

No. S 25

CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))

FISHERIES ORDER, 2009

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CONSTITUTION OF BRUNEI DARUSSALAM

(Order made under Article 83(3))

FISHERIES ORDER, 2009

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

PART I

PRELIMINARY

Citation and long title.

1. (1) This Order may be cited as the Fisheries Order, 2009.

(2) The long title of this Order is "An Order to consolidate the law relating to fisheries, fishing and fish processing and the marketing and distribution of fish and to make provision for matters connected therewith or incidental thereto".

Interpretation.

2. In this Order, unless the context otherwise requires —

"aquaculture" means the propagation of fish seed or the raising of fish through husbandry during the whole or part of the life cycle;

"authorised officer" means any person referred to in section 4(1);

"Brunei Darussalam fishing limits" means the limits set by or under section 3 of the Brunei Fishery Limits Act (Chapter 130);

"Brunei Darussalam waters" means all waters, whether navigable or not within Brunei Darussalam and that part of the seas adjacent to Brunei Darussalam both within and outside territorial waters, within which citizens of Brunei Darussalam have by international law the exclusive right of fishing; and where such part is defined by the terms of any treaty between Brunei Darussalam and any other State, includes the part so defined;

"country" means the country or territory in which a foreign fishing vessel is registered or to which the vessel belongs;

"directions" means any directions issued by the Director under section 9(1);

"Director" means the Director of Fisheries;

"enforcement officer" means any person referred to in section 4{2};

"enforcement vessel" means a vessel used by any enforcement officer for the purpose of the exercise of his powers under Part XIII;

"fish" means any aquatic animal or plant life, whether sedentary or not, and includes all species of fin fish, crustacean, molluscs, aquatic mammals or their eggs or spawn, fry, fingerling, spat or young, but does not include any species of otters, turtles or their eggs;

"fish seed" means fish egg, larva or post-larva of fish or the spawn, fry or fingerling of fish;

"fisheries plan" means any of the plans related to any fisheries as prepared by the Director under section 5;

"fishery" means any one or more stocks of fish which can be treated as a unit for the purpose of their conservation, management and development and includes fishing for any such stocks, and aquaculture;

"fishing" means —

(a) the catching, taking or killing of fish by any method;

(b) the attempted catching, taking or killing of fish;

(c) engaging in any activity which can reasonably be expected to result in the catching, taking or killing of fish; or

(d) any operation in support of or in preparation for, any activity described in paragraphs (a), (b) or (c),

but does not include sportsfishing;

"fishing appliance" includes a fishing net, fishing trap, fishing stakes and any gear, with or without floats, buoys or sinkers, designed for capturing fish and includes any such gear of hook-and-line type;

"fishing stakes" means any device used for fishing which is made up of poles or other supports fixed into the ground and enclosed by ramie, rattan, wire or other screening material and designed so as to lead fish in such enclosure;

"fishing vessel" means any vessel which is used for, equipped to be used for, or of a type used for —

(a) fishing; or

(b) aiding or assisting any vessel in the performance of any activity related to fishing, including any of the activities of preparation, processing, refrigeration, storage, supply or transportation of fish;

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

"inland fisheries" means fisheries in riverine waters;

"international fishery agreement" means any bilateral or multilateral treaty, which relates to fishing or fisheries, between the Government and the government of any other country or between the Government and any international organisation;

"international organisation" means the international organisation to which the foreign fishing vessel belongs;

"licence" means a licence issued under this Order;

"lobster fishing area" means any area established as a lobster fishing area under section 24(1);

"local fishing vessel" means any fishing vessel which is registered in Brunei Darussalam and which is wholly owned by one or more of the following —

(a) a citizen of Brunei Darussalam;

(b) a statutory corporation established under the laws of Brunei Darussalam;

(c) the Government;

(d) a body corporate or unincorporate established in Brunei Darussalam and wholly owned by any of the persons described in paragraphs (a), (b) or (c), or another body corporate or unincorporate wholly owned by any of the persons described in any of those paragraphs;

