in such area.

Article 6

Development of Fisheries

The Minister of Fisheries shall, in cooperation with other State bodies as appropriate, promote the development of traditional and industrial fisheries and related activities in Somalia. He shall ensure that development of industrial fisheries does not unduly damage or prevent the development of traditional fisheries, through such means as reserving areas for particular kinds of fishing.

Article 7

General Licensing Provisions

1. Applications for licences shall be made in such form as may be prescribed by regulations or as the Minister of Fisheries may require.

2. A licence issued under this Law shall be subject to such conditions, including limitations on permitted times, places, methods and activities, as may be prescribed by regulation or imposed by the Minister of Fisheries.

3. The Minister of Fisheries may by order in the Official Bulletin establish licence and application fees, royalties and other charges in respect of any licence issued under this Law, and he may establish different classes of licence and impose different fees, royalties and other charges for each class.

4. The Minister of Fisheries may revoke or suspend a licence issued under this Law at any time for failure to comply with the provisions of this Law, regulations or orders thereunder, or any condition of the licence, or where such action is necessary for the proper management of fisheries. In the event of revocation or suspension for the proper management of fisheries, the proportion of any fees paid with respect to the unexpired portion of the licence shall be promptly refunded to the licensee.

5. Every vessel in respect of which a licence is issued under this Law shall be marked in such manner as the Minister of Fisheries may require.

6. Any modification to or change of ownership of a licensed vessel shall be notified within thirty days to the Minister of Fisheries who shall note such modification or change and may, if he considers that such action is warranted, amend the existing licence or cancel it and treat the notification as an application for a new licence.

7. The Minister of Fisheries shall maintain a register of all licences issued under this Law.

Article 8

Local Fishing Vessel Licence

1. A local vessel is a vessel wholly owned by Somali citizens or the State or by legal entities wholly owned by Somali citizens or the State.

2. The President may, on the recommendation of the Minister of Fisheries, make regulations requiring a licence to use a local vessel for fishing, receiving and processing fish and other marine organisms.

3. Upon application in the required form and payment of the required fee, the Minister of Fisheries shall issue a licence in respect of a local vessel if he is satisfied that:

- a) the vessel is a local vessel as defined in this Article;
- b) the issue of such licence is consistent with any applicable fisheries management plan; and
- c) the applicant will comply with the conditions of the licence;

but otherwise he shall refuse to issue a licence.

4. Upon request of the applicant, the Minister of Fisheries shall give reasons for refusing to issue, or for imposing any condition on, a licence under this Article.

5. A licence issued under this Article shall, unless sooner revoked or suspended, be valid for such period not exceeding one year as may be stated thereon or prescribed by regulation, except that, at any time that the vessel ceases to be a local vessel, the licence shall cease forthwith to be valid.

Article 9

Foreign Fishing Vessel Licence

1. A foreign vessel is a vessel that is not wholly owned by Somali citizens or the State or by legal entities wholly owned by Somali citizens or the State.

2. Except pursuant to a licence issued under this Article, no foreign vessel shall be used in Somali waters for fishing, or for receiving fish or other marine organisms in any place not designated by the Minister of Fisheries for that purpose, or for processing fish or other marine organisms.

3. Where a foreign vessel is not licensed under this Article, the fishing gear of the vessel shall, at all times that the vessel is in Somali waters, be kept stowed in such manner as may be prescribed by regulation.

4. Upon application in the required form and payment of the required fee, the Minister of Fisheries may, consistently with any applicable fisheries management plan, issue a licence authorizing a foreign vessel to fish or to process or receive fish or other marine organisms in Somali waters.

5. A licence issued under this Article shall, unless sooner suspended or revoked, be valid for such time as the Minister of Fisheries may determine or as may be prescribed by regulation.

Article 10

Other Licences

The President may, on the proposal of the Minister of Fisheries, make regulations requiring a licence, in addition to any licence required by Article 8 or Article 9, for fishing with any gear or method with or without the use of a vessel, or for processing fish or other marine organisms.

Article 11

Inland Fisheries and Aquaculture

The President may, on the proposal of the Minister of Fisheries, make regulations governing inland fisheries and aquaculture, and the regulations may require licences for fishing in inland waters and for the cultivation of fish, shellfish and other aquatic organisms.

