

**REVIEW OF FISHERIES LAWS OF CERTAIN MEMBERS OF THE
REGIONAL COMMISSION FOR FISHERIES**



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REVIEW OF FISHERIES LAWS OF CERTAIN MEMBERS OF THE REGIONAL COMMISSION FOR FISHERIES

by

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PREPARATION OF THIS DOCUMENT

This document reviews the fisheries laws of certain Members of the Regional Commission for Fisheries. It was prepared for consideration by the FAO/RECOFI Workshop on Combating Illegal, Unreported and Unregulated Fishing held in Muscat, Oman, from 30 March to 2 April 2009.

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ABSTRACT

This document reviews the fisheries laws of the following Members of the Regional Commission for Fisheries (RECOFI): the Kingdom of Bahrain, the Islamic Republic of Iran, Kuwait, the Sultanate of Oman, Qatar, the Kingdom of Saudi Arabia and the United Arab Emirates.

A framework for the reviews consisted of the: use of terms; objective, scope and application of the law; institutional and policy provisions; fisheries conservation, management and development; access regime; licensing systems; international aspects; monitoring, control and surveillance; post-harvest, trade; evidentiary provisions; judicial/administrative processes; and violations and fines/penalties.

The framework also formed the basis for a synthesis of the individual reviews. The synthesis identified general gaps and constraints in legislation across the region with reference to the existing provisions, international instruments and best practices. Possible options for reviewing and overcoming the constraints were suggested, including reference to the implementation of international instruments and strengthening relevant legislative provisions.

This review was carried out as a desk study and limited to the legislation and informal translations kindly provided by the seven RECOFI Members.

CONTENTS

Preparation of this document	iii
Abstract	iii
1. INTRODUCTION	1
2. USE OF TERMS	3
3. OBJECTIVE, SCOPE AND APPLICATION OF THE LAW	4
3.1 Objective of the law	4
3.2 Scope of the law	5
3.3 Application of the law	5
4. INSTITUTIONAL AND POLICY PROVISIONS	6
4.1 Institutions	6
4.2 Policy	6
5. FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT	6
5.1 Information	7
5.2 Conservation and management	7
5.2.1 Management plans	7
5.2.2 Closures	8
5.2.3 Prohibitions	8
5.2.4 Marine reserves	8
5.2.5 Transshipments	8
5.3 Development	8
6. ACCESS REGIME	9
7. LICENSING SYSTEM	9
8. INTERNATIONAL ASPECTS	10
9. MONITORING, CONTROL AND SURVEILLANCE	11
10. POST-HARVEST, TRADE	12
10.1 Processing/handling/sale/marketing	12
10.2 Trade/import/export	12
11. EVIDENTIARY PROVISIONS	13
12. JUDICIAL/ADMINISTRATIVE PROCESSES	13
13. VIOLATIONS AND FINES/PENALTIES	13
14. CONCLUSIONS	14

APPENDIXES

A. Framework for the review of fisheries legislation of certain RECOFI Members	15
B. Kingdom of Bahrain	16
C. The Islamic Republic of Iran	24
D. Kuwait	34
E. Sultanate of Oman	41
F. Qatar	51
G. Kingdom of Saudi Arabia	60
H. United Arab Emirates	67

1. INTRODUCTION

RECOFI, within its Convention Area, has powers to formulate and recommend management measures for its Members in relation to the conservation and management of living marine resources. National and regional measures to address illegal, unreported and unregulated (IUU) fishing were considered at the fourth session of the Regional Commission for Fisheries (RECOFI), held in Jeddah, Kingdom of Saudi Arabia, from 7 to 9 May 2007. The Commission considered a range of issues relating to fisheries management and governance, including mechanisms for combating IUU fishing.

The Commission emphasized the importance of developing and implementing national plans of action to combat IUU fishing (NPOAs–IUU). It also noted the low percentage of acceptance by its Members of certain international instruments that are important for the fisheries governance and urged all members, who have not done it yet, to ratify or accept these instruments.

At the same session, it was recommended that the role of the Working Group on Statistics should be expanded to handle not only statistical but also evaluation, assessment and management aspects, particularly in the case of shared resources, as originally envisaged when the Working Group was established. The Working Group on Statistics subsequently became the RECOFI Working Group on Fisheries Management, and an expanded role for the Working Group was considered at its second meeting held in Cairo, Egypt, from 27 to 30 October 2008.

It would now be expected to focus on key issues germane to fisheries management including the ecosystem approach to fisheries, the implementation of the precautionary approach, illegal, unreported and unregulated (IUU) fishing and the role of port States in combating it, the development of the global register for fishing vessels, the effect of pollution on fisheries resources and the elaboration of criteria for flag States performance. In the course of its work the Working Group was to identify, prioritize and keep under review fisheries issues and activities that are important for Members and the management of resources in the RECOFI region.¹

The need for effective and ongoing regional cooperation and harmonization among Members for the management of the region's living marine resources was considered essential given the close geographic proximity of countries, stock structures and distribution and the possibility of one country undermining regional management efforts if it acts unilaterally or not in concert with other RECOFI Members.²

In addressing this need, the Working Group proposed the RECOFI Regional Strategy and Priorities for Regional Fisheries Management (Work Plan) and the List of Activities for RECOFI Working Group on Fisheries Management (2008–2011).³ The Strategy is expected to provide guidance for the planning and implementation of future work at the May, 2009 session of RECOFI.

The objective of the Regional Strategy was the promotion of sound and effective regional fisheries governance by ensuring that fisheries are exploited and utilized in a responsible and long-term sustainable manner, that they generate maximum social and economic benefits for RECOFI countries and that ecosystem considerations are incorporated into conservation and management decisions. Prioritized objectives of the Strategy included:

- implementation of effective fisheries management through regional cooperation and harmonization, including shared stocks and fisheries of common interest; and

¹ RECOFI, Second Session of the Working Group on Fisheries Management (formerly Working Group on Fishery Statistics), Cairo, Egypt, 27-30 October 2008. RECOFI:WGFM2/2008/3.

² FAO. Report of the second session of the RECOFI Working Group on Fisheries Management. Cairo, Egypt, 27–30 October 2008. FAO Fisheries and Aquaculture Report. No. 889. Cairo, FAO. 2008. 57p., Appendix H.

³ *Ibid*, in Appendixes J and K, respectively.

- promotion of legal discussion and review and revision of fisheries legislation to reflect policy and international commitments.

Agreed regional activities to be taken pursuant to these objectives included the review, revision and harmonization of fisheries legislation, and the acceptance and implementation of international instruments. Further activities for 2008–2011 were identified, including this desk study, with a focus on gaps and shortcomings in fisheries legislation and measures to be taken to strengthen and harmonize it.

Fisheries laws were provided by seven RECOFI Members, and individual reviews were each undertaken in the context of a framework of key elements of fisheries laws, shown in Appendix A. The framework includes: use of terms; objective, scope and application of the law; institutional and policy provisions; fisheries conservation, management and development; access regime; licensing systems; international aspects; monitoring, control and surveillance; post-harvest, trade; evidentiary provisions; judicial/administrative processes; and violations and fines/penalties.

The country reviews are shown as follows: Bahrain (Appendix B), Iran (Islamic Republic of) (Appendix C), Kuwait (Appendix D), Oman (Appendix E), Qatar (Appendix F), Saudi Arabia (Appendix G) and the United Arab Emirates.

The same framework used in reviewing national laws forms the basis for this synthesis and review, facilitating identification of general gaps and constraints in legislation across the region, with reference to the existing provisions, international instruments and best practices. Possible options for reviewing and overcoming the constraints are suggested, including reference to the implementation of international instruments and strengthening relevant legislative provisions.

As a desk study, this review was limited to the legislation and informal translations kindly provided by the seven RECOFI Members and did not have the benefit of on-ground experience. However, some important patterns emerged that may form the basis for further focus.

Four of the seven original laws reviewed were adopted in the 1980s, with some of the older laws being almost identical. Some laws have been amended or expanded through subsequent regulations. Most countries are not parties to many international fisheries instruments that have been developed over the past two decades, with six countries having ratified and one having signed (but not ratified) the 1982 United Nations Convention on the Law of the Sea (1982 UN Convention), none having accepted the 1993 FAO Compliance Agreement and one having ratified the 1995 UN Fish Stocks Agreement. In addition, one country has elaborated a National Plan of Action to Combat Illegal, Unreported and Unregulated Fishing (NPOA–IUU) to implement the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate IUU fishing (IPOA–IUU).

Two new areas being developed on the international level involve port State measures and flag State performance. A legally-binding agreement on port State measures is under negotiation; it builds on the IPOA–IUU and the 2005 FAO Model Scheme for Port State Measures to Combat IUU Fishing, and is expected to be finalized before long. The measures are applicable to foreign fishing vessels requirements include reports prior to entry into port, denial of entry into port where IUU fishing is believed to have occurred, inspections, reports on the results of inspections, actions for port States to take where IUU fishing is found, information to be collected and exchanged and training of inspectors. FAO Expert and Technical Consultations will consider criteria for flag State performance and actions that may be taken where the criteria are not met.

The Compliance Agreement and UN Fish Stocks Agreement are primarily focused on high seas fishing activities. However, definitions, principles, management approaches and concepts contained in the latter have been extended, adapted and applied in many national and regional laws and international instruments such as the IPOA–IUU and the draft Agreement on Port State Measures, including by non-parties. This has generally not yet occurred among RECOFI Members, and even the

1982 UN Convention has not been fully implemented by any law. This paper describes best practices at national and regional levels in providing a robust legal basis for the conservation, management and development of fisheries resources for consideration under the RECOFI Regional Strategy and Priorities for Regional Fisheries Management.

2. USE OF TERMS

The precise and comprehensive definition of terms used in fisheries legislation is fundamental for effective implementation of the law. It ensures clear implementation by competent authorities, and clear understanding by those who engage in fishing and fishing related activities. All laws and most international agreements define key terms, and wherever possible they should be harmonized according to international, regional and sub-regional law and practice. This will promote strengthening of fisheries management, particularly for shared stocks.

For example, the activity of “fishing” needs to be defined to allow the broadest possible scope for application of the law. Some definitions refer to fishing as the operations or process of fishing, but do not include specific “best practices” elements such as preparations, searching for fish, and undertaking other relevant activity falling within the scope of the law.

Although some of the fisheries laws in the RECOFI region are similar to each other, the use of terms varied widely. This could lead to uneven implementation and enforcement. Where an activity is clearly defined in one country and would fall within the scope of the law, it may be undefined, murky or subject to different definition in another country and as a result fall outside the scope of the law.

In particular, the following definitions were consistently weak:

- **“fish”**: some laws required the fish to be “living” (the fish already dead taken from the water, for example by explosives or poison, would not fall within the scope of the law). Others required the marine resources to have either scientific or economic value in order to fall within the scope of the law (other values, e.g. for food security, culture, recreation or social purposes would not be included, and the “value” is a subjective assessment that could easily vary with the result of expanding or constricting the scope of the law).
- **“fishing vessel”**: some laws referred to a floating construction used in catching or manufacturing living marine resources. This could require proof that the vessel has actually been used for these purposes. Best practices define a vessel as “equipped to be used or intended to be used” for fishing, as well as vessels used for activities related to fishing such as transshipment and supply.
- **“fisher”**: one law referred only to those people who were fishing from a ship, and another referred also to those who fished on foot. In both cases, divers and other people supporting fishing operations were excluded.
- **“foreign fishing vessel”**: this term was largely undefined, but in one country it is designated as a vessel that is registered in another country. This does not take into account the international law regarding stateless vessels: those registered in two or more countries and those without registration. Foreign vessels are normally defined according to ownership and control.

One law had no definitions, and many important terms were undefined in most laws, such as: fish processing, fishing gear or equipment, operator, owner, foreign fishing vessel, sell, buy, import, export, trade. Proper definitions would provide a “level playing field” for harmonized fisheries management and would close loopholes in the laws. For example, a consistent approach to what constitutes fishing vessels, gear and equipment would facilitate harmonized management and

enforcement, and it could be clear that the activity of selling illegally caught fish would include “displaying for sale” even though a transaction had not yet been made.

Clarification and inclusion of key definitions in the law would enhance implementation and enforcement and strengthen respective laws. A harmonized approach in the region would provide a foundation for cooperation in management of shared stocks. Revision of existing definitions and inclusion of new ones should be done with reference to any definitions in international instruments and national best practices. Most of the laws in the region were developed many years ago and do not contain modern concepts or principles; any initiative to strengthen and harmonize fisheries management in the region should be underpinned by a common legal basis for key concepts and activities.

Although the 1982 United Nations Convention on the Law of the Sea (the 1982 Convention) does not contain a part that defines terms, other regional and international instruments provide examples of best practices in this area.⁴ In implementing the provisions of such instruments, parties must ensure that the terms are defined consistently in national law, allowing harmonization of actions and measures. Harmonization of the use of key terms used in legislation would strengthen coordinated approaches to fisheries management.

3. OBJECTIVE, SCOPE AND APPLICATION OF THE LAW

Clear definitions of the objective, scope and application of the law constitute best practices at national and international levels, and provide a further basis for clarity and purpose in fisheries management and enforcement.

3.1 Objective of the law

None of the laws that were reviewed contained express objectives stating the purpose of the law. However, some laws, in establishing institutional arrangements, indirectly indicated the objective of the law by stating the purpose of the institution.

Objectives for fisheries laws and agreements are usually based on long-term sustainable use of the resources. A broader objective could be to “promote the objective of optimum utilization and long term sustainable development of living resources and the need to utilise living resources to achieve economic growth, human resource development and employment creation and a sound ecological balance”.

Objectives are often accompanied by guiding principles for the implementation of the law, but none of the laws reviewed contained an express provision setting out such principles. Some examples of principles that appear in national and international laws are:

- ensuring management measures are based on the best scientific evidence available;
- applying a precautionary approach to the management and development of aquatic living resources;
- protection of the ecosystem as a whole, including species which are not targeted for exploitation, and the general marine and aquatic environment;
- minimization of pollution;
- prevention or elimination of overfishing and excess fishing capacity and managing levels of fishing effort so they do not exceed those commensurate with the sustainable use of fishery resources; and
- taking into account the interests of artisanal and subsistence fishers.

⁴ Such as the Convention on the Conservation and Management of Fishery Resources in the South-East Atlantic Ocean, establishing the South East Atlantic Fisheries Organization, and the Chairperson’s draft Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

The principles serve to underpin decisions taken under the legislation. For example, legislation often requires that fisheries management, including development of fisheries management plans, must be carried out in accordance with the objectives and principles of the legislation.

3.2 Scope of the law

The scope of fisheries laws normally includes marine and/or aquatic plants and animals. None of the laws reviewed expressly defined the scope of the law as such, but instead the definition for terms such as “living aquatic resources” indirectly implied the scope. All laws included plants and animals in the definitions, but otherwise the scope was often loosely defined.

In some cases the definition implied that the species must be alive to fall within the scope of the law; but best practices refer to aquatic species whether alive or not. In one law, the scope included animal and plant life in designated waters only. In another, it applied to aquatic plants and animals that have scientific and commercial value.

One law referred to species on the seabed; these are sedentary species under the 1982 Convention.⁵ They are exempted from the provisions of Part V of the Convention, which describes the rights, jurisdiction and duties of the coastal State in the exclusive economic zone relating to fishing in the exclusive economic zone.⁶ It is therefore important for countries to expressly define sedentary species as falling within their national jurisdiction.

Best practices are precise in identifying whether marine species that are neither fish nor plants fall within the scope of the law, such as seabirds. None of the laws reviewed referred to such species, but some referred to marine mammals in the text.

3.3 Application of the law

The application of the law refers to the areas, persons or activities which are subject to the law. All laws reviewed apply loosely to fishing in areas under national jurisdiction. One law applies foreign fishing to all items that have not been provided for in international agreement, another is not clear about the application of the law to the exclusive economic zone, some refer to the fishing waters, interior waters, seabed and subsoil, and some to activities relating to handling, marketing and processing, preservation and transport and aquaculture. It was not clear in most cases whether all requirements in the law were applicable to all fisheries, including subsistence through industrial fisheries.

None of the laws reviewed extend their application beyond areas of national jurisdiction, except that one law referred to “regional waters”, which were not defined. However, in that country’s Executive by-law, which generally adopted the same definitions as the law, the parallel reference was to “exclusive economic zone” indicating it may have been a translation matter.

In the 1980s, when many of the laws reviewed were adopted, the right to declare exclusive economic zones had emerged only recently and there was minimal focus on laws relating to fishing on the high seas or for shared or migratory stocks. However, since then international instruments and regional regimes have undergone a significant shift in focus and now address these areas extensively.

In this regard, implementation of internationally agreed laws and standards requires the application of the fisheries law to areas under national jurisdiction as well as to nationals – including persons and vessels – fishing outside areas of national jurisdiction, whether on the high seas or in the zones of

⁵ Article 77: Sedentary species are living organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.

⁶ 1982 UN Convention, Article 68.

other coastal States. This would provide the basis for requiring national fishing vessels to be licensed to fish outside the waters of the country, or in accordance with a regional scheme.

Other related best practices are to include a provision creating an offence to import fish that were illegally-caught in waters outside the country's area of national jurisdiction (a "Lacey Act" type of provision, named after the original United States legislation authorizing prosecution for importing species caught beyond territorial jurisdiction contrary to the laws of another country) and to provide a mechanism that could allow joint or reciprocal surveillance or enforcement in accordance with international or regional agreement.

4. INSTITUTIONAL AND POLICY PROVISIONS

Institutional and policy provisions form the backbone of national, regional and international fisheries laws. Clear mandates for institutions, together with requirements for a process to develop and review policy at national level, ensure the effective functioning of administration, management and enforcement. Other benefits are to enhance the prominence of fisheries on the national agenda and provide a clear framework for interagency actions as appropriate.

4.1 Institutions

Where public organizations were established for the management of fisheries, the laws contained clear provisions relating to their mandates and most other laws set out the competence and jurisdiction of the relevant Ministry or agencies. However, in many cases the responsibilities are scattered throughout the law; they are consolidated for each country in the attached appendices and vary widely.

In several cases competencies are unclear, for example where a foreign vessel is required to hold a licence issued by the Ministry, but the Ministry is not specifically empowered to issue such licences. In such cases, the rules or processes for licence issuance would not be applicable.

A clear demarcation of institutional responsibilities and coordination with other non-fisheries laws and agencies is desirable, but while most laws reviewed refer to other areas of competence there is no standard approach. Some of the laws require compliance with specific non-fisheries legislation applicable to fishing activities, such as registration, safety, health and sanitation, while others refer simply to institutional responsibilities of other agencies (e.g. insuring farmed fish, issuing entry permits to foreign vessels). The responsibilities of fisheries agencies for coordination or consultation with other institutions/agencies are clearly stated in some laws but not in others.

There is no guidance in international instruments regarding specific institutional responsibilities, but the aim of many countries is to coordinate clearly responsibilities among agencies.

4.2 Policy

Most of the fisheries laws reviewed did not refer to policy processes, adoption and review. One law established a Council which would be responsible for proposing policies that guarantee protection, development and proper exploitation of living aquatic resources, and supervise implementation of these policies, and another established a public authority with a Board responsible for making policy and development plans and programs.

5. FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT

Activities and measures relating to fisheries conservation, management and development have many aspects. Some of the key components found in best practices are described below.

5.1 Information

The international community and regional fishery bodies have, over the past two decades, recognized the technological advances in areas such as communication and information. They require information and data to be supplied in real time, or as close as technologically possible. Requirements for exchange of data and information with other countries, electronic databases, vessel monitoring systems and the confidentiality of data have been developed. Without strong national laws requiring provision of clear and up-to-date data, cooperation at regional level is compromised.

Importantly, the duty for all persons or bodies to whom the law applies to provide information that is true, complete and correct has become part of the best practices in national laws.

The data-and-information-related provisions in most of the laws reviewed were somewhat general and weak, with a few requiring timely submission of data and none expressly requiring the provision of true, complete and correct information. One law indicated broadly that information may be required for licences, monitoring, control and surveillance (MCS), and management purposes. Another law required information for the issuance of permits and annually on the production of aquatic species, but not expressly for MCS and management purposes.

Most laws reviewed did not require the competent authority to keep a range of specified databases, such as those for licences, registration, fish handling or fish marketing. Some laws required registers to be kept by persons involved in designated activities such as trade. One law took a clear and comprehensive approach to the establishment of registers and data and information requirements, and authorized investigations to ensure that the data provided was in accordance with the law.

5.2 Conservation and management

Fisheries conservation and management is often required to be consistent with guiding principles, as described in section 3.1 of this paper, above. The principles should reflect international instruments developed over the past two decades, as well as implement the requirements of the 1982 UN Convention. However, none of the reviewed laws offer such interface or guidance from the international instruments.

5.2.1 Management plans

Requirements for the formulation of fisheries management plans form best practices in national laws and regional schemes. Generally, the plans should be developed for species that may be important to the country or threatened species, in accordance with certain management principles and a required framework setting out elements of a plan and using a specified process for consultations and approvals.

Regional long-term management plans may be developed, and it is useful to ensure that national management plans can be used to implement them.