"marine culture system" means any establishment, structure or facility employed in aquaculture and includes on-bottom culture, cage culture, hanging-net culture, pen culture, pond culture, pole or stick culture, raceway culture, raft culture, rope culture and hatchery;

"marine park" means any area established as a marine park under section 26(1)(b);

"marine reserve" means any area established as a marine reserve under section 26(1)(a);

"master", in relation to a vessel, includes every person (except a pilot as defined in section 2(1) of the Merchant Shipping Order, 2002 (S 27/02)), having command or charge of the vessel or lawfully acting as the master thereof;

"Minister" means the Minister responsible for fisheries matters;

"owner", in relation to a vessel, means the person who owns the vessel and includes any charterer, sub-charterer, lessee or sub-lessee of the vessel;

"pollutant" means any substance or material that causes pollution;

"processed fish" means fish that has been cured, cooked, frozen or preserved in any manner and includes any product derived or manufactured wholly or partly from fish;

"prohibited gears" includes a spear gun, a device for electric fishing, explosives used for fishing and any other gear prescribed by the Minister;

"riverine waters" means the waters of any rivers, lakes, streams, ponds and such other waters within Brunei Darussalam, whether natural or man-made, privately owned or otherwise;

"sedentary species" means organisms which, at the harvest stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil;

"sportsfishing" means fishing for sport or pleasure only;

"vessel" means any boat, ship or other water-going craft and includes a hovercraft.

PART II

ADMINISTRATION

Director and Deputy Director of Fisheries.

3. (1) His Majesty the Sultan and Yang Di-Pertuan may appoint a Director of Fisheries and a Deputy Director of Fisheries for the purpose of carrying this Order into effect.

(2) The Director shall be responsible for the general supervision of all matters to which this Order relates.

(3) The Director may delegate the exercise of any power or the performance of any duty conferred or imposed on him by this Order to the Deputy Director of Fisheries or to such other person as he may think fit.

(4) The power of delegation under subsection (3) shall only be exercised by the Director personally.

Authorised and enforcement officers.

4. (1) For the purposes of this Order, the following persons are authorised officers —

(a) the Director and Deputy Director of Fisheries;

(b) any police officer; and

(c) any officer authorised by the Director in writing to carry into effect any specific provision of this Order or of any regulations made thereunder.

(2) For the purposes of this Order, the following persons are enforcement officers —

(a) any authorised officer; and

(b) any commanding officer and every member of the crew of any Government naval vessel or Government aircraft.

Fisheries plans.

5. (1) The Director shall prepare and keep under continual review fisheries plans based on the best scientific information available and designed to ensure the optimum utilisation of fishery resources, consistent with conservation and

management policies and with the avoidance of overfishing, and in accordance with overall national policies, development plans and programmes.

(2) Each plan and each modification or revision thereof shall be implemented after approval by the Minister.

(3) All development within the fisheries industry shall conform generally with the conservation and management policies described in the fisheries plans.

PART III

GENERAL PROVISIONS IN RESPECT OF LICENCES

Applications for and renewal of licence.

6. (1) An application for a licence shall be made to the Director in such form as the Director may determine and shall fulfill any requirements as the Director may impose.

(2) On application made to him for a licence, the Director may grant or refuse the application.

(3) The Director shall, on being satisfied that the applicant has fulfilled with the requirements referred to in subsection (1) and has paid the prescribed fee and any deposit that the Director may require, grant the application and cause the licence to be issued to the applicant.

(4) On application made to him for the renewal of a licence, the Director may, on payment of the prescribed fee, cause the licence to be renewed.

(5) The Director shall not grant an application made under this section if the applicant is disqualified pursuant to an order under section 30(2).

Issue of licence.

7. (1) Every licence shall be issued in the name of the applicant and in such form and subject to such conditions as the Director may determine.

(2) No licence shall be transferable.

(3) The Director may refuse to issue or renew any licence under this Order where —

(a) there has been a breach of any of the provisions of this Order or any of the conditions of the licence;

(b) he is satisfied that it is necessary to do so for the proper management of any particular fishery and in accordance with the fisheries plan applicable to that fishery and with any directions issued in the implementation of that plan.