Article 12

Health Regulations

The President may, on the joint proposal of the Ministers of Health and of Fisheries, make regulations governing the handling, storage and processing of fish and other marine organisms, prescribing methods and product standards, and providing for the inspection of fish trading and processing establishments and their products.

Article 13

Scientific Research and Fisheries Management

The Minister of Fisheries may in writing authorize any person or vessel to conduct scientific research or other activities for the proper management of fisheries, subject to such conditions, including requirements for the disposition of any catch, as the Minister may impose. Any authorization under this Article may exempt any person or vessel from any provision of this Law or any regulation made thereunder.

Article 14

Enforcement

1. For the purpose of enforcing this Law, a Somali Navy Officer not below the rank of sub-lieutenant, or any other person so authorized in writing by the Minister of Fisheries, may, without a warrant:

- a) require to be produced, examine and take copies of any licence, log or other document required under this Law;
- b) require to be produced and examine any fish or other marine organism and any fishing nets or other fishing gear;
- c) stop and board any fishing vessel in Somali waters and inspect such vessel, its cargo, supplies, fishing gear, navigation documents and any fish and other marine organism carried on board;

- d) between the hours of sunrise and sunset enter any premises not used as a dwelling.

2. Whenever he has reasonable ground to suspect that an offence against this Law has been committed, and that prompt action is necessary to prevent the destruction or removal of evidence of the offence or of objects subject to forfeiture under this Law, a Somali Navy Officer not below the rank of sub-lieutenant or any other person so authorized in writing by the Minister of Fisheries may, without a warrant, seize any vessel, together with its catch, gear, supplies and cargo, and any other article which has been used or obtained in the commission of the offence.

3. Where a vessel is seized it shall be brought to the nearest convenient port in Somalia.

4. All articles seized shall, unless otherwise provided by this Law, be dealt with according to Article 58 of the Code of Criminal Procedure.

5. Where fish or other articles subject to rapid deterioration are seized, the court, or if there is not time to bring the matter before a court, the Minister of Fisheries, may dispose of the articles by sale or otherwise and retain any proceeds in lieu of the articles.

6. The court shall, on application from any person from whom a vessel or other object was seized, or from any other person who appears entitled to the possession thereof, release the vessel or other object upon deposit of adequate security for its value.

Article 15

Enforcement Outside Somalia

1. Where, following the commission in Somali waters of any offence against this Law, a vessel used in the commission of the offence is pursued beyond the limits of Somali waters, the powers conferred under Article 14 shall be exercisable in respect of the vessel beyond the limits of Somali waters in the circumstances and to the extent recognized by international law.

2. Where a fishing vessel registered in Somalia is found at any place in or out of Somali waters not under the jurisdiction of another State, the powers conferred under Article 14 shall be exercisable in respect of such vessel in such place.

Article 16

Jurisdiction of the Courts

Where an offence against this Law is committed aboard or with the use of a vessel and the vessel is found at or brought to any port in Somalia, the court of competent jurisdiction is the court having jurisdiction over the grade of the offence and over the place where the port is situated. Jurisdiction in all other cases is determined according to the Code of Criminal Procedure.

Article 17

Offences

1. Where any vessel in respect of which a local fishing vessel licence is required by any regulation made under Article 8 fishes, except under the authority of such a licence, the master or other person in charge of the vessel is guilty of an offence punishable by a fine not exceeding shillings.

2. Where any vessel in respect of which a local fishing vessel licence has been issued under Article 8 contravenes this Law, any regulation or orders issued thereunder, or any condition of the licence, the master or other person in charge of the vessel is guilty of an offence punishable by a fine not exceeding shillings.

3. Where any foreign vessel fishes, or receives fish or other marine organisms in anyplace not designated by the Minister of Fisheries for that purpose, or processes fish or other marine organisms, or enters or remains in Somali waters without its fishing gear being stowed in the prescribed manner, except pursuant to a foreign fishing vessel licence issued under Article 9, the master or other person in charge of the vessel and the owner and charterer, if any, are each guilty of an offence punishable by a fine not exceeding shillings.

4. Where any vessel in respect of which a foreign fishing vessel licence has been issued under Article 9 contravenes this Law, any regulation or order issued thereunder, or any condition of the licence, the master or other person in charge of the vessel is guilty of an offence punishable by a fine not exceeding shillings.