One law reviewed required a general plan for the protection, development, manufacture and exploitation of living marine resources to be proposed and supervised by the competent Department, and another described requirements for the development and approval of an Aquatic Resources Management Plan, including stakeholder consultations. The others did not provide for management plans.

5.2.2 Closures

Authorities are empowered to manage fisheries by declaring closures in all laws reviewed. One law permits licence suspension for rehabilitating the affected resource in a closed area and some laws permit the Minister to ban fishing “in coordination with the concerned authorities”. Another law is

broader, and authorizes the competent authority to determine areas, season and species subject to closures or prohibitions.

Ideally, the objective and scope of closures should be clearly stated and based on guiding principles, such as those described in section 3.1 of this paper.

5.2.3 Prohibitions

The use of prohibitions for fisheries management is authorized in all laws reviewed but the approach to this form of management is uneven among laws reviewed.

Prohibitions for gear, area and seasons are either set out in the principal law or delegated to be controlled by by-laws. Over half of the laws reviewed refer more extensively to specific prohibitions under this category, with one law prohibiting certain activities with respect to gear and species (the latter implements the FAO IPOA on sharks).

Many laws identify prohibitions based on size and species, including fingerlings turtles, marine mammals and sharks. The mechanism to regulate the size and species in one law is inferred by requirements for management plans and licensing.

Prohibited activities are dealt with more fully in most laws, and include reference to activities affecting the marine environmental quality (i.e. pollution, waste disposal), importing dangerous gear and equipment, activities that require a permit (e.g. use of explosives, construction of barriers, importation of gear) and activities that are fully prohibited (e.g. use of explosives, conditions for fish preserving and handling).

5.2.4 Marine reserves

The authority to establish marine reserves for specified purposes has rapidly become an important element of management, particularly for fishing for species that may be endangered or threatened, or for preserving marine ecology. One law authorized the declaration of protected areas in which fishing is prohibited permanently but this approach may not take into account applicable biodiversity or ecosystem considerations. Another law refers to marine reserves, but express authority for their declaration is not provided.

5.2.5 Transshipments

Transshipment of catch at sea, prior to landing, is a common activity carried out by IUU fishers to avoid detection. It can occur in a country's waters or on the high seas. Many countries and regions have implemented measures that either prohibit transshipment completely or at least require authorization, reporting and other forms of control. In at least one region, vessels that have carried out transshipment activities on the adjacent high seas are not permitted into the waters of coastal States.

Most of the laws reviewed had no provisions on transshipment. Of the two laws that did refer to this activity, one provides for fines/penalties for illegal transfer of catch from one vessel to unauthorized vessels. However, there was no other provision in the law regulating transshipment, or describing what constitutes illegal transfer or unauthorized vessels. In another country's law, only licensed owners of fishing and fish keeping gears were permitted to handle or transport fishing gear or catch, but this may have been intended to apply to transportation by vehicles rather than vessels.

5.3 Development

Best practices in fisheries laws are to encourage development activities that promote sustainability of the resource. Management of shared stocks could also involve development of fisheries.

All laws reviewed referred to development but with different approaches, and most didn't expressly address development of fisheries through management measures. The most common approach was to include responsibilities for certain aspects of fisheries development in institutional mandates for example to give the relevant Department responsibility for the general plan for the development of living marine resources. Another general approach was to make the authority responsible for sustainable management, development and exploitation of the existing resources and empower a relevant institution to make development plans and programs for the fisheries resources and supervise their execution.

Three laws emphasized the responsibility of the competent authority to develop fishing methods, gear, equipment or tackle and train fishers in the use. One required the authority to define appropriate sites for culture of fish and other living aquatic resources and encourage the establishment of such farms through assistance and technical supervision.

The development of production, rather than sustainable development of the resource, tended to be the goal expressed in some of the laws reviewed. One law encouraged development of the fishing industry through the granting of loans to fishers and the provision of boat repair and extension services.

6. ACCESS REGIME

An access regime determines the conditions of access for non-national fishing vessels. It normally involves licensing and the responsibility of the flag State to exercise effective control over their vessels. Best practices at national and international levels are increasingly requiring that flag States authorize their vessels to fish in areas beyond their jurisdiction and, where their vessel offloads fish at a foreign port, verify that the fishing was in accordance with applicable laws and conservation and management measures.

The type of access regimes required under fisheries laws varies. One or more type of arrangement may be required before the coastal State may issue a licence to a foreign fishing vessel, such as government-to-government agreements or government-to-industry agreements to ensure that the foreign government or, for example, boat owners association takes clear responsibility for its vessels to obey the laws of the coastal State. Joint venture or chartering arrangements are also used, and the law should at least provide minimum terms and conditions for all such arrangements.

Most laws reviewed allowed foreign vessels to fish, and specified the authority that would grant a licence or agreement. None provided clear duties or regulations for foreign vessels seeking access to the coastal State's waters, for example make reports prior to entering into the waters and submit required information on fishing operations.

One law permitted approval for foreign vessels to fish for national companies, another required a resolution to licence fishing to be released by the minister under an agreement setting out licence conditions and fees and a two others referred simply to a decision by the Minister or competent authority to issue a licence. One law prohibited fishing by any foreign vessel. As noted above, no law reviewed defined the term "foreign fishing vessel", which could make enforcement difficult.

7. LICENSING SYSTEM

The best practices of fisheries laws include providing for a clear, transparent and accountable licensing process that includes requirements, responsibilities and as appropriate timelines for licence application, review of applications, decision-making, communicating decisions, licence denial, suspension, cancellation or revocation and an appeal mechanism.

In addition, minimum licence conditions for issuance and compliance should be stated in laws or regulations. These often include modern technological requirements, such as operation of vessel

monitoring systems (VMS) electronic provision of other data and the establishment and maintenance of registers of vessel licences.

Some laws require permits to be issued by other agencies for activities that are related to broader aspects of fish and fisheries, such as environment ministries where activities may affect marine environmental quality and ports authorities for the registration of fishing vessels. Duties to hold such permits, as well as to coordinate with other agencies, such as those responsible for fisheries enforcement, should be clearly stated.

The laws all had comprehensive provisions for licensing, but they were usually difficult to understand. They contained requirements for a very wide range of activities that must be licensed, including for fishing, gear, catch, processing, import, export, aquaculture and many others. The full range of activities for which licences are required in each country appear in the respective Appendices. No country required licensing for fishing beyond areas of national jurisdiction; this is considered under international instruments to be a flag State responsibility for effective control of its fishing fleet.

Requirements for licences were scattered throughout all laws; there was no consolidated Part setting out all activities for which licences must be held. In some cases, there were no express requirements for certain activities to be licensed (e.g. diving) but requirements for licence applications for such activities were included. In other cases, all vessels and fishers were required to hold licences, and there did not seem to be any scope for control of subsistence fishing by other means. The result, in many cases, was somewhat confusing.

In some countries, the Minister was empowered to issue licences for scientific research but at the same time could exempt any fishing under such licences from the provisions of the law. Although it may be necessary for scientists to take fish that would otherwise be prohibited, this approach did not promote transparency and could be misused.

Information required on application forms reviewed was often very minimal and would not support informed management decisions.

The laws were uneven in scope and process did not seem well equipped to license fishers under a harmonized management scheme. It could be useful to review them for compatibility with the laws of other countries in the region and for adaptability to harmonized regimes. It is difficult to comment on the operation of the licensing process, but generally there seemed to be scope for improvement in terms of requiring information, decision-making and transparency.

8. INTERNATIONAL ASPECTS

International aspects of fisheries management involve ratification and implementation of international instruments and a mandate for fisheries Ministers or others to cooperate with other countries in managing shared stocks.

As noted in the introduction, most countries are not party to many international fisheries instruments that have been developed over the past two decades, with seven countries having ratified and one having signed (but not ratified) the 1982 United Nations Convention on the Law of the Sea (1982 UN Convention), none having accepted the 1993 FAO Compliance Agreement and one having ratified the 1995 UN Fish Stocks Agreement. In addition, one country has elaborated a National Plan of Action to Combat Illegal, Unreported and Unregulated Fishing (NPOA-IUU) to implement the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate IUU fishing (IPOA-IUU).

A legally-binding agreement on port State measures to combat IUU fishing is being developed in FAO Technical Consultations, with the third resumed session scheduled for early May 2009. It is possible that the agreement will be concluded during 2009. All IUU fishers have to land their catch at

some point, and Port State measures are considered as one of the most cost-effective and efficient ways of combating IUU fishing. It would be appropriate for RECOFI countries to review the progress made and consider harmonizing regional standards for port State measures.

The laws of most countries do not implement even the minimal key management concepts of recent international instruments, nor do they provide adequate port State or flag State measures.

Only one country envisions regional cooperation in its law, and mandates the Minister or his representative to consult his counterparts in other concerned countries to set up a joint plan to exploit and manage living aquatic resources in common areas, and coordinate management measures through agreement or declaration of intent. It would be useful if similar mechanisms in other RECOFI countries mandated such action.

9. MONITORING, CONTROL AND SURVEILLANCE

Robust monitoring, control and surveillance provisions in national laws and international instruments have evolved over the past few decades to reflect advances in fisheries technology, fisheries enforcement technology, globalization of communications through the internet and Web sites, an increasing number of regional arrangements that support improved fisheries governance, arrangements for joint/reciprocal surveillance and enforcement including cross-authorization of enforcement officers and sharing of MCS platforms, enforcement of violations of the fisheries laws of another country and boarding and inspection regimes on the high seas.

Enforcement capacity is a concern in a number of countries worldwide, and legal underpinning is vital to ensure that efficient and cost-effective MCS is in place that addresses recent technologies and enhances cooperative approaches.

It is standard for MCS provisions to address many areas. A process for authorization of enforcement officers, inspectors, observers or other MCS personnel carrying out duties under the law is provided, and as appropriate their qualifications. In some cases personnel from a defence or police force are designated, but personnel working directly for the fisheries authority may be appointed according to a transparent process required in the law. The goal is to ensure that personnel are trained in their duties and carry them out effectively.

The powers and duties of enforcement personnel should be clearly stated, and the duties of those being inspected to the personnel in order to avoid obstruction and promote cooperation. The power of search and seizure should be fully described, including taking documents/photocopies for use in evidence, and authorities beyond areas of national jurisdiction should be provided. The authority to take certain measures to prevent further violations where a vessel has been charged with contravention of the law, until the matter has been resolved, is often provided, such as disabling vessels to prevent their escape.

In most of the laws reviewed, enforcement officers were not required to have any special qualifications, and although secondment from enforcement agencies such as the police is provided in some laws, there was no transparent process for their appointment. Powers of search and seizure were not fully stated, and areas and items that were subject to search (e.g. vehicles, fish storage facilities) and seizure (e.g. documents, fish products) were generally incomplete.

None of the laws reviewed contained provisions relating to modern MCS compliance tools such as VMS or authority of enforcement officers beyond areas of national jurisdiction to cooperate or exercise powers in accordance with regional agreement and international law. Similarly, none of the laws contained provisions that would recognize MCS activities in areas under national jurisdiction by non-nationals under a harmonized regional agreement.

It could be useful to explore the need or support for regional arrangements for cooperation in fisheries MCS and the implementation of MCS-related requirements of international instruments in the context of the above considerations, and any legal consequences at national level.

10. POST-HARVEST, TRADE

Post-harvest measures for storage, processing, handling, sale, marketing transport and trade are coming under increasing global scrutiny for reasons of food security, health and control of IUU fishing. Major importing countries are now requiring sanitary and health certifications, catch certification and trade documentation. For example, from 1 January 2010 the European Community will require for imports of fish that flag States verify that the vessel was authorized to catch the fish and it was done legally, and many regional fisheries management organizations (RFMOs) have adopted catch certification and trade documentation schemes, with trade sanctions where conditions are not met.

10.1 Processing/handling/sale/marketing

The laws reviewed generally do not apply to processing, handling, sale or marketing trade in IUU fish, for example by making it an offence to trade in fish that were known, or could reasonably have been known, to have been caught during IUU fishing activities. Many laws refer to compliance with other relevant laws, such as hygiene, customs and quarantine but these laws were not available for review. Only one law referred to fish quality regulations. All laws require fishing vessels to have cold storage aboard and most require fish to be sold in designated markets that comply with health and commercial requirements. Some require transport vehicles to be equipped with cold storage facilities as well. However none of the laws set specific standards to ensure the quality of the fish being transported.

Only one law expressly requires dealers exploiting, processing, handling, marketing or transporting living aquatic resources and products to hold a licence, and two laws require traders to maintain an information register. Another regulates the establishment of factories, utilities and laboratories for the manufacture and processing of fish by requiring the permission of the Ministry for such activities. It is unclear whether the permission applies to activities that take place after establishment of the factories, etc., or if such activities require further permission from other government agencies.

The sale of fish by foreign fishing vessels is controlled by some laws, but it is the foreign fishing vessel itself, and not the owner, operator or master, that is responsible. This could cause problems with enforcement.

The laws reviewed generally did not require any kind of catch certification or trade documentation. However, to allow transit for live aquatics which were caught outside the waters of the country, one law required a certificate of origin from the exporter's country specifying the intended destination and the boarded quantities and kinds.

10.2 Trade/import/export

The laws reviewed generally do not apply to trade, import or export in IUU fish. One law controls the export of local live aquatic products and trade in ornamental fish, coral flora and seashells. In general, laws that refer to activities controlled by other laws (e.g. customs, quarantine, etc.) do not refer to trade in endangered species of aquatic living resources, or empower the fisheries Minister or authority to declare species to be endangered.

11. EVIDENTIARY PROVISIONS

Because some fisheries offences take place at sea and, depending on the laws, may take place outside areas of national jurisdiction, legal requirements for the evidence presented to secure a conviction may be different from standard evidentiary provisions. It is the best practices of many countries to adjust evidentiary requirements to fit the type of offence, yet to maintain fairness and justice.

The reversal of onus of proof is often included in fisheries laws. For example, proof that the master of a vessel held a licence at the relevant time would fall on the master, and not on the prosecutor to prove that a licence was not held. On the other hand, it would be up to the vessel master to disprove that the vessel was not at the location alleged if certain evidence (e.g. verified GPS or VMS information) were tendered by the prosecution.

In cases where there is cooperation between countries in fisheries management and enforcement, or where a vessel licensed to fish beyond areas of national jurisdiction did not comply with the licence conditions outside national waters, a system of “certificate evidence” could be developed in which the testimony of enforcement officers from another country would be accepted into national courts.

None of the laws reviewed had special evidentiary provisions for fisheries.

12. JUDICIAL/ADMINISTRATIVE PROCESSES

The laws of many countries provide for administrative processes where violations can be addressed, as an alternative to a judicial system. It operates in the same way as traffic tickets or customs offences: the alleged offender admits guilt and pays a fine. The process for administrative penalties needs to have built-in safeguards to ensure transparency and fairness, and a schedule of fines is provided. This could be applied to a certain category of offences that are less serious, and some laws provide a decision-making process to determine whether the alleged violator should be subject to judicial or administrative process. If the violator admits the offence in the administrative process and pays the prescribed penalty, he/she could then resume fishing activities and not be subject to further judicial procedures.

13. VIOLATIONS AND FINES/PENALTIES

The aim of prescribing fines and penalties for offences is twofold: to punish the violator and deter others from contravening applicable laws. Recent international instruments designate “serious” offences, for which stronger fines and penalties should be provided. A wide range of fines and penalties are provided in best practices at national levels; the goal is to make IUU fishing both unprofitable and unattractive to others. The fines and penalty provisions in the laws reviewed were somewhat uneven.

Fisheries laws take different approaches to fines. Some prescribe both minimum and maximum fines, some just minimum and others just maximum. Of the laws reviewed, minimum and maximum fines were generally prescribed at different levels, depending on the severity of the offence. However, the overall level of the minimum and maximum fines was significantly lower than normally found in fisheries laws. Of the laws reviewed, the lowest minimum fine was equivalent to 19.50 euros, and the highest minimum fine was 215 000 euros for foreign vessels where there was a recurrence. Maximum fines tended to be at the level of around 10 000 to 30 000 euros. This compares to a much larger maximum of one million US dollars provided in some Pacific countries for foreign tuna fishing vessels.

Most laws provided additional fines and penalties for subsequent offences, e.g. the fines would be doubled where there was a recurrence and foreign vessels may be seized.

Seizure and confiscation were provided in most laws, but in relation to different items. Some directed seizure, etc. just to vessels, while others provided that gear and equipment could also be sized. Some allowed seizure of fish involved in the commission of the offence and others did not. Interestingly, seizure and confiscation related to items “used in the commission of the offence”; if a vessel had other equipment, gear or fish on board not used in the commission of the offence they would not be subject to seizure or confiscation.

One law provided that licences would be withdrawn or that the violator must pay double for the licence fee. Another provided for a fine of three times the value of the fish. Two laws provided that the violator could be ordered to remove and restore damages that had resulted from the violation. Imprisonment was provided in some laws. Suspension, cancellation and/or revocation of licences was provided in some laws, but approaches were generally not consistent.

None of the laws reviewed provided for a “continuing offence”; where the same illegal act is carried out over several days, each day can count as a separate offence. As well, none of the laws provided for compliance tools to be used as penalties where there are reasonable grounds to suspect IUU fishing, such as denial of port services and denial of landing/trade.

14. CONCLUSIONS

A harmonized approach to fisheries laws in the region would provide a foundation for cooperation in management of shared stocks. Most of the laws reviewed were developed many years ago and do not contain modern management concepts, principles or provisions found in international instruments – both voluntary and legally binding – and used as standard best practices in national laws whether or not countries have ratified relevant binding instruments.

The recent international fisheries instruments have been developed with a view to combating IUU fishing and encouraging cooperation and harmonization of fisheries management. They underpin fisheries governance at national and regional levels. A sound approach for countries in the RECOFI region would be one of ratification and implementation of the instruments. At the least the national legal framework applicable to fisheries should be reviewed, updated and harmonized to the extent possible. As noted above, some of the older fisheries laws adopted nearly thirty years ago are highly similar, showing that efforts at harmonization have been made previously.

One way forward could be to agree at regional level on key areas in fisheries laws that need strengthening in order to provide a basis for harmonized fisheries management and possible processes or mechanisms for harmonization. In parallel, national reviews and revisions of fisheries and related legislation could be initiated with reference to international standards and best practices. This should be accompanied by an institutional review, to ensure that institutional and human capacity, as well as national institutional and policy coordination, would support any necessary legal improvements.

The aim would be to ensure that the legal framework for fisheries would embrace modern concepts, principles and provisions, and that implementation would be robust and coordinated as appropriate at regional level. The benefits would be lasting, and include improved fisheries management and strengthened measures to combat IUU fishing.

APPENDIX A**FRAMEWORK FOR THE REVIEW OF FISHERIES LEGISLATION OF CERTAIN
RECOFI MEMBERS**

1. USE OF TERMS
2. OBJECTIVE, SCOPE AND APPLICATION OF THE LAW
 - 2.1 Objective
 - 2.2 Scope
 - 2.3 Application
3. INSTITUTIONAL AND POLICY PROVISIONS
 - 3.1 Institutional
 - 3.1.1 Institutional responsibilities under this law
 - 3.1.2 Institutional responsibilities of institutions under related laws
 - 3.2 Policy
4. FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT
 - 4.1 Information
 - 4.2 Management
 - 4.2.1 Management plans
 - 4.2.2 Regulation
 - 4.2.3 Closures
 - 4.2.4 Prohibitions
 - 4.2.4.1 Gear, area, seasons
 - 4.2.4.2 Size, species
 - 4.2.4.3 Activities
 - 4.2.5 Marine reserves
 - 4.2.6 Transshipments
 - 4.3 Development
5. ACCESS REGIME
6. LICENSING SYSTEM
7. INTERNATIONAL ASPECTS
8. MONITORING, CONTROL AND SURVEILLANCE
9. POST-HARVEST, TRADE
 - 9.1 Processing/handling/sale/marketing
 - 9.2 Trade/import/export
10. EVIDENTIARY PROVISIONS
11. JUDICIAL/ADMINISTRATIVE PROCESSES
12. VIOLATIONS AND FINES/PENALTIES

KINGDOM OF BAHRAIN

Decree Law No. (20) for the year 2002
Concerning the Regulation of Fishing, Exploiting and Protecting Marine Fisheries1. USE OF TERMS¹

“Marine fisheries” refers to living and non-living resources.

- **Comment:** it is more common to define “fish” as including marine plants and animals, whether alive or not, and to include non-living resources under a description of the scope of the law.

“Fishing” refers to the process of collecting the marine fisheries using any means whatever the intention.

- **Comment:** the “process” could be difficult to enforce. It does not clearly explain that fishing includes preparations, searching for fish, and undertaking any other relevant activity. These elements are common in national and international laws.

“Fisherman” refers to anyone who is licensed for fishing.

- **Comment:** an unlicensed fisher would be exempt from the law unless otherwise stated.

“Fishing boat” refers to a floating base used for the purpose of collecting or processing the marine fish.

- **Comment:** the actual use of the boat for collecting, etc. the fish would need to be shown. The definition does not include “equipped to be used or intended to be used” for fishing, which offers a broader scope. National laws and treaties often include vessels used for activities related to fishing in this definition (such as transshipment or transport vessels), which broadens the scope of the law and strengthens efforts to combat IUU fishing.

“Fishing boat owner” refers to anyone who equips a fishing boat for fishing, whether he owns or hires it.

- **Comment:** If the “owner or operator” were used, with the operator having charge of the vessel, then where these are two people they can both be held responsible for compliance with the law.

“Foreign boats” refers to boats registered in countries other than the Kingdom of Bahrain.

- **Comment:** boats that are registered in two countries, including Bahrain or no countries are not included. Under international law, boats are not permitted to hold two registrations.

“Fishing waters” refers to the area at sea where fishing is practised.

- **Comment:** it would be preferable to refer to the legally declared zone so that its area is precise and not subject to change based on the human activity of practising fishing.

“The seabed and its underwater soil” refers to the seabed and its soil that is immersed in the fishing waters and the internal waters.

- **Comment:** the 1982 Convention refers to the “seabed and subsoil” over which the coastal state exercises sovereignty and sovereign rights. The subsoil is referred to in various ways under the definitions (“bed soil”, “underwater soil”), this may be due to translation and the original could be checked for consistency with the 1982 Convention.

¹ Section One.

Comment

- Some key definitions that are missing include: sell, buy, import, export, trade, fish processing, fishing gear or equipment, operator.

2. OBJECTIVE, SCOPE AND APPLICATION OF THE LAW

2.1 Objective

The Law does not contain an objective, such as sustainable use of fisheries, nor guiding principles, such as use of the precautionary approach.

2.2 Scope

Living and non-living: plants, animals, seabed and rocks, etc., that the seabed contains.

2.3 Application

The application of the Law relates to the fishing waters, and handling, marketing and processing.

Comment

- The scope is not clearly stated in the legislation, but inferred from definitions.
- The application of the Law is unclear in terms of the kinds of fishing and fishing-related activities it covers (e.g. subsistence, artisanal, semi-industrial, industrial).
- The Law does not extend to nationals fishing outside areas of national jurisdiction.

3. INSTITUTIONAL AND POLICY PROVISIONS

3.1 Institutional

3.1.1 *Institutional responsibilities under this law*

The Minister:

- has authority to grant fishing licences to scientific bodies and persons for purposes of research and scientific studies;
- hears appeals from decisions of licence refusal;
- may include in executive regulations provisions regulating specified issues; and
- may make a decision to establish a Living Marine Resources Council, subject to approval by the Council of Ministers.

[Ministerial decrees determine the:

- duties to be charged for licences and collection procedures (after approval of Cabinet of Ministers);
- measures for registration of fishing vessels;
- ban on fishing for protection of fisheries;
- conditions for sale and marketing of fish by foreign fishing boats; and
- appointment of authorized officers to enforce the Law.]

The “Competent Department”² is responsible for:

- specific duties, including a development and implementation of general fisheries plan, development and supervision of fishing affairs regulation programs, coordination of government bodies, provision of services to persons involved in fishing; development of legislation;³
- enacting regulations relating to fishing by amateurs, individuals and clubs;
- receiving licence applications for fishing;
- deciding on licence applications and renewal within 15 days from application;
- instructing fishing boat owners to keep records;
- requesting data from anyone working in fishing/marketing or any industry relating to fishing;
- issuing a licence to collect sea sand, and keeping a record of areas where sand is collected and names of people and companies who work in this field;
- issuing specifications for hygiene, cleanliness and safety, in coordination with the concerned authority;
- specify areas where marine fisheries may be sold;
- require forms for information to be supplied by fish handlers and processors;
- grant permission to foreign fishing vessels to sell or market marine fisheries;
- grant approval for exporting or importing marine fisheries or their products; and
- seize fishing boats or its equipment or gear and dispose of perishable goods, compel the violator to remove or restore damages and suspend the licence of the violator.

The Supreme Court hears appeals from the Minister’s decision to refuse a licence.

3.1.2 Institutional responsibilities of institutions under related laws

Boat Registration Law, Decree Law No. (14), 1978

The Directorate of Ports is responsible for registration of boats

Registration and safety of small boats Decree Law No. (20)

“Concerned authorities” are responsible for registration and safety of small boats

Comment

- The responsibilities listed above appear throughout the Law and are not consolidated in a separate Part on Institutions.
- Many of the responsibilities listed above are inferred and not clear. For example, the Competent Directorate is not expressly empowered to give permission to a foreign fishing vessel for selling or marketing fish, but foreign fishing vessels are not allowed to sell or market their products unless there is permission from the Competent Directorate.
- The Minister has authority to prohibit fishing pursuant to an executive resolution.

3.2 Policy

There is no provision on the development or implementation of fisheries policy.

² “The Fisheries Department”: Article (1).

³ Article (3).

4. FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT⁴

4.1 Information

Information may be required for licences, MCS and management purposes (see under section 6).

4.2 Management

4.2.1 *Management plans*

There is no provision for management plans.

4.2.2 *Regulation*

Regulation is effected through prohibitions, there is no provision empowering the promulgation of regulations to require the implementation of management measures such as fishing effort, gear, etc.

4.2.3 *Closures*

The Minister may ban fishing in coordination with the concerned Authorities.

4.2.4 *Prohibitions*

4.2.4.1 Gear, area, seasons

Specified nets, gear and equipment on board a boat, or in or near fishing areas.

4.2.4.2 Size, species

- undersize larvae or fingerlings; and
- turtles, seals, sea cows, sea mammals.

4.2.4.3 Activities

- Disposal of specified deleterious substances harmful to marine life is prohibited, and must be done according to law.
- Abusing settlement areas of turtles, seals, sea cows, sea mammals.
- Genocide for marine fisheries by use of explosives, chemicals, electric methods, etc.
- Specified activities are prohibited without the permission of the competent Directorate and approval of the concerned authority.
- Collection of sea sand, except under licence.
- Importing equipment and gear that are a danger to marine fisheries.

4.2.5 *Marine reserves*

No provision.

4.2.6 *Transshipments*

Only licensed owners of fishing and fish keeping gears may handle or transport fishing gear or catch.

⁴ Section Three: Protecting the Marine Fisheries. Articles 16–22.

4.3 Development

Provisions focusing on fisheries development are not included.

Comment

- The Minister may adopt a resolution to determine marine protected areas “in accordance with the laws and regulations issued in this concern”, but it is unclear what existing laws and regulations are being referred to.
- There is no provision for declaring, or cooperating in the declaration of, endangered species.
- The Minister is expressly empowered to ban fishing, but not to ban the import of specified equipment and gear (although the importation of banned equipment and gear is prohibited).
- The Minister is empowered to ban, in coordination with the concerned authorities, the processing, trade, import, export, transportation, selling and exhibiting for sale any marine fisheries if such activities impose a threat on public health. However, he is not empowered to ban such activities if it is necessary for the protection and sustainability of the resource.
- There is no clear requirement for the Competent Authority to keep databases of licences, registration, fishing activity and other relevant activities except for the collection of sea sand. However the Minister is empowered to issue resolutions to determine the data which should be collected and forwarded by the “people who work in the field of marine fisheries”.
- There is no requirement for persons engaged in activities to give, at all times, information that is true, complete and accurate.
- There is no requirement or authority regarding confidential information.
- There are no requirements to implement port State measures, especially those relating to information, access, use of port and inspection.
- There is no separate section on fisheries development.

5. ACCESS REGIME

There is no apparent access regime; see comment under section 6, below, indicating confusion as to whether a foreign vessel can be licensed to fish.

6. LICENSING SYSTEM⁵

- Non-Bahrainis are prohibited from practising commercial fishing.
- Fishing without a licence is prohibited.
- Boat owner is legally responsible for sailors actions.
- Bahraini captain must be on board during commercial fishing operations.
- Requirements for the licence:
 - time limited (maximum time not specified);
 - must bear specifications of the boat, methods and equipment, maximum and minimum number of sailors and specialization of each;
 - must specify areas where boat is allowed to operate, seasons, type, quantity of fish; and
 - licences for setting fishing traps to specify site, size, measurement, core size of trap.
- Information required for licence application.
- Qualifications of applicant (18 years old, trained in fisheries, no convictions).
- Licence validity of one year or less.

⁵ Section Two: Licences. Articles 2–15.

- Licence renewal process and time limits.
- Maximum three licences for one person.
- Licences are personal, non-transferable.
- Provisions for licence cancellation, loss or damage.
- Provisions for appeal from decision to refuse licence issuance or renewal.

Comment

- It is unclear whether non-Bahrainis can fish with a licence and a Bahraini Captain.
- Information to be included on a licence application is very minimal.
- It is unclear whether a licence or authorization is required for each transshipment, or for transshipments generally.
- It is unclear whether licences are required for divers; the Law only refers to requirements for an applicant of a diving licence, but does not expressly require divers to have licences.

7. INTERNATIONAL ASPECTS

Bahrain ratified the 1982 United Nations Convention on the Law of the Sea on 30 May 1985.

Comment

- There are no provisions relating to international aspects, such as international fisheries cooperation, or for fishing by Bahrainis beyond areas of national jurisdiction.

8. MONITORING, CONTROL AND SURVEILLANCE⁶

Authorized officers are appointed by Ministerial Decree, with powers to intercept and search fishing vessels, and to access vessels, fishing areas and places where marine fisheries, fishing equipment and gear exist on land and at sea, and the right to review and check fishing licences, records and documents and prepare reports.

Comment

- There are no laws addressing modern MCS compliance tools, such as requirements for vessel monitoring systems.
- There is no provision allowing authorized officers to search and seizure of vehicles, search of buildings or processing plants, or to undertake dockside inspection. However, the Law allows the Competent Directorate to confiscate and seize the vessel, equipment, etc.
- There is no indication of the requirements for making an arrest, but it is implied that the authorized officer must make a report before an arrest can be made.
- There are no provisions expressly explaining the duties of the authorized officers during an inspection (e.g. to show identification when requested) and duties owed to the authorized officers by those inspected.
- There are no provisions that foreshadow the possibility of regional or international cooperation in fisheries MCS, such as Lacey Act-type provisions, authorization of officers beyond areas of national jurisdiction, etc.
- There are no provisions empowering authorized officers to disable vessels that are under investigation.

⁶ Section Five: General Terms. Article 31.

9. POST-HARVEST, TRADE⁷

9.1 Processing/handling/sale/marketing

- Anyone working in fishing and marketing marine fisheries or any industry relating to fishing must comply with the regulations and resolutions that protect and regulate fishing, and exploiting and processing the fisheries, and must provide data specified by the Competent Directorate in coordination with the concerned authority.
- Sale is only permitted in areas specified by the concerned authorities.
- The required hygienic conditions must exist before handling; customs and quarantine requirements apply to imported processed fish.
- Foreign fishing vessels must have permission from the Competent Directorate to sell or market marine fisheries or their products.

9.2 Trade/import/export

It is prohibited to export or import marine fisheries or their products without the approval of the Competent Directorate.

Comment

- Responsibilities are placed on foreign fishing vessels, but it forms best practice of many countries to specifically place them on the owner, master, charterer or operator of the foreign fishing vessel.
- The linkages and cooperation in practice between the Competent Directorate and concerned authorities is unclear.

10. EVIDENTIARY PROVISIONS

There are no evidentiary provisions.

Comment

- Evidentiary provisions specific to fisheries offences forms part of the best practices of many national fisheries laws. These include such areas as reversal of onus of proof and certificate evidence.

11. JUDICIAL/ADMINISTRATIVE PROCESSES

There is no provision for administrative offences.

Comment

- A process for the acceptance of fines through an administrative process forms part of the best practices of many national fisheries laws for expediency and effectiveness.

12. VIOLATIONS AND FINES/PENALTIES⁸

Fines are set at a maximum of five thousand dinars (around 10 500 euros) for and a minimum of 100–300 dinars (around 600 euros) for different categories of offence; punishment is doubled where the same offence is committed within a year. The vessel or its equipment may and catch be confiscated and seized.

⁷ Section Four: Handling, Marketing and Processing. Articles 25–30.

⁸ Section Six: Punishments. Articles 33–38.

The Competent Directorate may seize the fishing boats, compel the violator to remove or restore damages and suspend or cancel the licence of the violator.

The Ministerial power to issue the resolutions required to execute the law are also in this Part, and include the following areas:

- fishing bans;
- bans on the use of equipment, gear, methods, etc.;
- determining allowed equipment and gear;
- banning processing, trading, importing, exporting, transporting, selling and exhibiting for sale marine fisheries;
- determining minimum size, catch quantities, seasons;
- determining specifications of fishing boats and barrier traps and related requirements;
- determining marine protected areas;
- specifying hygienic conditions; and
- determining the data to be collected by people who work in marine fisheries.

Comment

- The maximum level of fine is comparatively low, considering the value of some fishing operations.
- Confiscation of the fishing boat OR the equipment or tools used in committing the offence is allowed. However, confiscation should apply to both, not to one or the other.
- Specific “serious” violations have been indicated in international instruments, so that the maximum fine or penalty could be considered for application, in order to serve as a deterrent. The Law does not clearly reflect the detail of these violations.
- There is no provision for a “continuing offence”; where the same illegal law is carried out over several days, each day can count as a separate offence.
- Imprisonment appears to be mandatory in all cases, this could contravene Bahrain’s obligations under the 1982 UN Convention where, for example, a foreign person is imprisoned.
- There is no provision to forfeit the vessel, although the confiscation may amount to forfeiture.
- The Ministerial power to issue resolutions could usefully be reviewed for comprehensiveness, and placed in a separate part of the Law.

THE ISLAMIC REPUBLIC OF IRAN

Conservation and Exploitation Act of the Aquatic Resources of the Islamic Republic of Iran (“the Act”) 1995

Note: The legislation is composed of the Act itself (23 Articles) endorsed by the Islamic Council Assembly and Chapter Two, the Implementation By-law (81 Articles) adopted by the Cabinet. It contains extensive provisions on aquaculture, but this analysis is primarily directed at the provisions on fisheries. Reference to section numbers will relate to Chapter Two, the Implementation By-law, unless there is specific reference to “the Act”.

1. USE OF TERMS¹

“Fishing” refers to operations carried out for removing aquatic resources from their natural habitats.

- **Comment:** This definition is broad, but depends on interpretation of “operations”. It does not clearly explain, for example, that fishing operations include preparations, searching for fish, and undertaking any other relevant activity. These elements are common in national and international laws.

Comment

- Some key definitions that are missing include: sell, buy, import, export, trade, fish processing, fishing gear or equipment, operator, owner, fishing vessels, foreign fishing vessels.

2. OBJECTIVE, SCOPE AND APPLICATION OF THE LAW²

2.1 Objective

The objective of the Act can be inferred from the responsibilities of Shilat, which are to take specified measures with regard to improvement of marine products, supporting active legal and real entities in fisheries fields and sustainable management, development and exploitation of the existing resources.

The Act does not contain guiding principles, such as use of the precautionary approach.

2.2 Scope

Plants, animals.

2.3 Application

The application of the Act relates to the “waters under the jurisdiction of the Islamic Republic of Iran (inland waters, territorial waters and EEZ)...”. Internal waters, such as harbours and other waters landward of the baseline from which the territorial sea is measured, should also be referenced as appropriate.

¹ Chapter One: Definition.

² Chapter Two: Coverage and Implementation Rules of the Act.

Comment

- The scope is inferred from the definition of aquatics.
- The objective of the Act refers to “existing” resources; the concept of “future” resources is not included.
- The application of the Act is unclear in terms of the kinds of fishing and fishing-related activities it covers (e.g. subsistence, artisanal, semi-industrial, industrial, fishing related activities such as supply).
- Reports from Iranian vessels fishing beyond the Iranian waters are required (Article 16 of the Act), but otherwise the Act does not expressly extend to nationals fishing beyond areas of national jurisdiction. This has implications for effective control of fishing vessels, including by licensing to fish beyond areas of national jurisdiction.

3. INSTITUTIONAL AND POLICY PROVISIONS

3.1 Institutional

3.1.1 *Institutional responsibilities under this law*³

The Iranian Fisheries Organization (Shilat) is a public organization affiliated to the Ministry of Jihad Agriculture. It is charged with taking the measures described below with regard to the quantitative and qualitative improvement of marine products, supporting active legal and real entities in fisheries fields and sustainable management, development and exploitation of the existing resources.

- conducting scientific and applied research on the pertinent areas to aquatic resources as: their lives, exploitable species, environment, stock capacity, conservation and management of the existing resources in the waters cited in Article two of this Act;
- conducting research and taking necessary measures on fishing and exploitation methods, aquaculture, and process of seafood (fish) products;
- taking necessary measures on fishing, management and implementing the pertinent rules, resource conservation, rehabilitation and improvement of their habitants and economical restocking of the waters;
- establishment, development, maintenance and management of fishing harbors while respecting the functions of other organizations.
- conducting and monitoring all fishing, aquaculture, processing and fish export- import activities by legal and real entities; and
- encourage and support of fishing, fish production, fish farming and fish conversion industry activities through carrying out research, training, and extension activities and rendering technical consultative services.

In particular, Shilat’s institutional responsibilities include the following.

- develop and publishes the Aquatic Resources Management Plan (ARMP);
- sets quotas for licence holders in accordance with ARMP;
- give written approval for issuance of permits by the Ministry of Cooperation;
- give written approval for fishing vessel registration by the Iranian Harbors and Shipping Organization ;
- may suspend fishing licences for rehabilitation of fisheries or enforcement, and for three months during fishing seasons as a penalty in certain cases;
- manage and control fishing harbours;
- identify the fishing zone for industrial fishing vessels;
- approve agreement for foreign fishing vessels to fish;
- issue permits for scientific and research purposes;

³ Article 3 of the Act. See also <http://www.shilat.com/english/law.asp>.

- issue catch delivery permit;
- issue permits for transfer and production of all fish;
- determine procedures for installing gear on foreign fishing vessels;
- issue aquaculture licences;
- coordinate with the Ministry of Energy, Iranian Organization for Water Resource Management and Khuzestan Water and Electricity Organization in some aquaculture activities relating to water;
- collaborate with the Fund for Agriculture Products Insurance to set regulations and instructions on how to insure farmed fish products; and
- collaborate with Iranian Veterinary Organization to produce lists of illegal drugs, chemicals, contagious and dangerous diseases for aquaculture.

Exploitation management commissions: the Act states that the functions, members and procedures of the Commissions are to be developed by Shilat and approved by the Ministry of Jihad Agriculture:

- Fisheries Exploitation Management Commission of the Persian Gulf and Oman Sea;
- Fisheries Exploitation Management Commission of the Caspian Sea; and
- Fisheries Exploitation Management Commission of the Inland Waters.

The Fund for Agriculture Products Insurance:

- must insure farmed fish; and
- must insure the catch in advance considering the quota.

The Environment Protection Organization:

- duties relating to inland waters, including the restocking and farming of fish species; and
- sets standards for fisheries environment protection in coordination with state Water Resource Management Organizations, Shilat and other authorities.

Ministry of Energy:

- issues permits to fish in restocked reservoirs behind dams.

Harbour and Shipping Organization:

- issues utilization licence;
- issues entry permits for foreign fishing vessels; and
- registers fishing vessels.

3.1.2 Institutional responsibilities of institutions under related laws

Reference to specific related laws is not made in the Act, but may be inferred by reference to the other institutions/agencies of government noted above.

Comment

- The responsibilities listed above appear throughout the Act.
- The procedure and forms for obtaining the various licences are not in the Act.
- The coordination among different institutions is clearly stated.

3.2 Policy

There is no provision on the development or implementation of fisheries policy.

4. FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT⁴

4.1 Information

The functions and authority of fishing harbor management include keeping the data of fishers, vessel traffic and any other clients to the harbors. [Article 8]

Fishing vessels authorized to fish in Iranian waters and also the Iranian vessels operating in waters beyond national jurisdiction are required to deliver catch data and statistics in neat (written) form and within specified deadline cited in the executive rules to Shilat. [Article 16]

All vessels operating in Iranian waters, and all fishing groups lacking a vessel but operating in the coastal zones are required to submit on time information and statistics in uniform forms provided by Shilat including any details deemed necessary by Shilat. [Article 52]

All collected data and facts during research fishing operations and also the results of data analyses are required to be submitted to Shilat or any other authorities identified by Shilat. [Article 75]

4.2 Management

4.2.1 *Management plans*⁵

The requirements for the development of aquatic resources management plans are described and stakeholder consultations are required. The plans are for the purposes of identification and introduction of exploitable resources on the basis of scientific findings and socio-economic requirements. The exploitation management commissions must approve the plans.

4.2.2 *Regulation*

The Act does not have a consolidated Article empowering Shilat to make regulations over specified activities. However, this can be inferred from various Articles.⁶

4.2.3 *Closures*

Shilat may suspend fishing licences in specified cases of contravention of the law and may temporarily suspend or cancel licences for rehabilitating the resource and enforce fisheries management. [Articles 47 and 48]

4.2.4 *Prohibitions*

4.2.4.1 Gear, area, seasons

- Illegal vessels, fishing gear and equipment are defined as all fishing vessels, gear and equipment that have not been declared legal. There is no provision expressly empowering Shilat to make such a declaration, but this can be inferred from the authority to make fishery management plans (which has to include consideration of fishing seasons, quantity, methodological, species and fishing gear to the extent that it can guarantee sustainable exploitation of the aquatic resources) and issue licences.
- It is prohibited to carry and use illegal fishing gear as well as any explosive toxic or electric materials possibly causing weakness, disease or mortality of aquatic organisms. [Article 12].