5. Any person who engages in any activity for which a licence is required by any regulation made under Article 10 or 11, otherwise than under the authority of such a licence, is guilty of an offence punishable by a fine not exceeding shillings.

6. Any person who uses any explosive, poisonous or noxious substance for the purpose of killing, stunning or disabling fish or other marine organisms so as to render them more easily caught is guilty of an offence punishable by a fine not exceeding shillings.

7. Any person who fishes, or possesses gear in a prohibited area, in contravention of any management measure imposed under Article 4, is guilty of an offence punishable by a fine not exceeding shillings.

8. Any person who receives or possesses any fish or other marine organism, in respect of which he has reason to believe that an offence against this Law has been committed, is guilty of an offence punishable by a fine not exceeding shillings.

9. Any person who contravenes any regulation or order under this Law or who neglects or refuses to provide any information required by or under this Law or who obstructs any authorized person in the exercise of any power conferred on him by or under this Law, is guilty of an offence punishable by a fine not exceeding shillings.

Article 16

Forfeiture

1. On convicting any person of an offence against this Law, the court, in addition to any other penalty imposed,

- a) may order any fishing gear used in the commission of the offence, and any article in respect of which the offence has been committed, and in the case of an offence under Article 17(3) or 17(6) any vessel used in the commission of the offence, to be forfeited;

- b) shall order all fish and other marine organisms found on board any vessel used in the commission of the offence to be forfeited, except that any fish and other marine organisms that are proved not to have been caught in the commission of any offence shall not be forfeited.

2. Where an article in the custody of the court is not ordered to be forfeited, it shall be held until all fines imposed for any offence in the commission of which the article was used, or in respect of which the offence was committed, have been paid. If within thirty days following a final judgement of guilt, any such fine remains unpaid, such article may be sold and the proceeds applied toward payment of the fine.

Article 19

Compounding of Offences

The Minister of Fisheries may, with the consent in writing of a person who has committed an offence against this Law, compound the offence by accepting a sum of money not less than one tenth, nor more than the entire amount, of the maximum fine specified for the offence. In addition, the Minister may order the release of any vessel or other thing seized in connection with the offence on payment of a sum of money not exceeding the value of the vessel or other thing. Any money received under this Article shall be dealt with as if it were a fine imposed by the court.

Article 20

Regulations

The President may, on the proposal of the Minister of Fisheries, make regulations for the proper management and development of fisheries and for the purpose of implementing this Law.

Article 21

Amendments and Repeals

1. Articles 66, 67, 68, 69, 70, 71, 72, 234 and 235 of Maritime Code are repealed.
2. Article 17 of the Maritime Code is amended by inserting after paragraph 1 thereof the following new paragraph:

"The Maritime Administration may, in consultation with the Minister of Fisheries, grant concessions of the maritime demesne for the purpose of cultivating oysters, shrimps, fish and other marine organisms."
3. Law No. 6 of 1 January 1974 (Offences by Foreign Ships in Somali Territorial Waters), as amended by Law No. 15 of 15 April 1974, is repealed.
4. Paragraph 1 of Article 5 of Law No. 37 of 10 September 1972 (Law on the Somali Territorial Sea and Ports) is repealed and replaced by the following:

"Regular transportation of persons and goods between Somali ports is reserved for vessels flying the Somali flag and other authorized vessels".
5. Article 1 of Law No. 9 of 15 January 1973 (Norms for the Exportation of Salt and Dried Fish) is amended by the deletion of the words "e del pesce secco".

APPENDIX II

Proposed Draft Fisheries Regulations

Article 1

Data

1. Every licensed fishing vessel shall record and report the following information on its operations:

- a) vessels engaged in trawling shall compile a daily trawl catch report in the form set out in Annex 1 to these Regulations and shall report the contents by radio daily;
- b) vessels fishing by other methods shall record the description and number of sets or other operations, their location, and the species or species groups and weight of the retained catch and shall report the same by radio daily;
- c) every licensed vessel shall, on each occasion that it is in a Somali port, file a fisheries catch report in the form set out in Annex 2 to these Regulations.

2. Every fishery cooperative shall maintain records listing every boat owned by the cooperative or its members and recording all catches and landings made by such boats, as well as landings made by other boats and purchased by the cooperative. Reports summarizing the foregoing information shall be sent to the Minister monthly.

3. Every licensee shall furnish to the Minister of Fisheries a statement of capital invested and costs and revenues of operations subject to licence. The statement shall be furnished annually, and supplementary statements shall be furnished from time to time as the Minister may require.

4. Copies of all shipping and sales documents relating to the export, sale or other disposal of catches by licensed vessels shall be submitted to the Ministry as soon as they are issued.

Article 2

Local Fishing Vessel Licence

1. No person shall use a local vessel exceeding 12 metres overall length for fishing except pursuant to a local fishing vessel licence issued under Article 8 of the Law.

2. An application for a local fishing vessel licence shall be filed with the Minister of Fisheries and shall contain the following information:

- a) the name and description of the vessel;
- b) the name and residence of the owner of the vessel;
- c) a description of the proposed fishing operation, including the species to be fished, the methods of fishing and type of gear to be used, the area or areas to be fished, and the place or places where the catch is to be landed;
- d) any other information requested by the Minister in clarification or amplification of the foregoing.

3. Every local fishing vessel licence shall be in the form set out in Annex 3 to these Regulations.

Article 3

Foreign Fishing Vessel Licence

1. An application for a foreign fishing vessel licence under Article 9 of the Law shall be filed with the Minister of Fisheries and shall contain the following information:

- a) the name, description, flag state and home port of the vessel;
- b) the name of the owner, charterer, if any, and master of the vessel;
- c) the side number of the vessel, its radio frequencies and call sign;
- d) a description of the proposed fishing operations, including where applicable:
 - i) the species to be fished;
 - ii) the method of fishing and type of gear to be used;
 - iii) the areas to be fished;
 - iv) the quantity of fish or other marine organisms to be caught;
 - v) the period of time for which a licence is sought;
 - vi) the place where the catch is to be landed, and a description of the marketing arrangements, ultimate destination and use of the catch;
 - vii) a description of support, handling and processing operations, and the name and licence number of any other fishing vessels involved;
- e) a description of any joint venture or other arrangements with Somali interests in connection with the fishing operations;
- f) any other information requested by the Minister in clarification or amplification of the foregoing.

2. Every foreign fishing vessel licence shall be in the form set out in Annex 4 to these Regulations.

Article 4

Conditions Applicable to Foreign Fishing Vessels

Every licence in respect of a foreign fishing vessel shall be subject to the following general conditions, in addition to such other conditions as may be indicated thereon:

- a) at least 24 hours prior to the entry of the vessel into Somali waters, notice on its behalf shall be given to the Minister of the location and time of such entry, the approximate fishing plan or schedule of activities to be carried out, the port to which the vessel will proceed for initial inspection unless exempted from such inspection, and the quantity and condition, by species, of any fish or other marine organisms on board the vessel;

- b) the vessel shall at all times while in Somali waters fly the flag of its flag state and display in places clearly visible both from the sea and from the air the letters and numbers assigned to the vessel in the licence, in white markings at least sixty centimeters in height on a black background; skiffs and other small craft that may be carried aboard licensed vessels, and whose use in fishing operations is authorized by a valid licence, shall be marked with the letters and numbers assigned by the licence, legibly painted in a size appropriate to the size of the craft;
- c) the vessel shall afford necessary facilities, including the use of an accommodation ladder, for boardings and inspections authorized under this Law;
- d) the vessel shall provide adequate food, accommodation and working facilities for an observer and an observer trainer or supervisor when so required by the Minister;
- e) no fish or other marine organism shall be landed or transshipped except in such place as may be designated by the Minister for that purpose;
- f) the master shall bring the vessel into a Somali port whenever so required by the Minister;
- g) whenever the vessel is in any area of Somali waters where it is not authorized by its licence to fish, all fishing gear shall be stowed as prescribed by Regulation 5;
- h) at least forty-eight hours prior to the departure of the vessel from Somali waters, notice on its behalf shall be given to the Minister of the estimated time and location of such departure, the port to which the vessel will proceed for final inspection unless exempted from such inspection, and the quantity and condition, by species, of any fish and other marine organisms aboard the vessel;
- i) every licensed vessel except one used only for the transport of catch and supplies shall carry a crew of whom at least 50 percent are Somali, or the licensee shall arrange a training programme or a combination of training and employment which in the opinion of the Minister provides equal benefits to Somalia;
- j) any records, reports or notifications required to be maintained or made under these Regulations shall be maintained or made in the English, Italian or Somali language.