⁴ Chapter Three: Aquatic Resources Management Plan.

⁵ Chapter Three.

⁶ For example, Article 76 provides that regulations concerning on board processing are set by Shilat.

- The Shilat determines gear for which sale is forbidden. [Article 46]
- The Shilat determines the procedures of installing gears on the board of foreign vessels. [Article 60]
- Catching marine mammals is forbidden in all seasons and all regions. [Article 71]

4.2.4.2 Size, species

The mechanism to regulate the size and species to be harvested is inferred by requirements for management plans and licensing.

4.2.4.3 Activities

Extensive lists of criminal and prohibited activities is provided. [Article 22, 39, 40, 47]

4.2.5 Marine reserves

No provision

4.2.6 Transshipments

Article 23 of the Act provides for fines/penalties for illegal transfer of catch from one vessel to unauthorized vessels. However there is no provision in the Act governing transshipment, or otherwise describing what constitutes illegal such transfer of catch.

4.3 Development

The competence of Shilat includes sustainable management, development and exploitation of the existing resources.

Comment

- There is no provision for declaring, or cooperating in the declaration of, endangered species.
- There are no data/information requirements in respect of aquaculture, processing, trade or activities other than fishing and scientific research.
- The authority to determine legal gear, seasons, size species is implied through the development of fishing plans.
- There is no clear requirement for the keeping of databases of licences, registrations, fishing activity and other relevant activities.
- There is no requirement for persons engaged in activities to give, at all times, information that is true, complete and accurate.
- There is no requirement or authority regarding confidential information.
- There are no requirements to implement port State measures, especially those relating to information, access, use of port and inspection.

5. ACCESS REGIME

Foreign fishing vessels are allowed to fish for Iranian companies provided that the agreement has been approved by Shilat [Article 59].

6. LICENSING SYSTEM

There is no separate part on licensing requirements. However, it is generally provided that no real or legal entity is allowed to embark upon any fishing operation without any first obtaining a valid

licence. The Implementation By-law was to provide for issuance, suspension, cancellation, validity period extension mechanisms, full or partial transfer and tariff rate. [Article 6 of the Act]

Fishing licences are defined as letters of permission issued for fishing activities by legal and real entities and in which details such as specifications of the given vessel, fishing methods, species, gears, quota, fishing zone and owners of the vessel are stipulated.

Permits issued by Shilat are required for:

- fishing using illegal gear and equipment or holding such gear, equipment or material on board [Article 22.C.5];
- catch, processing, supply, sale, transportation, storage, export and import of any sturgeon species and caviar [Article 22D];
- importing native or non-native brood–stocks or fingerlings from abroad [Article 33];
- exporting native and non-native farmed fish abroad [Article 34];
- handling live aquatic resources for aquaculture purposes [Article 35];
- storing legal gear on board vessels [Article 47];
- conducting fishing for scientific and research purposes [Article 72];
- catch delivery [Article 77]; and
- transfer of fish and their production [Article 79].

Written approval of Shilat is required for the issuance of permits by the Ministry of Cooperation for the establishment of cooperative companies, fishermen and aquaculture associations. [Article 5]

Comment

- All fishing vessels and some fishers without a vessel are required to hold a licence; there is no stated exception, e.g. for subsistence fishing.
- There is no provision for licences for chartered vessels or fishing beyond areas of national jurisdiction.
- The system of licences, approvals and permits indicate varying approaches to activities controlled under the Act, some of which relate to fishing (licences) and others which could also be controlled under other legislation (e.g. environmental, trade).
- There is no provision for control of “related activities” such as transshipment;
- It is inferred that fishers must have a permit to store legal gear on board [Article 47.7], but there is no provision authorizing Shilat to issue such a permit.
- The process for licence issuance is not comprehensive, with several relevant issues not addressed, e.g. the basic information or qualifications for application, cancellation, loss or damage. However, many issues are to be addressed in Executive Regulations.

7. INTERNATIONAL ASPECTS

Iran ratified the 1995 UN Fish Stocks Agreement on 17 April 1998.

Comment

- There are no provisions relating to international aspects, such as international fisheries cooperation, or for fishing by Iranian nationals beyond areas of national jurisdiction.

8. MONITORING, CONTROL AND SURVEILLANCE

There is no separate Chapter on monitoring, control and surveillance (MCS). Inspection and identification of crimes under the Act and its implementation bylaw are to be carried out by the

Disciplinary Force as the bailiff for the Judiciary. Authority and terms of reference will be determined in the rules and regulations governing the Disciplinary Force. [Article 21] In implementing this provision and in order to find out and prosecute any criminal actions, the nature of cooperation between Shilat and the Iranian Disciplinary Force was to be finalized in accordance with a joint procedure adopted on the basis of a mutual agreement between the Ministry of Jihad Agriculture and Ministry of the Interior. [Article 81]

Regarding observers, fishing vessel owners are required to deploy them on board during fishing season and render necessary cooperation in the registration and submission of reliable data at the request of Shilat. [Article 53]

Comment

Standard best practice provisions in fisheries laws regarding the powers of inspectors and enforcement officers for fisheries offences may be in the agreement regarding the Iranian Disciplinary Force. These should include, for example:

- Qualifications for fisheries enforcement officers (e.g. fisheries related training) and a transparent process for their appointment.
- Powers of search and entry on premises where fish is reasonably believed to be found.
- Power to request and examine and seize books and documents.
- Provisions addressing modern MCS compliance tools, such as requirements for vessel monitoring systems.
- Provisions allowing enforcement officers to search and seize vehicles, search buildings other than stores or shops (e.g. processing plants), or undertake dockside inspection.
- Duties of the authorized officers during an inspection (e.g. to show identification when requested) and duties owed to the authorized officers by those inspected.
- Provisions that foreshadow the possibility of regional or international cooperation in fisheries MCS, such as Lacey Act-type provisions, authorization of officers beyond areas of national jurisdiction, etc.
- Empowering authorized officers to disable vessels that are under investigation.

There are no provisions setting out the rights of observers (e.g. the standard of accommodation, right to documents, gear, take photographs etc.) or the duties of the master and crew to the observers (e.g. allow and assist the observer to carry out duties)

9. POST-HARVEST, TRADE

9.1 Processing/handling/sale/marketing

- Chapter Seven addresses fish quality control regulations, including a requirement for a catch delivery permit and visits by experts to processing facilities and fish hatcheries. Owners are required to cooperate with the experts.
- Fish handling and storing quality control provisions on board of vessel fishing harbor and fish farms are set by Shilat.
- Transfer of all fish is subject to Shilat's permit.

9.2 Trade/import/export

There are no provisions, except for permit requirements described under section 6 above relating to licensing, for:

- export and import of any sturgeon species and caviar [Article 22D];
- importing native or non-native broodstocks or fingerlings from abroad [Article 33], and

- exporting native and non-native farmed fish abroad [Article 34].

Comment

- There are no provisions requiring compliance with other laws (such as customs, health, commercial laws).
- The provisions do not reflect modern technology and the power to use marketing and trade as compliance tools to combat IUU fishing.
- There is no requirement that the fish be actually maintained in a safe and hygienic condition.
- The law does not require any person falling within its scope to maintain registers and information as required.
- There are no provisions regarding general import or export.

10. EVIDENTIARY PROVISIONS

There are no evidentiary provisions.

Comment

- Evidentiary provisions specific to fisheries offences forms part of the best practices of many national fisheries laws. These include such areas as reversal of onus of proof and certificate evidence.

11. JUDICIAL/ADMINISTRATIVE PROCESSES

There is no provision for administrative offences.

Comment

- A process for the acceptance of fines through an administrative process forms part of the best practices of many national fisheries laws for expediency and effectiveness.

12. VIOLATIONS AND FINES/PENALTIES⁷

Unlicensed fishing by foreign vessels

Any foreign fishing vessels operating fishing in Iranian waters without the required licence will be sentenced to from two million to one hundred million rials (158–8 000 euros) fine and seizure of all the catch, and in addition the court may seize the catch, gear and equipment on board.

Other crimes are punishable as follows:

- illegal fishing activities by the Iranian nationals;
- illegal transfer of catch from one vessel to unauthorized vessels;
- supply and transfer of hygienically uncertified aquatic resources for aquaculture purposes without hygienically certificate;
- selling illegal fishing gears and equipments;
- detouring, creating physical barriers and establishing any illegal infrastructures in the rivers determined as migration path or natural reproduction sites of aquatic resources; and
- causing any pollution or spread of diseases, discharge of industrial contagious waste or any pollutants incurring damage on aquatic resources.

⁷ Article 26.

The court may order a cash penalty three times of the value of product (given the nature of the crime, capacity of the vessel size and type of the catch) for the first three crimes or about one to five million rials for the remaining crimes. In addition, the court may seize the fishing and aquaculture products or the outcome of the products, fishing gear and any other equipment utilized in the commitment of the given crime and ban the pollutant factor until it is removed.

For repeated violations, the court may also seize the equipment and fishing gear involved in the commitment of the crimes.

The court may impose fines from one to ten million rials and seize the catch, gear and equipment for the following:

- fishing in banned zones;
- catching the banned species;
- catching the species for which no licence has been obtained;
- operation of industrial fishing vessels in coastal fishing zones;
- fishing with illegal gear and equipment or holding such gear, equipment or material on the board without having obtained permit from Shilat;
- carrying or holding illegal catch on board;
- failure to report required information or misreporting catch and aquaculture activities, and
- violating the rules governing the exposure of required vessel identification symbols, names, letters and numbers.

For the catch, processing, supply, sale, transportation, storage, export and import of any sturgeon species and caviar without the permit of Shilat, the penalty is set at three times of the catch value (given the type and size of the catch) and one to three months imprisonment. For repeated violations, the violators may also be sentenced to discretionary imprisonment from ninety–one days to six months.

In addition to the fines and penalties that may be imposed by the court, Shilat may suspend fishing licences for three months during fishing seasons in the following cases: [Article 47]

- violation of any points cited in the respective fishing licence;
- subdivision of fishing licence to other party without prior written approval of fisheries;
- violation of hygienic and quality control regulations as cited in the by law;
- any kinds of illegal transfer of fish products to legal vessels or abroad;
- fishing in banned zones or seasons;
- fishing banned species;
- storing legal gear on vessel board without any prior permit of Shilat;
- transshipment and storage of illegally harvested fisheries resources on board; and
- violation of respective regulations on installing identity plate, signs and symbols in accordance with international marine path regulations and various fishing methods.

Comment

- The maximum level of fine is comparatively low, considering the value of some fishing operations.
- Seizure of the catch, gear and equipment is an optional penalty, but there is no provision for seizure of the vessel.
- There is no provision for compliance tools to be used as penalties where there are reasonable grounds to suspect IUU fishing, such as denial of port services and denial of landing/trade.
- Specific “serious” violations have been indicated in international instruments, so that the maximum fine or penalty could be considered for application, in order to serve as a deterrent. The Act does not clearly reflect the detail of these violations.

- There is no provision for a “continuing offence”; where the same illegal act is carried out over several days, each day can count as a separate offence.

KUWAIT

Law No. 49 OF 1983 To Establish the Public Authority for Agriculture Affairs and Fish Resources

Law No. 46 of 1980 Concerning the Protection of Fish Wealth

1. USE OF TERMS

Neither Law defines the terms used, nor do any of the other subsidiary legal instruments.

- **Comment:** The 1980 Law¹ declares that decrees will determine: right to fish and exploit the animal and plant marine life in the territorial sea, and in any other fishing region; and Kuwaiti possession of the living natural resources at the bottom of its continental shelf. A simple definition of fish (marine plants and animals, whether living or not) could avoid the duplication in the phrase, “fish and exploit the animal and plant marine life”... In addition, “any other fishing region” does not clearly identify other fishing regions that may fall within the scope of the law.

Comment

- Providing for key definitions facilitates a clear implementation of the legislation.

2. OBJECTIVE, SCOPE AND APPLICATION OF THE LAW

2.1 Objective

The Acts, adopted in the early 1980’s, do not contain contemporary objectives, such as sustainable use of fisheries, nor guiding principles, such as use of the precautionary approach.

However, the Law to establish the Public Authority for Agriculture Affairs and Fish Resources (PAAFR) states that the purpose of establishing the Authority is to carry out the works related to the development of agriculture, plant and animal sectors, and to foster and protect the fish resources. It does not refer to international instruments such as the 1982 UN Convention on the Law of the Sea (1982 Convention) as guidance for the activities of the Authority.

2.2 Scope

The scope of the PAAFR Law is not clear.

The scope of the Fish Resources Act is not clearly stated, but appears to include animal and plant life in the territorial waters, the territorial sea, and any other fishing region as determined by a certain (unspecified) decree. Living: plants, animals.

2.3 Application

The application of the Protection of Fish Resources Decree² and its resolutions in respect of foreign fishing vessels is to “all items that have not been provided for in an international agreement”. This likely refers to all national laws not contained in a fishing agreement.

¹ Article 1.

² Article 2.

Comment

- The scope of the protection of Fish Resources Decree is not clearly stated in the legislation, but inferred from definitions.
- The application of the Law is unclear in terms of the kinds of fishing and fishing-related activities it covers (e.g. subsistence, artisanal, semi-industrial, industrial).
- The Law does not extend to nationals fishing outside areas of national jurisdiction.

3. INSTITUTIONAL AND POLICY PROVISIONS

3.1 Institutional

3.1.1 Institutional responsibilities under the protection of Fish Resources Act and relevant Resolutions

The competent Minister:

- may release a resolution to licence fishing by foreign fishing boats with conditions pursuant to an agreement;
- may release with designated bodies the by-laws which regulate fishing activity, including specified activities;
- may form an advisory committee under the chairmanship and in the membership of representative government and non-government bodies concerned with marine wealth to express an opinion on policy; and
- shall commission enforcement employees required to enforce this law, carry out inspections and control violations.

The “competent administrative body”:

- may issue licences for fishing boats, marine traps or pounds, persons involved in fishing.

The “competent body for fish resources”:

- shall make rules regulating fishing by amateurs, club members and authorities; and
- may require licences in certain cases.

The Fish Resources Control in the Ministry of Public Works:

- receives applications for fishing licences from boat owners, persons working on board Kuwati fishing boats.

3.1.2 Institutional responsibilities under the Public Authority for Agriculture Affairs and Fish Resources (PAAAFR)

The PAAAFR:

- carries out works related to the development of agriculture, plant and animal sectors and fosters and protect the fish resources; and
- establishes a Board with authorities including making policy and development plans and programs, suggesting projects for laws and decrees related to fish resources, making rules in relation to fish traps, and determining support for fishers.

3.1.2 *Institutional responsibilities of institutions under related laws*

No information was available.

Comment

- The responsibilities listed above appear throughout the Act and are not consolidated in a separate Part on Institutions.
- It is not clear, but inferred, that the “competent administrative body” is the Fish Resources Control in the Ministry of Public Works, which would both receive applications for licences and issue them except for foreign fishing vessels and recreational vessels.
- There is no express responsibility for vessel registration.
- There are no provisions encouraging administrative coordination between competent bodies or agencies that may carry out related activities.

3.2 **Policy**³

There is no clearly designated responsibility for developing and adopting fisheries policy, but the competent Minister is empowered to form an advisory committee to express an opinion on policy.

4. FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT⁴

4.1 Information

The competent minister may release by-laws to organize books and documents to be kept by persons involved in fishing, and determine the data to be furnished to the competent administrative body. [Article 8.13, PFR Decree]

4.2 Management

4.2.1 Management plans

There is no provision on management plans.

4.2.2 Regulation

- The competent Minister “releases with the designated bodies the by-laws which regulate the fishing activities”, including licence conditions, fees and exemptions, vessel marking, safety and other specifications, gear, hazardous materials, size limits for fish and nets, prohibited species, prohibited environmental hazards, prohibited fishing, total allowable catch and seasons, hygienic conditions, data and records, services for persons involved in fishing. [Article 8, PFR Decree]
- The PAAARF is empowered to “supervise fishing and organize this activity to ensure the growth of the fishing wealth.” [Article 2.2, PAARF Law]

4.2.3 Closures

A by-law may prohibit fishing.

³ Article 9, Protection of Fish Resources Decree.

⁴ Article 8, Protection of Fish Resources Decree. Article 5, PAAARF Law.

4.2.4 Prohibitions

4.2.4.1 Gear, area, seasons

To be controlled under by-laws.

4.2.4.2 Size, species

To be controlled under by-laws.

4.2.4.3 Activities

- Activities that may be regulated by by-laws are noted under 4.2.2; and
- Under the Decree itself, there are no prohibited activities except fishing without a licence and contravening the by-laws.

4.2.5 Marine Reserves

No provision.

4.2.6 Transshipments

No provision.

4.3 Development

The PAAARF is empowered to supervise fishing and organize this activity to ensure the growth of the fishing wealth. The Board of the PAARF is empowered to make development plans and programs for the fisheries resources and supervise their execution.

Comment

- Fisheries management authority of the PAAARF and the competent Minister seems to overlap.
- There is no provision prohibiting the processing, trade, import, export, transportation, buying, selling etc. of fish or fish products for purposes of fisheries management (e.g. for IUU caught fish or endangered fish species).
- There is no clear requirement for the competent body to keep databases of licences, registration, fishing activity and other relevant activities.
- There is no requirement for persons engaged in activities to give, at all times, information that is true, complete and accurate.
- There is no requirement or authority regarding confidential information.
- There are no requirements to implement port State measures, especially those relating to information, access, use of port and inspection.
- There is no provision for declaring, or cooperating in the declaration of, endangered species.

5. ACCESS REGIME

Foreign fishing vessels are permitted to fish only when a resolution to licence fishing is released by the competent Minister under an agreement setting out licence conditions and fees.

6. LICENSING SYSTEM⁵

- Kuwaiti vessels are required to hold licences.
- Foreign fishing vessels are required to hold a licence issued by resolution of the Minister.
- Persons involved in fishing on board a Kuwaiti fishing boat, marine trap or on foot are required to hold licences.
- Licences are required for marine traps or pounds.
- Licences may be required for fishing by amateurs, club members and authorities.
- By-laws may provide for licence exemptions.
- There are no requirements relating to licences for scientific research or studies.
- There are no provisions for a licensing process including licence limitation, denial, appeals, etc.
- There are no requirements for licensing activities related to fishing.

Comment

- All Kuwaiti and foreign fishing vessels are required to hold a licence; there is no exception, e.g. for subsistence fishing.
- All fishers “on foot” are required to hold a licence, with no exceptions.
- By-laws may provide for exemption of licence fees, but there are no guidelines.
- There is no provision for suspension or revocation of licences for reasons of conservation and management.
- Licences be revoked or suspended if there is a violation, except for licences issued to persons on fishing boats.
- There is no provision requiring licences for research vessels or for chartered vessels or fishing beyond areas of national jurisdiction.
- There is no provision for control of “related activities” such as transshipment.
- The process for licence issuance is not comprehensive, with several relevant issues not addressed, e.g. the basic information or qualifications for application, transferability, cancellation, loss or damage. However, many issues are to be addressed in by-laws.

7. INTERNATIONAL ASPECTS

Kuwait ratified the 1982 United Nations Convention on the Law of the Sea on 2 May 1986.

Comment

- There are no provisions relating to international aspects, such as international fisheries cooperation, or for fishing by Kuwaiti nationals beyond areas of national jurisdiction.

8. MONITORING, CONTROL AND SURVEILLANCE⁶

The Minister is empowered to commission employees required to enforce the law, carry out inspection works and control the violations. They have powers to: enter vessels, gear, stores, shops and other places where marine resources exist; request and examine relevant books and documents; control ships, living marine resources, means and tools in violation of the law.

The employees may issue summons and refer them to investigation authorities, sell the fish and deposit the proceeds pending decision on the violation.

⁵ Articles 2–7.

⁶ Article 10.

Comment

- There are no qualifications for enforcement officers; they are simply employees who are commissioned. Most fisheries laws designate classes of persons that can be commissioned (e.g. police, navy, etc.) and/or training or other qualifications needed. The process for their appointment should be clear and transparent.
- The enforcement officers appear to have a general power to search to control the violations.
- Enforcement officers have the power to request and examine books and documents, but no power to seize them, take photocopies, etc.
- Enforcement officers have the power of seizure, but the list of items that are subject to seizure is incomplete (e.g. they cannot seize fish products, vehicles, etc.).
- There are no laws addressing modern MCS compliance tools, such as requirements for vessel monitoring systems.
- There is no provision allowing enforcement officers to search and seize vehicles, search buildings other than stores or shops (e.g. processing plants), or undertake dockside inspection.
- A summons may be issued and it appears that other competent investigation authorities may use force. The power of arrest is not clear.
- There are no provisions expressly explaining the duties of the authorized officers during an inspection (e.g. to show identification when requested) and duties owed to the authorized officers by those inspected.
- There are no provisions that foreshadow the possibility of regional or international cooperation in fisheries MCS, such as Lacey Act-type provisions, authorization of officers beyond areas of national jurisdiction, etc.
- There are no provisions empowering authorized officers to disable vessels that are under investigation.

9. POST-HARVEST, TRADE⁷

9.1 Processing/handling/sale/marketing

Relevant laws were not provided.

9.2 Trade/import/export

Relevant laws, if they exist, were not provided except that boat owners are obliged to offer the boat's production to the local market in Kuwait.⁸

Comment

- Relevant laws, if they exist, were not provided.

10. EVIDENTIARY PROVISIONS

There are no evidentiary provisions.

⁷ Chapter IV – Handling, Marketing and Manufacture. Articles 20–25.

⁸ Resolution 19 of 1985.

Comment

- Evidentiary provisions specific to fisheries offences forms part of the best practices of many national fisheries laws. These include such areas as reversal of onus of proof and certificate evidence.

11. JUDICIAL/ADMINISTRATIVE PROCESSES

There is no provision for administrative offences.

Comment

- A process for the acceptance of fines through an administrative process forms part of the best practices of many national fisheries laws for expediency and effectiveness.

12. VIOLATIONS AND FINES/PENALTIES⁹

Fines for certain serious offences have a minimum level of fifty dinars (127 euros), and a maximum of five hundred dinars (12 700 euros). In addition, the boat, etc. may be confiscated and licence withdrawn. Twice the amount of licence fees is payable by the violator. Other offences have a maximum of fifty dinars and the item may be confiscated.

Comment

- The maximum level of fine is comparatively low, considering the value of some fishing operations.
- There is no provision for compliance tools to be used as penalties where there are reasonable grounds to suspect IUU fishing, such as denial of port services and denial of landing/trade.
- Specific “serious” violations have been indicated in international instruments, so that the maximum fine or penalty could be considered for application, in order to serve as a deterrent. The Act does not clearly reflect the detail of these violations.
- There is no provision for a “continuing offence”; where the same illegal act is carried out over several days, each day can count as a separate offence.
- Imprisonment is not among the penalties.
- There is no provision to forfeit the vessel, although the confiscation may amount to forfeiture.
- There is no provision for recurring violations.

⁹ Articles 11–13.

SULTANATE OF OMAN

Marine Fishing and Living Aquatic Resources Protection Law, 1981

Executive Regulations of the Marine Fishing and Living Aquatic Resources Protection Law, 1994¹1. USE OF TERMS²

“Living aquatic resources” are plants and animals that live in fishing waters or interior waters or on seabed, or sea-bottom soil, or substances that form inside the bodies of those living organisms (pearls), or after their death (coral reefs).

- **Comment:** Living aquatic resources are defined as living in water, but reference is also made to substances that form inside the bodies of the living organisms or after their death; this implies that this Law applies only to fish that are alive, and not to those which may not be alive when harvested. It is common to define “fish” or “marine resources” as including marine plants and animals, whether alive or not. This would also apply to fish taken from the water that are no longer living (e.g. through use of poisons).

“Fishing vessel” refers to a floating construction used for the purpose of catching or processing living aquatic resources, whatever its purpose or means of propulsion, and whether it is used recreationally or professionally.

- **Comment:** The definition requires proof that the vessel is in fact used for fishing or processing. It does not include other elements used in national laws and international instruments, including: vessels “equipped to be used or intended to be used” for fishing; and vessels used for activities related to fishing (such as transshipment or transport vessels). It is not clear whether fishing for scientific research purposes falls within the scope of the definition.

“Fishing” refers to the catch of marine resources by any means and for any purpose.

- **Comment:** This definition could make the law very difficult to enforce because of its focus on “catching” marine resources. It does not clearly explain that fishing includes preparations, searching for fish, and undertaking any other relevant activity. These elements broaden the scope of the law and are common in national and international laws.

“Fisherman” refers to anyone who practices fishing, whether on foot or by use of a fishing vessel.

- **Comment:** This seems to restrict “fishers” to those who are doing so by standing or on a fishing vessel. Divers, people supporting fishing operations (e.g. helicopter pilots who find fish) or others who may have once fished would not be included.

Comment

- Some key definitions that are missing include: sell, buy, import, export, trade, fish processing, fishing gear or equipment, operator, owner, foreign fishing vessels.

¹ Other relevant legislation not available for review includes the Quality Control Regulations of Omani Exported Fish, issued in accordance with Ministerial Decision No. 136/98 and Ministerial Decision No. 121/98, concerning conditions and specifications of industrial fishing vessels equipped for preservation and handling of fish products.

² Chapter One.

2. OBJECTIVE, SCOPE AND APPLICATION OF THE LAW

2.1 Objective

The Law does not contain an objective, such as sustainable use of fisheries, nor guiding principles, such as use of the precautionary approach. However, it does require the Minister to set executive regulations to guarantee management and development of living marine resources in accordance with the Law, which is indicative of the Law's objective.

2.2 Scope

Living: plants, animals.

2.3 Application³

The application of the Law relates to the fishing waters, interior waters, seabed and subsoil, and activities relating to handling, marketing and processing, preservation and transport.

Comment

- The scope is not clearly stated in the legislation, but inferred from definitions.
- The application of the Law is unclear in terms of the kinds of fishing and fishing-related activities it covers (e.g. subsistence, artisanal, semi-industrial, industrial).
- The Law does not extend to nationals fishing outside areas of national jurisdiction.

3. INSTITUTIONAL AND POLICY PROVISIONS

3.1 Institutional

3.1.1 *Institutional responsibilities under this law*

The Minister:

- must establish a Council for the management of living aquatic resources;
- grants fishing permits for purposes of research and scientific studies, may exempt holder from all or part of the provisions of the Law;
- may consult counterparts in other concerned countries to set up a joint plan to exploit and management living aquatic resources in common areas, and coordinate management measures through agreement or declaration of intent;
- sets executive regulations to guarantee management and development of living aquatic resources, including those that relate to:
 - licensing, fees and payments;
 - navigation and fishing equipment;
 - prohibiting substances harmful to living aquatic resources;
 - identifying protected waters;
 - prohibitions on seasons, areas, species;
 - minimum size of species;
 - allowable catch;
 - conditions for fish handling;
 - prohibited substances entering the aquatic environment;
 - data collection, registers, documentation;
 - rewards; and

³ Article (2).

- conditions for building plants, laboratories at sites near interior or fishing waters, precautions to be taken by vessels to protect resources.

The competent authority is the Directorate General of Fisheries Resources, and has the following responsibilities:

- determine the number of licences issued for fishing vessels or fishers;
- define breeding and reproductions seasons of living aquatic resources and publishes in mass media;
- develop and modernize fishing methods and encourage training in their use;
- issue permits to foreign fishing vessels to sell or market living aquatic resources;
- encourage artisanal fishers, supervise their activities and provide guidance and financial loans and services;
- encourage the processing of living aquatic resources in coordination with other authorities;
- assume monitoring of fishing operations and other related activities; seek help from the Royal Oman Police and other government bodies;
- where a penalty may include withdrawal of a licence, temporarily withdraw the licence and suspend the violator from practicing fishing operations until the final judgment is taken;
- where a penalty may include confiscation, sell resources or products, impound provisionally gear and equipment or means of transport and take measures necessary to prevent occurrence of the violation or its continuation and eliminate the consequences at the violator's expense;
- issue licences for practising marine fishing, vessel fishing, handling, amateur fishing and collect fees;
- issue licences for collecting or exporting oyster shells and/or coral;
- determine prohibitions for fishing seasons, areas and species;
- determine a range of measures, including:
 - prohibited areas, seasons and species;
 - permitted fishing periods and areas;
 - safety precautions to be taken by fishing vessels to protect living aquatic resources;
 - prohibited devices, equipment and methods for fishing;
 - information to be included on the licence applications;
 - conditions for preservation and handling of fish to guarantee quality;
 - data required from fishermen and dealers, registers, documentation;
 - prohibited substances for discharge in waters; and
 - define fishing areas for artisanal fishers.
- issue licences for the use of fishing guns underwater, setting artificial reefs, aquaculture facilities, the processing, handling, marketing or transporting living aquatic resources and products, the catching and handling of ornamental fish; and
- set conditions for preserving, transporting and marketing living aquatic resources and products.

The Council for the Management of Living Aquatic Resources is mandated to:

- propose policies that guarantee protection, development and proper exploitation of living aquatic resources, and supervise implementation of these policies;
- propose programmes for fishing regulations and supervise their implementation;
- liaise between government and non-government bodies (NGs) to achieve a balance between projects and activities to ensure sustainability; and
- propose or amend legislation and review issues concerning marine aquatic resources raised by government and NG bodies and make recommendations to the Minister.

3.1.2 Institutional responsibilities of institutions under related laws

The Minister must coordinate with financial authorities in levying licences fees, fishing vessels must comply with the instructions of customs and quarantine authorities, and processing is to be encouraged by the competent authority in coordination with other concerned authorities. The competent authority must coordinate with concerned authorities in relation to sanitation and commercial conditions for preserving, transporting and marketing activities.

Comment

- The responsibilities listed above appear are partly consolidated⁴ throughout the Law and are not consolidated in a separate Part on Institutions.
- Many of the responsibilities listed above are inferred and not clear. For example, the competent authority is not expressly empowered to issue a licence for collecting and exporting oyster shells, the use of fishing guns underwater, etc. but the persons engaged in those activities are required to hold a licence issued by the competent authority.
- There is no express responsibility or requirement for vessel registration.
- The competent authority has responsibility over a number of fisheries-related activities concerning the environment, without a general duty to coordinate with other concerned authorities. However, the law is without prejudice to other valid laws in Oman, including environment protection and pollution control.

3.2 Policy

The Council for the Management of Living Aquatic Resources is mandated to propose policies that guarantee protection, development and proper exploitation of living aquatic resources, and supervise the implementation of these policies.

4. FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENTS

4.1 Information⁶

The Law provides that all persons working in the field of fishing or marketing of living aquatic resources or any related industry must provide the competent authority with any requested data. The competent authority must register and analyze the data. This is supplemented throughout the instruments by provisions:

- authorizing the competent authority to determine data from fishermen and dealers, and the organization of registers and documentation to be provided for the competent authority;
- requiring fishing vessel owners to keep on board a record for recording fishing operations data as required by the competent authority; and
- requiring fish handling and fish marketing companies and owners of living aquatic resources transport trucks to provide the competent authority with data and statistics as requested.

4.2 Management

4.2.1 Management plans

There are no provisions requiring management plans.

⁴ Especially in Articles 3, 4, 5 of the Law and Article 20 of the 1994 Executive Regulations.

⁵ Law: Chapter Two, Regulation of Fishing; Chapter Three, Protection and Development. Regulations: Chapter Four, Protection and Development of Living Aquatic Resources; Chapter Five, Regulation of Fishing.

⁶ Law: Article 5.

4.2.2 Regulation

- Executive regulations are required for the management and development of living aquatic resources in a proper manner that ensures implementation of the Law, and the Minister is required in particular to set regulations concerning:
 - licensing, fees and payments;
 - navigation and fishing equipment;
 - prohibiting substances harmful to living aquatic resources;
 - identifying protected waters;
 - prohibitions on seasons, areas, species;
 - minimum size of species;
 - allowable catch;
 - conditions for fish handling;
 - prohibited substances entering the aquatic environment;
 - data collection, registers, documentation;
 - rewards; and
 - conditions for building plants, laboratories at sites near interior or fishing waters, precautions to be taken by vessels to protect resources.
- Regulation of fishing is also addressed under Chapter Five of the Regulations, where prohibited activities are described, some of which can be undertaken if a permit is issued by the competent authority.

4.2.3 Closures

The competent authority is authorized to determine areas, season and species subject to closures or prohibitions.

4.2.4 Prohibitions

The Law contains a number of general prohibitions, many of which can take place under a special licence and relate to gear and species (which would also apply to section 4.2.4.1 and 4.2.4.2 below) including:

- taking whales, marine mammals, turtles, turtle eggs;
- throwing shark parts or shark waste in the sea or on the shore, and separating shark fins and tails contrary to required conditions;
- handling or marketing shark part without a licence;
- returning to sea all species of fish caught;
- using or carrying prohibited nets, gear and equipment on board fishing vessels or keeping them near a fishing area; and
- collecting or exporting oysters shells or coral reefs.

4.2.4.1 Gear, area, seasons

- Executive regulation to define prohibited equipment and methods.
- Certain species may not be caught during defined breeding and reproduction seasons, particularly lobsters and abalone, and conditions apply to their harvesting.
- Executive Regulation and competent authority may identify locations, seasons where fishing is prohibited.

4.2.4.2 Size, species

Executive Regulation, competent authority may identify species to be prohibited, quantities to be caught.

4.2.4.3 Activities

- Executive Regulation to identify and forbid the use of harmful substances, set conditions for fish preserving and handling, identify safety elements for living marine resources, identify information which persons involved in fisheries should maintain, collect and provide, specify reward for breach of the law, set general conditions for construction near inland or fishing waters, identify precautions to be taken by ships to protect living marine resources.
- Specified activities are prohibited without a permit, including construction of barriers that block the movement of living aquatic resources, uprooting seaweed and vegetation, using sekar nets or other types of gear in shallow water, using methods of mass destruction such as poisons, using methods and tools harmful to the eggs or young of living aquatic resources, use of mechanical fishing gear and trawlers, fishing in areas where investment has been exclusively granted to the government or companies, changing specifications of fishing vessels or gear, use of fishing guns underwater, use of Hayal or monofilament nets, placing material that might hamper fishing or navigation operations, setting artificial reefs.

4.2.5 *Marine reserves*

Protected areas in which fishing is prohibited permanently may be declared.

4.2.6 *Transshipments*

No provision

4.3 **Development**⁷

Chapter Three of the Law and Chapter Four of the Regulations are both titled Protection and Development of Living Aquatic Resources, and relate primarily to protection. However, the Law requires the competent authority to develop and modernize fishing methods and encourage the training of fishermen in their use, and to define appropriate sites for culture of fish and other living aquatic resources and encourage the establishment of such farms through assistance and technical supervision.

Comment

- There is no provision for declaring, or cooperating in the declaration of, endangered species.
- There is no clear provision prohibiting the processing, trade, import, export, transportation, etc. of illegally caught fish; a licence is required for these activities but the conditions of licence might not prohibit such activities.
- There is no clear requirement for the competent authority to keep databases of licences, registration, fishing activity and other relevant activities in a transparent manner for use in fisheries management.
- There is no requirement for persons engaged in activities to give, at all times, information that is true, complete and accurate.
- There is no requirement or authority regarding confidential information.
- There are no requirements to implement port State measures, especially those relating to information, access, use of port and inspection.

⁷ Regulations, Chapter Four, Protection and development of living aquatic resources.

5. ACCESS REGIME

There is no apparent access regime; foreign vessels are not permitted to fish without a licence from the competent authority in addition to other licence requirements in the Regulation.

6. LICENSING SYSTEM⁸

The process, information and fees required for licences for marine fishing are set out, and include licences for:

- practicing marine fishing;
- fishing vessels;
- handling living aquatic resources; and
- amateur fishing.

A range of activities for which licences, permission or approval must be given is provided throughout the Law and Regulations, described in section 3.1.1 of this paper under the responsibilities of the competent authority. Many of those activities would fit under the scope of one of the four licences for which the process, information and fees are established. However this is not expressly provided.

Comment

- All fishing vessels are required to hold a licence.
- There is no general provision allowing suspension or revocation of licences for reasons of conservation and management.
- Licences can only be revoked for specific repeated violations.
- There is no provision for licences for chartered vessels or fishing beyond areas of national jurisdiction.
- Ministerial discretion to exempt vessels fishing for scientific or research purposes from any provision of the law appears to be very broad and could be open to abuse.
- The system of licences, approvals and permits indicate varying approaches to activities controlled under the Law, some of which relate to fishing (licences) and others which could also be controlled under other legislation (e.g. environmental, trade).
- There is no provision for control of “related activities” such as transshipment.
- The process for licence issuance is not comprehensive, with several relevant issues not addressed, e.g. the basic information or qualifications for application, transferability, cancellation, loss or damage. However, many issues are to be addressed in Executive Regulations.

7. INTERNATIONAL ASPECTS

Oman ratified the 1982 United Nations Convention on the Law of the Sea on 17 August 1989.

The Minister or his representative may consult his counterparts in other concerned countries to set up a joint plan to exploit and manage living aquatic resources in common areas, and coordinate management measures through agreement or declaration of intent.

Comment

- Oman has taken steps to implement the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) Fishing by developing a National Plan of Action to Combat IUU Fishing.

⁸ Regulations, Chapter Two, Licences for Marine Fishing; Chapter Three, Fishing Licence Fees.

8. MONITORING, CONTROL AND SURVEILLANCE⁹

The director of the competent authority is responsible for the enforcement of the Law and Executive Regulations.

The competent authority is empowered to assume monitoring of fishing operations and other related activities. It may seek help from the Royal Oman Police and other concerned government bodies. The employees appointed by the competent authority have the power to control violations and take necessary measures in accordance with this Law and its Regulations.

Where the penalty may include withdrawal of a licence, the competent authority may temporarily withdraw the licence and suspend the violator from practicing fishing operations until the final judgment on the violation is delivered. Where a penalty includes confiscation, the competent authority must sell resources or products seized and hold the proceeds until the final judgment is delivered, impound provisionally gear and equipment or means of transport and take measures necessary to prevent occurrence of the violation or its continuation and eliminate the consequences at the violator's expense

Comment

- There are no qualifications for enforcement officers; they are simply employees. The process for their appointment and their powers should be clear and transparent.
- It is unclear whether the employees would be carrying out duties of inspection or search and seizure.
- Powers of enforcement officers is normally clearly stated in fisheries laws to promote compliance (and allow prosecution for non-compliance) with key actions, such as inspection of vessels, vehicles, equipment, gear, places where fish is located, etc.
- There are no laws addressing modern MCS compliance tools, such as requirements for vessel monitoring systems.
- There is no provision allowing enforcement officers to search and seize vehicles, search buildings other than stores or shops (e.g. processing plants), or undertake dockside inspection.
- There is no indication of the requirements for making seizures and arrests, but it is implied that the Royal Oman Police would be charged with this responsibility.
- There are no provisions expressly explaining the duties of the employees or Omani Police during an inspection (e.g. to show identification when requested) and duties owed to the authorized officers by those inspected (e.g. allow and assist the inspection).
- There are no provisions that foreshadow the possibility of regional or international cooperation in fisheries MCS, such as Lacey Act-type provisions, authorization of inspectors/officers beyond areas of national jurisdiction, etc.
- The Law enables employees to take measures necessary to prevent occurrence of the violation or its continuation; this could extend to reasonable acts such as the disabling of a vessel but also to acts that may not be so reasonable; in the latter case the alleged wrongdoer would not have the protection of the law.

⁹ Law, Articles 5, 29. Regulations, Article 43.

9. POST-HARVEST, TRADE¹⁰

9.1 Processing/handling/sale/marketing

- Fishing vessels and transporting trucks must be equipped with cold storage facilities kept clean and complying with health conditions as defined by the competent authority.
- Sale is only permitted in markets and shops that comply with health and commercial requirements.
- The required hygiene and health regulations must be observed when processing prior to marketing; customs and quarantine requirements apply to imported processed fish.
- Dealers exploiting, processing, handling, marketing or transporting living aquatic resources and products must hold a licence, and (for the last four activities) observe sanitation and commercial conditions issued by the competent authority in coordination with concerned authorities.
- Dealers selling living aquatic resources at fish markets are subject to specified conditions.

9.2 Trade/import/export

- Traders must maintain information registers.
- Export or import is prohibited without prior approval.
- Foreign fishing vessels must have permission from the competent department to sell or market living marine resources or their products.
- The competent authority must encourage artisanal fishers according to the regulations.
- The competent authority must encourage the processing of living aquatic resources in coordination with other concerned authorities.

Comment

- Some of these provisions refer to requirements of other concerned authorities, and the emphasis is one of coordination among authorities.
- The provisions don't reflect modern technology and the power to use marketing and trade as compliance tools to combat IUU fishing.
- The law puts emphasis on the vessel or fishers, rather on the activity that they should be undertaking. For example, it requires fish transporters to be equipped with cold storage complying with health standards, but does not require that the fish be actually maintained in a safe and hygienic condition.
- The linkages and cooperation in practice between the competent department and concerned authorities is unclear, but this would allow flexibility for coordination.

10. EVIDENTIARY PROVISIONS

There are no evidentiary provisions.

Comment

- Evidentiary provisions specific to fisheries offences forms part of the best practices of many national fisheries laws. These include such areas as reversal of onus of proof and certificate evidence.

¹⁰ Law: Chapter Four, Handling, Marketing and Processing, Articles 19-26. Regulations: Chapter Six, Preservation, Transport and Marketing of Living Aquatic Resources, Articles 32-34. Ministerial Decision No. 4/97 issuing a quality control regulation for Omani fishery export was not available for review.

11. JUDICIAL/ADMINISTRATIVE PROCESSES

There is no provision for administrative offences.

Comment

- A process for the acceptance of fines through an administrative process forms part of the best practices of many national fisheries laws for expediency and effectiveness.