Article 5

Stowage of Gear

Every foreign fishing vessel prohibited by Article 9 of the Law or by the terms of its licence from fishing in any area of Somali waters shall, while within such area, stow its fishing gear in accordance with the following provisions:

- a) all fishing 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, trawlboards 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 superstructure of the vessel.

Article 6

Standards

No fish or other marine organism or product thereof may be exported from Somalia if it will fail to comply with the health and quality standards of the importing country.

Annex 3

SOMALI DEMOCRATIC REPUBLIC

LOCAL FISHING VESSEL LICENCE NO.

A local fishing vessel licence is hereby issued to _____
(name of operator)

in respect of the following vessel:

Name _____

Port of Registry (if any) _____

Registration number (if any) _____

Length _____ Gross tonnage _____

Method of propulsion _____ Horsepower _____

Radio call sign _____ Frequency _____

Owner, charterer, mortgagee _____

The following operations are authorized:

Kind of fishing _____

Areas to be fished _____

Species to be fished _____

Catch to be landed at _____

Other _____

The vessel shall be marked with the sign _____

Royalties and other charges shall be paid as follows _____

Operations shall be subject to the Fisheries Law, Law No. _____ of 1980,
to regulations, decrees and orders issued thereunder, to all other applicable
laws, and to the following conditions:

(insert here any other conditions to which the licence is subject)

This licence is valid from _____ to _____

Date of issue _____

Signature of the Minister of
Fisheries or Authorized
Official

Annex 4

SOMALI DEMOCRATIC REPUBLIC

FOREIGN FISHING VESSEL LICENCE NO.

Name of Vessel _____

Type of Vessel _____

Port and country of registry _____

Registration number _____

Year and place of construction _____

Length _____ Registered tonnage: Gross _____

Net _____

Engine horsepower _____

Handling and processing facilities _____

Hold capacity and temperature _____

Radio call sign _____ Frequency _____

Skiffs or other craft carried on board _____

Name and address of owner _____

Name and address of operator, charterer and mortgages (if any) _____

Name and address of master _____

The vessel, details of which appear above, is authorized to conduct the following operations in Somali waters:

Description of operations: _____

Name and licence number of other vessels used in combined operations: _____

Areas to be fished _____

Species to be taken _____

Quantities permitted _____

Seasonal limitations _____

Requirements concerning disposal of by-catch _____

Reporting requirements _____

Authorized landing and trans-shipping places _____

The following mark is assigned to the vessel: _____

Fees or royalties _____

Conditions: This licence is granted subject to all provisions of the Fisheries Law, Law No. _____ of 1980, to regulations, decrees and orders issued thereunder, to all other applicable laws, and to the following conditions:

(here insert any other conditions to which the licence is subject)

Validity from _____ to _____

Date of issue _____

Signature of the Minister of
Fisheries or Authorized
Official

APPENDIX III

Proposed Draft Fisheries Order

Fisheries Order No. 1

Article 1

Management

1. No person shall use a vessel over 12 metres long for trawling in waters less than 60 metres deep lying within ten nautical miles of the following communities:

(list of fishing communities)

2. No person shall catch and retain, land, sell, buy, receive or possess any lobster of the genus Panulirus which measures less than 8 centimeters from the base of the rostrum to the rear of the carapace, or which is a female bearing external eggs.

3. No person shall fish for deep-sea lobster of the genus Puerulus from (1 April to 1 September 1980). During this period no person shall take from the water or have in his possession any quantity of fish of which more than five per cent of the live weight equivalent consists of Puerulus lobster.

4. No person shall operate a yuwar net of which the central third is made of netting having a wet stretched mesh measurement of less than 76 millimeters or of which the wings comprise less than two thirds of the total length or are made of netting having a wet stretched mesh measurement of less than 127 millimeters.

Article 2

Foreign Fishing Vessel Licence Fees

Every licensed foreign vessel shall pay a royalty in the form of twenty per cent of its catch delivered to the Minister at dockside in Somalia, or at the option of the Minister, the equivalent value in a currency designated by the Minister.

Article 3

Designation of Places for Receiving Fish

All ports in Somalia are designated as places where foreign vessels that are not licensed under Article 9 of the Law may receive fish and other marine organisms.