12. VIOLATIONS AND FINES/PENALTIES¹¹

Law: Chapter five, Violations and Penalties. Articles 27–29.

Regulations:

Fines range from a minimum of sixty Omani Rials (about 115 euros) to a maximum twenty thousand Omani Rials (about 38 000 euros), in five different categories of violations.

In each case, imprisonment is an alternative to payment of a fine, and for some cases both can be imposed. Punishment may also include the confiscation of gear, equipment and living aquatic resources involved in the commission of the offence and withdrawal of licence for a limited term or permanently.

The fine may be doubled and the vessel confiscated where there is recurrence of any crime.

Comment

- The maximum level of fine is comparatively low, considering the value of some fishing operations.
- There is no provision for compliance tools to be used as penalties where there are reasonable grounds to suspect IUU fishing, such as denial of port services and denial of landing/trade.
- Specific “serious” violations have been indicated in international instruments, so that the maximum fine or penalty could be considered for application, in order to serve as a deterrent. The Law does not clearly reflect the detail of these violations.
- There is no provision for a “continuing offence”; where the same illegal act is carried out over several days, each day can count as a separate offence.
- There is no provision for compensation for damage caused, e.g. to the environment and living aquatic resources.

¹¹ Act: Chapter Five, Violations and Penalties, Articles 27–29. Regulations: Chapter Eight, Penalties, Articles 50–51.

QATAR

Law No. 4 OF 1983
Regarding the Exploitation and Protection of Living Marine Resources in Qatar
as amended by the Decree Law No. 24 of 2001¹

1. USE OF TERMS²

“Living marine resources” are the plant and animal beings living in fishing waters, inland waters, on the seabed or the subsoil and what is formed inside the bodies of such beings whether while still alive (pearls) or after their death (coral reefs).

- **Comment:** living marine resources are defined as living in water, but reference is also made to their bodies after death, this implies that this Law applies only to fish that are alive, and not to those which may not be alive when harvested. It is common to define “fish” or “marine resources” as including marine plants and animals, whether alive or not. This would also apply to fish taken from the water that are no longer living (e.g. through use of poisons).

“Fishing ship” refers to a floating construction used in lifting or manufacturing living marine resources.

- **Comment:** the definition requires proof that the vessel has been used in lifting or manufacturing living marine resources. It does not include other elements used in national laws and international instruments, including: vessels “equipped to be used or intended to be used” for fishing; and vessels used for activities related to fishing in this definition (such as transshipment or transport vessels). Both of these broaden the scope of the law and strengthen efforts to combat IUU fishing.

“Fishing” refers to the lifting of marine resources by any means and for any purpose.

- **Comment:** this definition could make the law very difficult to enforce. It does not clearly explain that fishing includes preparations, searching for fish, and undertaking any other relevant activity. These elements are common in national and international laws.

“Fisher” refers to anyone who practices fishing, whether mounting or dismounting a fishing ship.

- **Comment:** this seems to restrict “fishers” to those who are currently fishing from a ship. Divers, people supporting fishing operations (e.g. helicopter pilots who find fish) or others who may have once fished would not be included.

“Fishing water” refers to areas adjacent to the territorial sea of Qatar and the coasts of its islands. The outer limit is by agreement with relevant States or the median line where no agreement exists.

- **Comment:** the Law would not apply to legal or illegal fishing activities within the territorial sea, because it is not mentioned. However under Article 2 the Law applies to Fishing Waters and “inland” waters, so the territorial sea should logically be included. However, it is possible that the correct translation is “internal” waters; this should be clarified.

“The seabed and its subsoil” refers to the seabed and its soil that is submerged in the fishing waters and the internal waters.

- **Comment:** the 1982 Convention refers to the “seabed and subsoil” over which the coastal state exercises sovereignty and sovereign rights. The subsoil is referred to in various ways

¹ Emiri Decree No. 17 of 1993 also amended this legislation, but was unavailable in English.

² Article One.

under the definitions (“bed soil”, “underwater soil”), this may be due to translation and the original could be checked for consistency with the 1982 Convention.

Comment

- Some key definitions that are missing include: sell, buy, import, export, trade, fish processing, fishing gear or equipment, operator, owner, foreign fishing vessels.

2. OBJECTIVE, SCOPE AND APPLICATION OF THE LAW

2.1 Objective

The Law does not contain an objective, such as sustainable use of fisheries, nor guiding principles, such as use of the precautionary approach.

2.2 Scope

Living: plants, animals.

2.3 Application³

The application of the Law relates to the fishing waters, and handling, marketing and manufacturing.

Comment

- The scope is not clearly stated in the legislation, but inferred from definitions.
- The application of the Law is unclear in terms of the kinds of fishing and fishing-related activities it covers (e.g. subsistence, artisanal, semi-industrial, industrial).
- The Law does not extend to nationals fishing outside areas of national jurisdiction.

3. INSTITUTIONAL AND POLICY PROVISIONS

3.1 Institutional

3.1.1 *Institutional responsibilities under this law*

The Minister:

- may issue fishing licences to authorities and persons for purposes of research and scientific studies;
- decides on licences for foreign fishing vessels;
- hears appeals from decisions of licence refusal;
- may include provisions in the Executive Regulations for specified areas, including fisheries management, fish preserving and handling, safety, pollution, information for persons involved in fishing to collect, rewards; and
- may second employees in cooperation with concerned authorities for fisheries MCS
- shall issue regulations and decisions executing the law.

The “Competent Department”⁴ is responsible for:

- proposing and supervising the general plan for the protection, development, manufacture and good exploitation of living marine resources; proposing and supervising the execution

³ Article (2).

⁴ “Fisheries Department”: Article (1).

of fishing affairs regulation programs; coordinating government bodies involved in living marine resources; updating fishing technology and providing services to fishers; proposing legislation;

- requiring information from persons working in fishing, fish marketing or related industries, and regulate and analyze special registers for the information;
- issuing licences to fishing vessels;
- denying licence applications;
- receiving applications from owners of fishing vessels to transform the vessel into a cargo, passenger or transport vessel or for any other purpose;
- consulting with the Ports Department to ensure safety and rescue requirements are met;
- limiting the number of licences issued to fishers or vessels;
- identifying breeding and reproduction seasons and announcing them in the media;
- giving written approval for specified types of waste that is dumped in the fishing water that may cause harm to marine living resources;
- issuing special permits for specified activities, many of which relate to construction, digging, use of fixed equipment and specified substances;
- identifying areas for construction of living marine resources breeding farms, and encourage and technically supervise such farms;
- coordinating with concerned authorities on hygienic and commercial conditions of markets selling living marine resources;
- establishing forms to be maintained by traders of living marine resources;
- approving the import of living marine resources and their products; and
- issuing a permit to foreign fishing vessels for selling or marketing products of living marine resources.

A Living Marine Resources Council may be established under the Law.

3.1.2 Institutional responsibilities of institutions under related laws

Ports Department: its competence to make requirements on the safety and rescue for fishing vessels is recognized.

General Department of Meteorology: to provide fishers with a daily bulletin on the state of the sea and wind speed.

Comment

- The responsibilities listed above appear throughout the Law and are not consolidated in a separate Part on Institutions.
- Many of the responsibilities listed above are inferred and not clear. For example, the Competent Department is not expressly empowered to issue a licence to a foreign fishing vessel for catching fish, but foreign fishing vessels are not allowed to catch fish unless the Minister had decided a licence could be issued (presumably by the Competent Department).
- There is no express responsibility for vessel registration.
- The Competent Department has been given the lead in a number of fisheries-related activities concerning the environment without a legal requirement for consultation or coordination with other departments.

3.2 Policy

There is no provision on the development or implementation of fisheries policy.

4. FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT⁵

4.1 Information

The Minister may include provisions in Executive Regulations identifying the information which the persons involved in fisheries collect and provide the competent department with and regulate the books and documents which they should maintain. [Article (5)11]

Every person working in the field of fishing, living marine resources marketing, or related industries should provide the information required by the competent department which should regulate and analyze special registers for such information. [Article (6)]

Anyone trading in living marine resources should maintain registers of the types and prices of quantities traded. [Article (23)]

4.2 Management

4.2.1 Management plans

A general plan for the protection, development, manufacture and good exploitation of living marine resources is to be proposed and supervised by the Competent Department. [Article 3]

4.2.2 Regulation

Executive Regulations may identify requirements to regulate: specifications and requirements of fishing vessels, devices and equipment permitted for fishing, marine reserves, minimum allowed volume of fish and other living marine resources to be caught, quantities/seasons/species of living marine resources allowed to be caught, fish preserving and handling, safety elements for living marine resources.

4.2.3 Closures

The Minister may ban fishing in coordination with the Concerned Authorities

4.2.4 Prohibitions

4.2.4.1 Gear, area, seasons

- Executive regulation to prohibit devices and equipment.
- Living marine resources may not be caught during breeding and reproduction seasons.
- Executive Regulation to identify locations, seasons where fishing is prohibited.
- Specified activities prohibited without a permit, including use of skar, hothoor nets, methods or equipment which are harmful to eggs or young, use of tools or equipment to harm or threaten living marine resources.

4.2.4.2 Size, species

Executive Regulation to identify species to be prohibited, quantities to be caught.

4.2.4.3 Activities

- Executive Regulation to identify and forbid the use of harmful substances, set conditions for fish preserving and handling, identify safety elements for living marine resources,

⁵ Chapter II – Regulation of Fishing. Articles 3–15. Chapter III – Protection and Development. Articles 16–19.

identify information which persons involved in fisheries should maintain, collect and provide, specify reward for breach of the law, set general conditions for construction near inland or fishing waters, identify precautions to be taken by ships to protect living marine resources.

- Specified activities are prohibited without a permit, including construction of dams, genocide by explosives, poisons, etc., removal of herbs and plants utilized by living marine resources, dig/excavate dirt or plant materials of fishing traps or shore that harms living marine resources, perform arbitrary backfilling on coasts, constructing jetties, etc.

4.2.5 Marine reserves

No provision.

4.2.6 Transshipments

No provision.

4.3 Development

The Competent Department is responsible for the general plan for the development of living marine resources, working towards the development and updating of fish means and methods, and for identifying areas for breeding farms for living marine resources and encouraging and supervising the farms.

Comment

- There is no provision for declaring, or cooperating in the declaration of, endangered species.
- The Minister is empowered to ban, in coordination with the concerned authorities, the processing, trade, import, export, transportation, selling and exhibiting for sale any marine fisheries if such activities impose a threat on public health. However, he is not empowered to ban such activities if it is necessary for the protection and sustainability of the resource.
- There is no clear requirement for the Competent Department to keep databases of licences, registration, fishing activity and other relevant activities.
- There is no requirement for persons engaged in activities to give, at all times, information that is true, complete and accurate.
- There is no requirement or authority regarding confidential information.
- There are no requirements to implement port State measures, especially those relating to information, access, use of port and inspection.

5. ACCESS REGIME

There is no apparent access regime; foreign fishing vessels are prohibited from fishing without a licence issued on the decision of the Minister.

6. LICENSING SYSTEM⁶

- Vessels and professional fishers who fish from vessels are both required to hold licences.
- Foreign fishing vessels are required to hold a licence issued on the decision of the Minister.

⁶ Articles 7–15.

- A licence issued by the Minister is required for fishing for scientific research or studies, and the holders may be exempted from some of the provisions of the Law and relevant decisions.
- The competent department may deny licence applications and cancel licences for fishing vessels where the owner wishes to transform the ship for other uses (cargo, etc.).
- The competent department may limit the number of licences issued to fishing ships or fishers.
- Guidelines are given for what the licences should state (e.g. location, seasons, etc. for fishing) but it is not mandatory.
- The boat owner is legally responsible for actions of crew members.
- A licence for scientific research or studies issued by the Minister may be exempted from the application of some or all the provisions of the law.
- Approvals (but not licences) are required for certain activities such as dumping waste into the fishing waters.
- Approvals (but not licences) are required for the import of living marine resources and products.
- Special permits (but not licences) are required for specified activities, many of which result in degradation of marine environmental quality.
- Permits (but not licences) are required for foreign fishing ships selling or marketing living marine resources.

Comment

- All fishing vessels are required to hold a licence; there is no exception, e.g. for subsistence fishing. However, some provisions in the Law seem to indicate that it is the larger industrial vessels that require a licence (the licence should state a number of details in relation to the vessel's operation – location, season, catch quantities etc.).
- Professional fishers who fish from vessels are required to hold a licence, but there are no requirements for fishing without a vessel.
- There is no provision for suspension or revocation of licences for reasons of conservation and management.
- Licences can only be revoked for specific repeated violations.
- There is no provision for licences for chartered vessels or fishing beyond areas of national jurisdiction.
- Ministerial discretion to exempt vessels fishing for scientific or research purposes from any provision of the law appears to be very broad and could be open to abuse.
- The system of licences, approvals and permits indicate varying approaches to activities controlled under the Law, some of which relate to fishing (licences) and others which could also be controlled under other legislation (e.g. environmental, trade).
- There is no provision for control of “related activities” such as transshipment.
- The process for licence issuance is not comprehensive, with several relevant issues not addressed, e.g. the basic information or qualifications for application, transferability, cancellation, loss or damage. However, many issues are to be addressed in Executive Regulations.

7. INTERNATIONAL ASPECTS

Qatar ratified the 1982 United Nations Convention on the Law of the Sea on 9 December 2002.

Comment

- There are no provisions relating to international aspects, such as international fisheries cooperation, or for fishing by Qatar nationals beyond areas of national jurisdiction.

8. MONITORING, CONTROL AND SURVEILLANCE⁷

Employees seconded by the Minister in cooperation with concerned authorities are given a prosecutorial capacity to prove violations. They have powers to: enter ships, fishing traps, stores, shops and other places where living marine resources and gear exist; request and examine books and documents related to their mission; seize ships, living marine resources, means and tools in violation of the law.

Authorized officers are appointed by Ministerial Decree, with powers to intercept and search fishing vessels, and to access vessels, fishing areas and places where marine fisheries, fishing equipment and gear exist on land and at sea, and the right to review and check fishing licences, records and documents and prepare reports.

Comment

- There are no qualifications for enforcement officers; they are simply employees who are seconded. Most fisheries laws designate classes of persons that can be seconded (e.g. police, navy, etc.) and/or training or other qualifications needed. The process for their appointment should be clear and transparent.
- The right of entry by enforcement officers depends on the presence of fish, etc. in the place that is entered. They should instead have general powers of search because it is difficult to know whether fish is on the premises before entering.
- Enforcement officers have the power to request and examine books and documents, but no power to seize them, take photocopies, etc.
- Enforcement officers have the power of seizure, but the list of items that are subject to seizure is incomplete (e.g. they cannot seize fish products, vehicles, etc.).
- There are no laws addressing modern MCS compliance tools, such as requirements for vessel monitoring systems.
- There is no provision allowing enforcement officers to search and seize vehicles, search buildings other than stores or shops (e.g. processing plants), or undertake dockside inspection.
- There is no indication of the requirements for making an arrest, but it is implied that the authorized officer must make a report before an arrest can be made or force can be used.
- There are no provisions expressly explaining the duties of the authorized officers during an inspection (e.g. to show identification when requested) and duties owed to the authorized officers by those inspected.
- There are no provisions that foreshadow the possibility of regional or international cooperation in fisheries MCS, such as Lacey Act-type provisions, authorization of officers beyond areas of national jurisdiction, etc.
- There are no provisions empowering authorized officers to disable vessels that are under investigation.

9. POST-HARVEST, TRADE⁸

9.1 Processing/handling/sale/marketing

- Fishing ships and transport means should be equipped with cold storage facilities and cleanliness and health conditions.
- Sale is only permitted in markets and shops that comply with health and commercial requirements.

⁷ Article (27).

⁸ Chapter IV – Handling, Marketing and Manufacture. Articles 20–25.

- The required hygienic conditions must exist before handling; customs and quarantine requirements apply to imported processed fish.

9.2 Trade/import/export

- Traders must maintain information registers.
- Foreign fishing vessels must have permission from the competent department to sell or market living marine resources or their products.

Comment

- Many of the provisions of this Part refer to requirements of concerned authorities other than the fisheries department, and require fish transporters, marketers, etc. to comply with the other laws (such as customs, health, commercial laws).
- The provisions don't reflect modern technology and the power to use marketing and trade as compliance tools to combat IUU fishing.
- The law puts emphasis on the vessel or fishers, rather on the activity that they should be undertaking. For example, it requires fish transporters to be equipped with cold storage, but does not require that the fish be actually maintained in a safe and hygienic condition.
- The law does not require any person falling within its scope to maintain registers and information as required. In this Chapter, for example, only traders fall within that requirement.
- Imports from foreign vessels are controlled, but there are no provisions regarding general import or export.
- The linkages and cooperation in practice between the competent department and concerned authorities is unclear.

10. EVIDENTIARY PROVISIONS

There are no evidentiary provisions.

Comment

- Evidentiary provisions specific to fisheries offences forms part of the best practices of many national fisheries laws. These include such areas as reversal of onus of proof and certificate evidence.

11. JUDICIAL/ADMINISTRATIVE PROCESSES

There is no provision for administrative offences.

Comment

- A process for the acceptance of fines through an administrative process forms part of the best practices of many national fisheries laws for expediency and effectiveness.

12. VIOLATIONS AND FINES/PENALTIES⁹

Fines for fishing by foreign vessels and specified activities deleterious to the marine environmental quality in the coastal zone (e.g. backfilling) have minimum and maximum levels. Minimum levels range from a minimum of Qatar Riyals two thousand (around 430 euros) for small vessels to fifty

⁹ Article 26.

thousand (10 800 euros) for large ships and deleterious activities. Maximum fines range from two thousand to one hundred thousand Riyals.

The court may also terminate the residence permit if the convicted person is a foreigner working on Qatari fishing ships.

The fine may be doubled where there is recurrence of any crime. If and where there is recurrence by a foreign vessel of unlicensed fishing the vessel may be confiscated or a fine of not less than Qatar Riyals one million may be paid.

Where there is recurrence of other crimes, a number of additional penalties are optional such as licence suspension or revocation and confiscating the ship.

Comment

- The maximum level of fine is comparatively low, considering the value of some fishing operations.
- Confiscation of the ship and equipment is an optional penalty, but there is no provision for confiscation of fish and gear.
- There is no provision for compliance tools to be used as penalties where there are reasonable grounds to suspect IUU fishing, such as denial of port services and denial of landing/trade.
- Specific “serious” violations have been indicated in international instruments, so that the maximum fine or penalty could be considered for application, in order to serve as a deterrent. The Law does not clearly reflect the detail of these violations.
- There is no provision for a “continuing offence”; where the same illegal act is carried out over several days, each day can count as a separate offence.
- Imprisonment is not among the penalties.
- There is no provision to forfeit the vessel, although the confiscation may amount to forfeiture.

KINGDOM OF SAUDI ARABIA

Regulations for Fishing, Exploitation and Protection of Live Aquatic Resources in the Territorial Waters of the Kingdom of Saudi Arabia, 1989

Note: The governing Law was not available in English.

1. USE OF TERMS¹

“Farming of live aquatic resources” refers to the cultivation of better and faster-growing live aquatic species”

- **Comment:** this would encourage the cultivation of better species, but does not cover aquaculture of common species for food security.

“Live aquatic resources” refers to all species of aquatic animals, plants, etc. which exist in sea waters and inland waters and which have economic and scientific value.

- **Comment:** although definition of fish by reference to economic and scientific value is consistent with the concept of “fish wealth”, it may exclude the application of these Rules to certain species. It does not take into account the value of these species for food security, recreation and cultural and social purposes. The definition of “value” itself could cause problems because of its subjective nature. Also, use of “etc.” is unclear, but this may be a translation problem.

“Zone of work” refers to inland waters, territorial waters and the exclusive economic zone in the Red Sea and the Arabian Gulf.

- **Comment:** the title refers to the Territorial Waters only; this inconsistency causes confusion in relation to the extent of the application of the Rules.

Comment

- Some key definitions that are missing include: fishing, sell, buy, import, export, trade, fish processing, fishing gear or equipment

2. OBJECTIVE, SCOPE AND APPLICATION OF THE LAW

2.1 Objective

The Rules do not contain an objective, such as sustainable use of fisheries, nor guiding principles, such as use of the precautionary approach.

2.2 Scope

Aquatic plants and animals that have scientific and commercial value.

2.3 Application

As noted under Item 1, it is unclear whether the Regulations apply to the territorial sea only (in the title), or also to the exclusive economic zone (in the definition of “zone of work”). They apply to investment, exploitation, employment, preservation, transportation, marketing, manufacture, handling, processing, diving, cultivation of live aquatic resources and the formation of cooperative societies.

¹ Section One.

Comment

- The scope of the Regulations is unclear.
- The application of the Law is unclear in terms of the kinds of fishing and fishing-related activities it covers (e.g. subsistence, artisanal, semi-industrial, industrial).
- The Law does not extend to nationals fishing outside areas of national jurisdiction.

3. INSTITUTIONAL AND POLICY PROVISIONS

3.1 Institutional

3.1.1 *Institutional responsibilities under this law*

The Competence and jurisdiction of the Ministry of Agriculture and Water are set out in Section Nine of the Regulations, Articles 98–120. This Section refers to:

- issue permits for fishing, exploitation of live aquatic species and diving;
- establish marine studies and research centres and conduct surveys for evaluation of marine wealth;
- encourage investment and provide guidance to preserve vital marine resources;
- encourage and organize financing by the Agricultural Bank of cooperative societies of fishers;
- allocate marine zones for fish farms, encourage relevant projects, provide technical supervision;
- issue instructions on fishing equipment, ascertain technical soundness;
- provide supervision on fishers and divers training centres;
- encourage implementation of fish farms inland and issue permits;
- develop fishing methods, equipment and tackle;
- organize posts operation for assessment of extracted aquatic wealth;
- issue preliminary approval for establishment of industries, etc. for processing and manufacturing aquatic products;
- conduct scientific, applied and economic research;
- designate prohibited zones and seasons;
- inspect gear and tackle, fishnets and preservation and refrigeration facilities;
- determine the number of permits and projects for inland and coastal waters;
- withdraw investment permits where projects are not implemented in two years;
- book violations, investigate cases, impose penalties;
- issue preliminary approval for the establishment of factories, workshops to manufacture fishing craft, tackle and marine engines;
- amend these regulations;
- monitor the validity of permits issued for fishing, diving and related craft, equipment and methods, and issue relevant ordinances and directives; and
- the Frontiers Corporation must provide the Ministry with names of fishers and divers prohibited from going to sea because of technical or security violations committed by them.

Cooperation is required under this section for specified activities with municipalities, the Frontiers Corps, Department and the Ministry of Interior. Elsewhere in the Regulations reference is made to compliance with specified requirements of or coordination with the Customs Department, Ministry of Commerce, Veterinary Quarantine Department, Ministry of Communications, National Organization for the Protection and Development of the Natural Environment Agricultural Bank and the Frontiers Corps.

3.1.2 Institutional responsibilities of institutions under related laws

The Regulations do not refer to related laws, but specify where compliance with the requirements of other government agencies is required (see 3.1.1, above)

Comment

- The competence of the Ministry of Agriculture and water is focused on a very broad range of activities in areas under the jurisdiction of Saudi Arabia, but does not cover Saudi nationals fishing elsewhere.
- International, regional and subregional cooperation, including through regional fishery bodies, is not covered.

3.2 Policy

There is no provision on the development or implementation of fisheries policy.

4. FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT²

4.1 Information

Information required for the issuance of permits is elaborated, and a general rule requires all fishing companies and establishments, fish farms, cooperative fishing societies and owners of industrial fishing craft to provide the Ministry with data and statistics on their annual production of aquatic species. However, there are no requirements for information to be provided for management and MCS purposes.

4.2 Management

4.2.1 Management plans

There is no provision for fisheries management plans.

4.2.2 Regulation

Regulation is effected through permit issuance, fishing prohibitions (including fishing zones and seasons), trade and environmental prohibitions (disposal at sea of waste materials) and cutting weeds and grasses in coastal areas, etc. without a permit.

4.2.3 Closures

The Minister may ban fishing in coordination with the Concerned Authorities

4.2.4 Prohibitions

4.2.4.1 Gear, area, seasons

Fishing prohibited as designated by the Ministry: during breeding seasons. The Ministry has general authority to designate seasons and zones in which fishing is prohibited.

² Chapter Six: Protection of Live Aquatic Resources. Articles 58–66.

4.2.4.2 Size, species

Fishing prohibited unless permitted by Ministry: marine mammals, commercial fishing for indigenous species, fishing for trade in ornamental fish, coral flora and seashells.

4.2.4.3 Activities

Activities prohibited unless permitted by Ministry: construction or industrial projects in coastal areas, introduction of non-indigenous fish, reclamation of land in coastal areas.

4.2.5 Marine reserves

No provision.

4.2.6 Transshipments

No provision.

4.3 Development

Provisions focusing on the development of fisheries (through management measures) are not included. The provisions of the legislation generally encourage the development of production, for example the Ministry is required to “act in all possible ways to develop fishing methods, equipment and tackle...”

Comment

- There is no provision for declaring, or cooperating in the declaration of, endangered species.
- The Minister is expressly empowered to ban fishing, but not to ban the import of specified equipment and gear (although the importation of banned equipment and gear is prohibited).
- The Ministry is not expressly empowered to ban the processing, trade, import, export, transportation, selling and exhibiting for sale of species of fish if there is a threat to public health or if it is necessary for the protection and sustainability of the resource.
- There is no clear requirement for the Ministry to keep databases of licences, registration, fishing activity and other relevant activities except, or for information on fishing and fishing-related activities to be promptly provided by permit holders.
- There is no requirement for persons engaged in activities to give, at all times, information that is true, complete and accurate.
- There is no requirement or authority regarding confidential information.
- There are no requirements to implement port State measures, especially those relating to information, access, use of port and inspection.
- There is no separate Section on fisheries development.

5. ACCESS REGIME

There is no apparent access regime; applicants for a licence for an industrial vessel must be Saudi Arabian nationals.

6. LICENSING SYSTEM³

- A Saudi citizen is entitled to practice the fishing profession as investor, professional or pedestrian fisherman, or as work hand, in accordance with the conditions in the Regulations. The conditions primarily relate to application for permits and the conditions that would be attached to them.
- Permits are required for the following:
 - fishing and shrimp fishing;
 - work hands;
 - conventional and industrial fishing craft; and
 - fishing of and trade in ornamental fish, coral flora and seashells.
- Written permission or approval is required for the following:
 - construction or industrial projects in coastal areas;
 - introduction of non-indigenous live fish;
 - commercial fishing of indigenous live fish in local waters;
 - fishing for marine mammals;
 - cutting weeds, trees, etc. in coastal areas;
 - reclamation of land, construction of embankments and execution of excavations along the coastal waters;
 - export of local live aquatic products; and
 - the establishment of factories, laboratories or utilities for the manufacture or processing of fish.

Comment

- Conditions for the grant of permits are specified, but there are no general conditions based on reasons relating to fisheries management for suspension, revocation, cancellation or denial of a permit.

7. INTERNATIONAL ASPECTS

Saudi Arabia ratified the 1982 United Nations Convention on the Law of the Sea on 24 April 1996.

Comment

- There are no provisions relating to international aspects, such as international fisheries cooperation, or for fishing by Bahrainis beyond areas of national jurisdiction.

8. MONITORING, CONTROL AND SURVEILLANCE (MCS)⁴

The Ministry has the right to inspect fishing gear and tackle, fishnets and preservation and refrigeration facilities used by professional and investing fishermen and companies and establishments, and permit holders must provide certain information before permit issuance, and can be required to report annually. Other than this, there are no substantive provisions relating to MCS.

Comment

- There are no provisions relating to the appointment and powers of inspectors.
- There is no provision designating who, in addition to inspectors, may search and seize vehicles, search buildings or processing plants, or to undertake dockside inspection.
- There is no indication of the requirements for making an arrest.

³ Throughout the Regulations.

⁴ Section Nine: Competence and Jurisdiction of the Ministry of Agriculture and Water. Article 112.

- There are no provisions expressly explaining the duties of the authorized officers/inspectors during an inspection (e.g. to show identification when requested) and duties owed to the inspectors by those inspected (e.g. provide information, documents).
- There are no requirements for regular reporting by the licensee or monitoring by the Ministry.
- There are no laws addressing modern MCS compliance tools, such as requirements for vessel monitoring systems.
- There are no provisions that foreshadow the possibility of regional or international cooperation in fisheries MCS, such as Lacey Act-type provisions, authorization of officers beyond areas of national jurisdiction, etc.
- There are no provisions empowering inspectors to disable vessels that are under investigation.

9. POST-HARVEST, TRADE

9.1 Processing/handling/sale/marketing

Craft for transport of fish are to be equipped with refrigerators for preservation of catch in a healthy form and good condition from the fishing site to market, provided that the facilities are used only for the transport of fish. Also, the permission of the Ministry is required for the establishment of factories, laboratories or utilities for the manufacture or processing of fish, but no further responsibility regarding post-harvest conditions or requirements is referenced.

9.2 Trade/import/export

Trade in ornamental fish, coral flora and seashells requires a permit from the Ministry, and the export of local live aquatic products requires the Ministry's permission. Otherwise, trade, import and export of illegally caught fish are not regulated under this instrument.

Comment

- The Regulations do not refer comprehensively to post-harvest activities, or trade/import/export of illegally caught fish or other relevant items.

10. EVIDENTIARY PROVISIONS

There are no evidentiary provisions.

Comment

- Evidentiary provisions specific to fisheries offences forms part of the best practices of many national fisheries laws. These include such areas as reversal of onus of proof and certificate evidence.

11. JUDICIAL/ADMINISTRATIVE PROCESSES

There is no provision for administrative offences.

Comment

- A process for the acceptance of fines through an administrative process forms part of the best practices of many national fisheries laws for expediency and effectiveness.

12. VIOLATIONS AND FINES/PENALTIES⁵

Fines are set at a maximum of ten thousand Saudi Riyals (around 1 950 euros) for and a minimum of one hundred Saudi Riyals (19.50 euros) for different categories of offence; punishment is doubled where the same offence is committed, but the fine for any one offence cannot exceed SR 10 000.

The vessel or its equipment and catch may be confiscated and seized.

The Competent Directorate may seize the fishing boats, compel the violator to remove or restore damages and suspend or cancel the licence of the violator.

Comment

- The maximum level of fine is comparatively low, considering the value of some fishing operations.
- Seizure and forfeiture of the fishing vessel and the equipment or tools used in committing the offence is not allowed. However, confiscation should apply to both, not to one or the other.
- Specific “serious” violations have been indicated in international instruments, so that the maximum fine or penalty could be considered for application, in order to serve as a deterrent. The Law does not clearly reflect the detail of these violations.
- There is no provision for a “continuing offence”; where the same illegal act is carried out over several days, each day can count as a separate offence.

⁵ Section Ten: Violations and Penalties. Articles 121–125.

UNITED ARAB EMIRATES

Federal Law No. [23] of the year 1999 concerning Exploitation, Protection and Development of the Living Aquatic Resources in the State of the United Arab Emirates

Ministerial Decision number (302) of the year 2001 for issuing the executive by-law of the Federal Law number (23) of the year 1999 concerning the exploitation, protection and development of the living aquatics in the United Arab Emirates

1. USE OF TERMS¹

“Living aquatics” is defined in both the Law and the Executive by-law. They refer to living aquatics, plants and animals...dwelling in the fishing waters...or that visit these waters. They both appear to refer to migratory and habitant creatures.

- **Comment:** living aquatic resources are defined as dwelling in water; this implies that this Act applies only to fish that are alive, and not to those which may not be alive when harvested. It is common to define “fish” or “marine resources” as including marine plants and animals, whether alive or not. This would also apply to fish taken from the water that are no longer living (e.g. through use of poisons).

“Fishing boat” is defined in both the Law and Executive by-law, and refers to a floating body used in fishing, regardless of its material.

- **Comment:** the definition requires proof that the vessel is in fact used for fishing. It does not include other elements used in national laws and international instruments, including: vessels “equipped to be used or intended to be used” for fishing; and vessels used for activities related to fishing (such as transshipment or transport vessels). It is not clear whether vessels used for fish processing fall within the scope of the definition.

“Fishing” is defined in both the Law and Executive by-law and refers to taking the living aquatic wealth from its natural habitat.

- **Comment:** this definition could make the law very difficult to enforce because of its focus on the act of extraction. It does not clearly explain that fishing includes preparations, searching for fish, and undertaking any other relevant activity. These elements broaden the scope of the law and are common in national and international laws.

“Fisherman” is defined in both the Law and Executive by-law and refers to everyone who practices fishing.

- **Comment:** this does not distinguish between people fishermen and those supporting fishing operations.

Comment

- Some key definitions that are missing include: sell, buy, import, export, trade, fish processing, operator, owner, foreign fishing vessels.
- The definition of “fishing waters” seems to be different in the Law and Executive by-law. The Law refers to territorial waters including regional waters, and the Executive by-law includes waters of the exclusive economic zone of the State.

¹ Law, Article 1; By-law, Article 1.

2. OBJECTIVE, SCOPE AND APPLICATION OF THE LAW

2.1 Objective

The Law and Executive by-law do not contain a general objective, such as sustainable use of fisheries, nor guiding principles, such as use of the precautionary approach. The Law and Executive by-law address the organization and regulation of the fishing profession, procedures for enrolment in the vessel register, fishing vessel licences, fisheries protection and development, circulation, processing and marketing, grants and loans to fishermen, export of fish, re-export and transit and general provisions.

2.2 Scope

Living: plants, animals.

2.3 Application²

The application of the Act relates to the internal waters, including coasts of islands, creeks, beaches and coasts of the State, territorial waters and (regional waters-law/exclusive economic zone-Executive by-law) and activities relating to fishing, handling, marketing, trade, export and re-export, transit and grants and loans to fishermen.

Comment

- The scope is not clearly stated in the legislation, but inferred from definitions.
- The application of the Law appears to be directed at professional fishing operations, but is unclear in terms of the kinds of fishing and fishing-related activities it covers (e.g. subsistence, artisanal, semi-industrial, industrial, recreational).
- The Law does not extend to nationals fishing outside areas of national jurisdiction.

3. INSTITUTIONAL AND POLICY PROVISIONS

3.1 Institutional

3.1.1 *Institutional responsibilities*

The Minister of Agriculture and Fisheries, under the Law:

- shall form a Fishing Regulation Committee in each Emirate. The Minister's Decree shall determine the chairman and members of the committee among whom there shall be a representative from the Ministry, the ministry of Communications, the Competent Authority, the Coast and Border Guards and the fishermen's cooperative societies in each Emirate;
- hears complaints from fishers where the application for his own or his boat registration was rejected within fifteen days as from the date of notification or receiving the decision of the Committee, and conclusively decides within fifteen days as from the date of submitting the complaint;
- determines the banned species of fish and marine creatures for catching for extracting their eggs, skins or fins, or for any other purposes;
- issues a decision for the system of loans and grants of fishermen containing the terms and conditions of granting and using such loans and the procedures of obtaining them;
- identifies the category of national fishermen who own fishing boats and depend on the fishing profession as their essential source of sustenance;

² Article 1 in both the Act and Executive by-law.

- decides the period of validity of a fish exporter card;
- agrees as appropriate with the Minister of Justice and Islamic Affairs and Awkaf, the employees of the ministry and the local government departments who will have the capacity of law officers to prove infringements of the Law and the decisions being issued in execution thereof;
- decides the form of registers to be kept, and the types of data and information for each register in relation to exports, re-exports or processing of fish;
- submits to cabinet for decision after coordination with the competent authorities the fees due for registration;
- issues the decisions regulating fishing and diving for hobbyists in accordance with the provisions of the Executive by-law; and
- issues the regulations after coordination with the competent authorities in the Emirates, and the decisions necessary to execute the provisions of this law.

The Minister of Agriculture and Fisheries, under the Executive by-law:

- hears complaints from fishers where the application for his own or his boat registration was rejected within fifteen days as from the date of notification or receiving the decision of the Committee, and conclusively decides within fifteen days as from the date of submitting the complaint;
- may decide to ban fishing gear or equipment during a certain period or in a certain ground;
- issues a decision, in coordination with the competent authority, to determine times and grounds where fishing is prohibited where studies and scientific research indicate that they are the seasons and grounds for fertilization and reproduction of fish species;
- issues a decision, in coordination with the fishing regulation committees in each Emirate, to ban catching small fishes under the permitted limits;
- issues a decision to form a central committee for fish loans;
- issues a decision to form sub-committees for grants and loans in the different parts of the country to study the applications submitted to them and to transfer them to the grants and loans central committee attached with its recommendations; and
- decides on the citizens, cooperative societies and companies which are allowed to carry on the export of live aquatic wealth caught in the fishing waters to outside the country.

The Ministry is the Ministry of Agriculture and Fisheries, and has the following responsibilities under the Law:

- issues an Exporter Card and boat licence/registration;
- keeps a general record practitioners of the fishing profession;
- issues executive by-laws to determine the form of the record and the enrolled data;
- issues a book's licence for fishing boats intended to be registered;
- member of the Fishing Regulation Committee;
- determines, in coordination with the Competent Authority, the number of the fishing boats permitted to fishing as well as the method of fishing;
- may require data in relation to a vessel's licence;
- identifies, in cooperation with the competent authority in each Emirate seasons, species and sizes and announces the same in the mass media and through the Ministry's offices in the regions and the fishermen's cooperatives;
- issues licences, in addition to those issued by competent authorities, to set up artificial coral reefs for scientific research purposes or for developing certain species of the living Aquatic Wealth;
- give private permission for ships to undertake scientific research, marine surveys or other ships for research or explorations or taking samples or studies in the fishing waters (competent authority permission also required);

- gives (in kind) grants, loans, and services to the fishers who practice or desire to practice the fishing profession; and
- receives a copy at least once a year of records kept by exporting fishers and craftsmen exporting, re-exporting or processing the living aquatics for registering the data and information relating to the live aquatic wealth associated to their activity.

The Ministry has the following responsibilities under the Executive by-law:

- issues a Captain's card;
- issues a boat's licence;
- keeps a general Register for fishing profession practitioners and their boats with required data fields, and gives certificates of registration;
- sets specifications for inscribing the name of the boat and its registration number on its front side;
- the competent authorities specify in coordination with the ministry prohibitions for fishing, anchoring and running of the fishing boats;
- notifies municipalities of the country, the competent authorities, committees and the fishermen cooperative societies in the Emirates and Fish Wealth Department in the Region about the minimum permitted size of fish for fishing;
- provides a letter of support for consideration by the veterinary quarantine authorities and the custom authorities as a condition of their approval for exporting ornamental fish;
- for aquaculture, coordinate with the competent authority to determine number and sizes of floating cages;
- considers, in cooperation with the competent authority, the applications for obtaining a licence for establishing and investing the commercial farms for aquatic organisms;
- issues a written licence authorizing the import of alien brood stock or larvae and to rear such species;
- issues a licence to establish artificial coral reefs for certain purposes after the approval of the fishing regulations committee and obtaining a licence from the competent authority;
- approve the importation of fishing gear or equipment;
- issues assistant Nokhada cards;
- issues special licences for scientific research and marine surveys, research, explorations or studies in the fishing waters;
- provides services to the fishermen who carry on or desire to carry on the fishing trade, and particularly boat engines repairing service at marine workshops of the ministry and fish extension services;
- presents grants and loans to the fishermen who carry on or desire to carry on the fishing trade. The competent department in the ministry will determine the form and kind of such loans and grants, and fishermen must shall repay grants and loans to the collection officer in the finance department of the ministry;
- issues licences for the export of local fish, and local fish exporters cards;
- issues licences for re-export of live aquatics caught outside the fishing waters; and
- receives records at least once a year from the exporters and craftsmen involved with exporting or re-exporting or processing the live aquatic wealth with specific information.

The competent authority is the competent authority in the concerned Emirate, and has the following responsibilities under the Law:

- issues the fishing licences;
- determines the conditions and procedures of the fishing licence;
- participates in the Fishing Regulation Committee;
- is consulted by the Ministry in determining the number of the fishing boats permitted to fish as well as the method of fishing;
- cooperates with the Ministry as it identifies the seasons, species and sizes where fishing is prohibited;

- gives special written permission for: diving for or catching ornamental fish; sport fishing; and establishing fish farms for investment;
- issues a licence for setting up artificial coral reefs for scientific research purposes or for developing certain species of the fish;
- issues written permission for scientific research to capture sea turtles, their eggs, tamper with their habitat, catching whales, sea cows, other sea mammals, oysters, sponges or coral reefs;
- sets up controls where there are prohibitions to circulate sell, market, consume, utilize or exploit in any aspect banned fish and other aquatics entirely or in a specific season;
- prescribes regulations to ensure cleanliness and hygienic conditions for fishing boats and other means of transporting living aquatics;
- prescribes by laws, regulations, by-laws and decisions hygienic and trade conditions for markets or stores where fish are sold;
- approves ships for Scientific research, marine survey, or other ships conduct any research or exploration or taking samples or any studies in the fishing waters, in addition to private permission from the Ministry;
- seals the certificate of origin for purposes of export;
- may not grant a licence to the companies and individuals for import and re-export of the live aquatic wealth caught outside the fishing waters unless after the applicant for licensing had obtained a private permit from the Ministry; and
- is consulted on who will have the power of law officers.

The competent authority has the following responsibilities under the Executive by-law:

- issues fishing licences;
- authorizes fishermen to carry on the fishing trade;
- has the (qualified) right to authorize whoever has completed twelve years of age to go to sea as an apprentice and grant him a special licence for such purpose;
- juridical officers are authorized to notify the competent authority of any violation to the Law and Executive by-laws;
- coordinates, after approval by the fishing regulation committees and as an outcome of studies and scientific research or to the public interest requirements, the use of certain fishing equipment in all the grounds and all year except for those banned by a decision from the minister during a certain period or in a certain ground;
- Minister coordinates to determine times and grounds for prohibition of fishing.
- issues a written licence for diving under certain circumstances;
- approves marine sport competitions, receives comprehensive reports;
- receives applications for establishing or investing in commercial living aquatic farms
- in establishing aquatic organism breeding farms, determines the number and sizes of floating marine cages in coordination with the Ministry;
- the Ministry in cooperation with the competent authority is to consider the applications for obtaining a licence for establishing and investing in the commercial farms for aquatic organisms;
- for importing and rearing alien species of brood stock or larvae after having obtained a written licence from the Ministry, the competent authority is to issue the licence after undertaking to take the maximum precautions for not infiltrating these species in to the local aquatic environment;
- after the approval of the Fishing Regulations Committee and obtaining a licence from the competent authority and the ministry, coral reefs may be established for purposes of scientific research or developing and enhancing certain species of the living aquatic wealth;
- issues licences (in addition to those issued by Ministry) to the owners of the existing marine coral reefs provided that they had not been established in designated places;
- may approve scientific research or enhancement of designated organisms otherwise prohibited on condition that the licence application contains certain information;

- issues a navigation licence for persons practicing diving as a hobby;
- controls the enforcement of prohibitions on circulating, selling, marketing, consuming or benefiting in any aspect from prohibited fish and marine organisms;
- decides rules relating to cleanliness and health conditions for fishing vessels and fish transport;
- issues the rules, regulations and decisions, together with the State, for the commercial and health conditions for the sale of fish in markets or shops;
- sets rules for products that are fresh, dried, canned, salted, smoked, cooled or frozen;
- approves scientific research and marine surveys or studies in the fishing waters;
- stamps the certificate of origin for export; and
- issues the licence for practicing exporting and re-exporting of live aquatics caught outside the fishing waters after obtaining a special permit from the Ministry.

The Fishing Regulation Committee has the following constitution and jurisdiction under the Law:

- ascertains the conformity of the enrollment data in the record and compares them with the required documents;
- examines and views the boat owned by the applicant for registering and enrolling its own particulars including measurement of length, width and depth by foot;³
- seeks necessary technical expertise for technical examination and testing of the fishing vessels;
- determines the number of labourers for each fishing vessel; and
- constitution: to be determined by Ministerial Decree, but members to include a representative from the Ministry, the ministry of Communications, the Competent Authority, the Coast and Border Guards and the fishermen's cooperative societies in each Emirate.

The Fishing Regulation Committee has the following responsibilities under the Executive by-law:

- investigates the conformity of the data written in the application for entering the Register with the required documents and to make sure that the fisherman had not been registered in more than one Emirate;
- examines and inspects the boat owned by the applicant for registration and enrolls data of measurements of length, width and depth in foot as well as year of manufacturing, type of the manufacturing material of the boat, kind of the engine fuel, engine number, capacity, navigation and safety equipments and the maximum limit of fishermen or worker on boat. The committee is entitled to seek technical assistance to check and inspect the boat;
- determines the fishing equipment allowed or banned fishing tools is subject to inspection in compliance with the provisions of fishing gear provided for in the federal law number (23) of the year 1999;
- defines the number of the recorded fishing boats being entered in to the Emirate;
- determines the spawning and reproduction seasons in the different grounds and scrutinizing permanently or temporarily, and control the prevention fishing in such grounds as well as scrutinizing the prevention of fishing small sized aquatics under the permitted limit;
- scrutinizes the prevention of establishing artificial coral reefs except for the purposes of scientific research or for developing certain kinds of fish after obtaining a licence from the ministry and the competent authority;
- scrutinizes the prevention of catching marine turtles of all kinds, sizes and ages or collecting their eggs or tampering with their places of existence and reproduction in the fishing waters, catching whales, cow fish (dugongs) and other marine mammals of all

³ It also includes year of manufacturing and its material, type and power of the engine, the boat's load limit, its name, number, kind and number of fishing equipment on board of the boat and the navigation and safety equipment.

kinds and sizes and extracting oyster, sponges and coral reefs except for the purposes of the scientific research and after obtaining a written authorization from the competent authority;

- exempts aged fishermen from requirements to submit a certificate of good reputation and conduct;
- approves the fishing gear and equipment used on the licensed fishing boats; and
- receives and decides on applications from licensed fishermen to set up fixed fishing equipment.

The Minister of Justice and Islamic Affairs and Awkaf:

- determines in agreement with minister of Agriculture and Fisheries and after consultation with the competent authority, the employees of the ministry, the competent authority and the local government departments who will have the capacity of law officers to prove infringements of the Law and the decisions being issued in execution thereof.

3.1.2 Institutional responsibilities of institutions under related laws

General reference is made in the introduction to the Law and Executive by-law to laws governing the mandates and activities of other relevant government agencies.

Specific reference is made to the duties of other agencies and the obligations to follow relevant laws in the Law and Executive by-law. For example, all ships or vehicles carrying imported fish products must take into consideration the provisions of the laws and regulations and decisions of the customs, veterinary quarantine and general health.

The Executive by-law provides that the veterinary quarantine authorities and the custom authorities shall not issue the approvals required for exporting ornamental fish without a licence and approval supported by a letter from the ministry.

The veterinary quarantine authorities must investigate the quantities and species of fish intended for export and their compliance with fisheries management measures prior to issuing the necessary health certificates.

Comment

- The responsibilities listed above appear are not consolidated in a separate Part on Institutions.
- The Law and Executive by-law clearly set out where coordination is needed between/among the Minister, the Ministry, the competent authority and the Committee.

3.2 Policy

There is no reference to the development or adoption of fisheries policy in the Law or the Executive by-law.

4. FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT⁴

4.1 Information

A number of requirements for information and data appear throughout the Law and Executive By-law as follows.

⁴ Law: Chapter Four, Protection and Development (Articles 22-35). Executive by-law: Chapter Four, Protection and Development (Articles 20–53). Information requirements appear throughout each instrument.

4.1.1 Law

- A general register is established in the Ministry for practitioners of the fishing profession and their fishing boats in the state. The Ministry determines the form of the record and through executive by- laws.
- The Fishing Regulation Committee has the authority to ensure that the data enrolled in the record conforms with legal requirements.
- Registered fishers must notify the Ministry of any amendment or change to the data in the application of registration or attached documents within a month of such amendment or change.
- The fishing licence must contain specified data.
- The exporting fishers and craftsmen involved in exporting, re-exporting or processing the living aquatics are required to keep proper records for registering the data and information relating to the live aquatic wealth associated to their activity. The form of the registers and the types of the data and information which must be registered is determined by Ministerial decision.

4.1.2 Executive by-law

- A general Register to record fishing practitioners is established in the Ministry and required data is specified.
- A general Register for fishing boats is established in the Ministry and required data is specified.
- The Fishing Regulation Committee has the authority to investigate to ensure that the data in the application record conforms to requirements, and that the fisher had not been registered in more than one Emirate.
- The fishers must notify the Ministry of any amendment or change to the data in the documents within a month of such amendment or change.
- The boat's licence must contain specified data.
- For fixed fishing gear, where the Committee approves the application, it must notify the competent Department and all the required data shall be recorded in a special register being established for purpose.
- Specified data is required for registration of the master, seine nets or enclosure surroundings and fish traps.
- A two-month local fish exporter card is issued by the competent department in the Ministry for those possessing a licence for exporting local fish, which must contain specified data.
- The holder of the fish exporter card must provide the competent department with comprehensive statistics and data about export operations.
- The exporters and craftsmen involved with fish exporting or re-exporting or processing must keep proper records for entering the data relating to their activity and provide the Ministry with a copy of the same at least once a year, and must include specified data, and
- Fishing and voyaging hobbyists must provide the Ministry with the information it requires about the live marine wealth.

4.2 Management

4.2.1 Management plans

There are no provisions requiring fisheries management plans.

4.2.2 Regulation

The Law and Executive by-laws each contain a chapter on Protection and Development, and include the prohibitions described below (with some stated exceptions). Section 3.1.1 on institutional

responsibilities, above, describes the regulatory authorities of the Minister, Ministry, competent authorities and Fishing Regulation Committees. In general, the Law and Executive by-law are both clear and flexible enough so that baseline requirements for prohibitions, permissions and information can be enhanced by additional requirements from time to time to respond to the changing needs of fisheries management.

4.2.3 Closures

The Ministry in cooperation with the competent authority in each Emirate identifies seasons and grounds where fishing (including for specific species or sizes) is banned temporarily or permanently.

4.2.4 Prohibitions

The following prohibitions appear in the Law and Executive by-law, and relate to gear, area and seasons, size/species and activities. Some of the prohibitions span two or more of these categories. The law and Executive by-law address essentially the same areas, with the by-law providing greater detail. Some labour-related prohibitions (activities by non-UAE citizens) were not addressed in this review.

4.2.4.1 Law

The Minister determines the banned species for fishing, extracting eggs, skins or fins or other purposes, and the following activities are prohibited:

- anchoring or sailing in prohibited fishing grounds;
- using banned fishing gear or equipment identified by the Executive by-laws;
- fishing during spawning seasons and in banned areas;
- except with special written permission: diving for/catching ornamental fish; sport fishing for competition, establishing fish farms for investment;
- fishing with trawl nets, bottom setting nets, nylon nets or driftnets;
- setting up artificial coral reefs;
- capturing, etc., sea turtles, whales, sea cows, other marine mammals, and extracting oysters, sponges or coral reefs;
- import, possess, sell and circulate unauthorized or banned nets, tools or equipment;
- sailing a fishing vessel without the owner or his representative (a UAE citizen);
- fishing with explosives that are harmful, toxic or anaesthetics for fish; and
- dumping remains of whales and fish in the fishing waters.

4.2.4.2 Executive by-law

Following are prohibitions provided in detail by the Executive by-law:

- anchoring or sailing in areas specified by the competent authorities in coordination with the Ministry, including certain areas and providing for certain exceptions;
- prohibits specified materials and equipment from use in the fishing waters;
- specifies equipment that may be used in fishing after approval by the Fishing Regulation Committee;
- permits use of the traditional inherited fishing methods which do not affect fish stocks, especially for pelagic and migratory fish, subject to the approval of the Fishing Regulation Committee;
- rules for using permitted fishing equipment;
- procedures for licensed fishers in setting fixed gear, beach seine nets or surrounding nets
- fishing during spawning seasons and grounds as indicated by scientific research, and determined by the Minister in coordination with the competent authority;
- catching undersize fish as determined by the Minister and not returning them to the sea;

- diving without a licence, to be issued under specified conditions;
- exporting ornamental fish without certification of a valid export card;
- marine sport competitions, unless specified conditions are fulfilled, including the approval of the competent authority through an official application;
- establishing or investing in commercial living aquatic farms, except by specified parties and in accordance with an application containing specified information;
- prohibiting/requiring specified activities for licensing aquatic organism breeding farms;
- establishment of artificial coral reefs except for specified purposes with the approval of the Fishing Regulation Committee and a licence, including providing specified information in the licence application, and requirement for the owners of existing marine coral reefs to obtain licences;
- catching marine turtles, collect, move, sell or trade their eggs or tamper with nests or reproduction places except for scientific study under licence; to be released if caught in nets;
- catching marine mammals, whales, dugongs, dolphins places except for scientific study under licence; to be released if caught in equipment;
- extracting oysters, sponges, coral reefs from the seabed places except for scientific study under licence;
- catching living aquatic resources to extract their eggs, skins, fins and any other parts thereof;
- importation of fishing gear or equipment without prior approval of Ministry;
- importing, possessing, selling, circulating and reserving specified fishing gear and equipment;
- sailing a fishing vessel without the owner or his representative, unless the representative meets specified conditions;
- throwing wastes of dead fish and carcasses of whales and sharks into the fishing waters; and
- diving, fishing and voyaging as a hobbyist, except under specified requirements.

4.2.5 Marine reserves

Marine reserves are referenced in the Executive by-law, but express authority to declare marine reserves is not provided.

4.2.6 Transshipments

There are no provisions regulating transshipment.

4.3 Development

Chapter Four of the Law and Executive by-law are both titled Protection and Development, but they relate primarily to the protection of fisheries. Development of the fishing industry is encouraged in Chapter Six of both the Law and Executive by-law through the granting of loans to fishermen and the provision of boat repair and extension services.

Comment

- The provisions relate to fishing, and there is little reference to regulation of activities affecting the marine environmental quality/habitats; this may be covered in other environmentally-based legislation.
- The coordination is clearly stated, between the Minister, Ministry, competent authorities and Committees.
- Although marine reserves are mentioned in the Executive by-law, there is no clear authority to declare such areas.

- There are no provisions directly empowering an authority to develop, or promote/facilitate the development of fisheries or categories of fisheries.
- There is no provision for declaring, or cooperating in the declaration of, endangered species as such although there is authority to prohibit the fishing for certain species.
- There is no clear provision prohibiting the processing, trade, import, export, transportation, etc. of illegally caught fish; a licence may be required for these activities but the conditions of licence might not prohibit such activities.
- There are requirements for information registers, and information which should be kept. The transparency of the process and use of the information received (e.g. for fisheries management, exchange and distribution) are unclear.
- There is no requirement for persons engaged in activities to give, at all times, information that is true, complete and accurate.
- There is no requirement or authority regarding confidential information.
- There are no requirements to implement port State measures, especially those relating to information, access, use of port and inspection.

5. ACCESS REGIME

There is no access regime; foreign vessels are not be permitted to fish in the fishing waters, including ships, boats, vessels, small boats yachts, launches, speed boats, ferries, doba, tugs tankers and other marine means.

6. LICENSING SYSTEM

Licensing requirements appear throughout the Law and Executive by-law. A range of activities for which licences, permission or approval must be given is provided throughout the Law and Regulations, described in section 3.1.1 of this paper under institutional responsibilities. The requirements for the application, information, decision-making process, data to be included on the licence, requirement to keep licence on board and produce on request, fees, period of validity, renewal requirements replacement of lost or damaged licences, are set out, and include licences for:

- fishing;
- fishing using fixed-net equipment;
- boat;
- fishing gear and equipment for use on the boat;
- setting up artificial reefs;
- fish exporter card;
- import and re-export of fish;
- seaman's apprentice licence;
- diving, hobby diving;
- marine sport competitions;
- establishing or investing in commercial living aquatic farms;
- owners of marine coral reefs to adjust status to licensee;
- navigation licence must be held by fishing and voyaging hobbyists;
- scientific research and marine surveys; and
- export of local fish.

The process and requirements are clear, but there is no provision for appeal of decision to issue the licence, or grounds or process for licence denial, suspension, cancellation or revocation.

Comment

- All fishing vessels and fishers are required to hold a licence.
- There is no general provision allowing suspension or revocation of licences for reasons of conservation and management or for cancellation as a penalty for violations.
- There is no provision for licences for chartered vessels or fishing beyond areas of national jurisdiction.
- There is no provision for control of “related activities” such as transshipment.

7. INTERNATIONAL ASPECTS

The United Arab Emirates signed the 1982 United Nations Convention on the Law of the Sea on 10 December 1982, but has not ratified.

Comment

- There is no provision empowering the Minister or other authority to consult counterparts in other concerned countries to cooperate in fisheries management, such as by setting up a joint plan to exploit and manage living aquatic resources in common areas, and coordinate or cooperate with respect to fisheries management and monitoring, control and surveillance measures.

8. MONITORING, CONTROL AND SURVEILLANCE⁵

Law officers are appointed from among the employees of the Ministry, the competent authority and the local government departments. Their appointment is made by a decision of the Minister of Justice and Islamic Affairs and Awkaf in agreement with the Minister of Agriculture and Fisheries after consultation with the competent authority.

The law officers may prove infringements of the Law and decisions made in its implementation. They are entitled to intercept, inspect and enter the places and bodies where relevant activities are taking place to ascertain the implementation of the Law and relevant decisions, except for dwelling houses, and may seize the infringing cases.

The law officers are authorized to notify the competent authority of any violation of the Law or Executive by-law, and may inquire from the fishermen and boat owners about their presence in the prohibited areas, send notices to them and impose punishments. They may also seize fishermen who sell and market undersized fish.

(Note: translation of “seize” is not clear in the contexts above. It may refer to seizure of the fish and arrest of the fishers.)

Comment

- There are no qualifications for law officers; they are chosen from among employees. The process for their appointment and their powers should be clear and transparent.
- It appears that the law officers would be carrying out duties of inspection, search and seizure, and perhaps arrest. It is not clear if these activities are to be carried out with other enforcement authorities, such as police officers.
- Powers of enforcement officers is normally clearly stated in fisheries laws to promote compliance (and allow prosecution for non-compliance) with key actions, such as inspection of vessels, vehicles, equipment, gear, places where fish is located, etc. For

⁵ Law, Article 57. Executive by-law, Article 20(e)

example, there are no provisions specifically allowing law officers to search and seize vehicles or undertake dockside inspection.

- These seem to be generally covered, but specific authority is not detailed.
- There are no laws addressing modern MCS compliance tools, such as requirements for vessel monitoring systems.
- There are no provisions expressly explaining the duties of the law officers during an inspection (e.g. to show identification when requested) and duties owed to the law officers by those inspected (e.g. allow and assist the inspection).
- There are no provisions that foreshadow the possibility of regional or international cooperation in fisheries MCS, such as Lacey Act-type provisions, authorization of inspectors/officers beyond areas of national jurisdiction, etc.
- The Law does not enable law officers to take measures necessary to prevent a continuation of the violation; this could extend to reasonable acts such as the disabling of a vessel.

9. POST-HARVEST, TRADE⁶

9.1 Processing/handling/sale/marketing

It is prohibited to circulate, sell, market, consume, utilize or exploit in any aspect prohibited/banned fish and other aquatics entirely or in a specific season.

Fishing boats and other means of transporting living aquatics must be equipped with refrigerators or ice-cooled insulation boxes or with means and technologies which satisfy the purpose and must ensure cleanliness and secure hygienic conditions as per regulations to be prescribed by the competent authority.

Sale of living aquatics is not permitted at markets or stores where hygienic and trade conditions prescribed by the laws, regulations, by-laws and decisions issued by the competent authority are not fulfilled.

Basic health standards must be considered in processing and drying living aquatics prior to marketing.

9.2 Trade/import/export

Export of the living aquatic wealth caught in the fishing waters is prohibited except under a decision by the cabinet and for specified categories and pursuant to a fish exporter card. The ban includes transit and transport or export of the living aquatics being caught in the fishing waters by any means whatsoever.

The executive by-laws determine the conditions and procedures of transit and re-export of the live aquatic wealth being caught outside the state.

To allow transit for live aquatics which were caught outside the waters of the country, a certificate of origin is required from the exporter's country specifying the intended destination and the boarded quantities and kinds, and the vehicle or other means of crossing the boarder in the country of origin must be overlaid with lead, and the consignment must not be dissociated or discharged except with the knowledge of the competent authority or the competent department.

⁶ Law and Executive by-law: Chapter Five: Circulation, Processing and Marketing; Chapter Seven: Export of Living Aquatics; Chapter Eight: Re-export and Transit.

The exporting fishers and craftsmen together with exporting, re-exporting or processing the living aquatics must keep proper records for registering the data and information relating to the live aquatic wealth associated with their activity.

Comment

- The provisions don't reflect modern technology and the power to use marketing and trade as compliance tools to combat IUU fishing.
- The law puts emphasis on the transporters or marketers, rather on the activity that they should be undertaking. For example, it requires fish transporters to be equipped with cold storage, but does not require that the fish be actually maintained in a safe and hygienic condition.
- The linkages and cooperation in practice between the competent department and concerned authorities is unclear, but this would allow flexibility for coordination.

10. EVIDENTIARY PROVISIONS

There are no evidentiary provisions.

Comment

- Evidentiary provisions specific to fisheries offences forms part of the best practices of many national fisheries laws. These include such areas as reversal of onus of proof and certificate evidence.

11. JUDICIAL/ADMINISTRATIVE PROCESSES

There is no provision for administrative offences.

Comment

- A process for the acceptance of fines through an administrative process forms part of the best practices of many national fisheries laws for expediency and effectiveness.

12. VIOLATIONS AND FINES/PENALTIES⁷

Act: Chapter five, Violations and Penalties. Articles 27–29.

Fines range from a maximum of four thousand dirham (about 830 euros) to a maximum one hundred thousand dirham (about 21 000 euros) or two hundred thousand dirham about (42 000 euros) for a second offence in four different categories of violations. Second offences also carry a minimum fine, ranging from one hundred thousand dirham to five thousand dirham (about 1 000 euros).

In each case, a minimum term of imprisonment is set in addition to payment of a fine. There is also provision for seizing and confiscating the boats and gear used in the violation.

Comment

- The maximum level of fine is comparatively low, considering the value of some fishing operations.
- There is no provision for licence revocation/cancellation.

⁷ The Law: Chapter Nine, Penalties, Articles 51–55.

- There is no provision for seizure and confiscation of fish.
- There is no provision for compliance tools to be used as penalties where there are reasonable grounds to suspect IUU fishing, such as denial of port services and denial of landing/trade.
- Separate provisions for violations of the regulations have not been made.
- Specific “serious” violations have been indicated in international instruments, so that the maximum fine or penalty could be considered for application, in order to serve as a deterrent. The Act does not clearly reflect the detail of these violations.
- There is no provision for a “continuing offence”; where the same illegal act is carried out over several days, each day can count as a separate offence.
- There is no provision for compensation for damage caused, e.g. to the environment and living aquatic resources.

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