Conditions.

8. (1) Any condition determined by the Director under section 7(1) shall be attached to the licence.

(2) Where he is satisfied that it is necessary or expedient for the proper management of fisheries to do so, the Director may vary the conditions of a licence, but due notice of such intended variation shall be given to the licensee who shall, if he so desires, have the right to be heard within such period as the Director may allow.

(3) A certificate by the Director stating that any condition in a licence was imposed or any variation thereof was made for the proper management of fisheries shall be conclusive proof thereof in any legal proceedings.

Directions.

9. (1) The Director may issue directions in writing in relation to the proper management of fisheries to be complied with by every person to whom they are applicable.

(2) Such directions may be displayed in such public places and for such period as the Director may determine.

Validity of licence.

10. Every licence issued under this Order shall, unless suspended, cancelled or the contrary is stated in the licence, expire on the 31st December of the year in which it is issued or renewed.

Cancellation and suspension.

11. (1) Subject to subsection (4), the Director may cancel or suspend for such period as he thinks fit, any licence if —

(a) the licensee has been convicted of any offence against this Order;

(b) there has been a breach of any of the conditions of the licence; or

(c) the Director is satisfied that it is necessary to do so for the proper management of any particular fishery in accordance with the fisheries plan applicable to that fishery and any direction issued in the implementation of that plan.

(2) The Director may cancel a licence if fishing operations to which the licence relates have not commenced within 3 months from the date on which the licence was issued.

(3) Where a local fishing vessel or a foreign fishing vessel ceases to be such a vessel, any licence issued in respect of the vessel shall be deemed to have been cancelled when the vessel so ceased to be a local fishing vessel or a foreign fishing vessel.

(4) Before the Director makes a decision to cancel or suspend a licence under subsection (1)/b) or under subsection (2), the Director shall give the licensee a reasonable opportunity to show cause why the licence should not be cancelled or suspended.

(5) When a licence has been cancelled or suspended under subsections (1) or (2), the Director shall cause notice of that fact to be served on the licensee.

Appeal.

12. (1) Any person aggrieved by the refusal of the Director to issue or renew any licence under this Order (except under section 17) or by the suspension or cancellation of any licence issued under this Order (except under section 17) may appeal to the Minister against such refusal, suspension or cancellation within 14 days after the date thereof.

(2) The Minister may, after hearing the appeal, make such order thereon as he thinks fit and that order shall be final.

(3) Any order made under subsection (2) shall take into account any scheme for the limitation of fishing effort for which provision is made in any fisheries plan.

PART IV

FISHING APPLIANCES

Fishing appliances.

13. (1) Any person who, in Brunei Darussalam waters —

(a) operates or allows to be operated, any fishing appliance without a licence;

(b) has in his possession or under his control, any fishing appliance without such a licence;

(c) sets up or causes to be set up any fishing appliance without a written approval from the Director prior to the issue of such a licence; or

(d) contravenes the conditions of any such licence or written approval,

is guilty of an offence.

(2) Written approval pursuant to subsection (1)(c) shall be subject to such conditions as the Director may impose.

(3) The Director shall refuse to grant an application for a licence under subsection (1)(a) if, in his opinion, the system would be likely to cause any obstruction to navigation or impediment to the natural flow of water within Brunei Darussalam waters.

PART V

MARINE CULTURE SYSTEM

Marine culture system.

14. (1) Any person who, in Brunei Darussalam waters —

(a) operates or allows to be operated, any marine culture system without a licence;

(b) constructs or establishes any marine culture system without a written approval from the Director prior to the issue of such a licence; or

(c) contravenes the conditions of any such licence or written approval,

is guilty of an offence.

{2} Written approval pursuant to subsection {1}/b/ shall be subject to such conditions as the Director may impose.

{3} The Director shall refuse to grant an application for a licence under subsection {1}/a/ if, in his opinion, the system would be likely to cause any obstruction to navigation or impediment to the natural flow of water within Brunei Darussalam waters.

PART VI

LOCAL FISHING VESSELS

Operation of fishing vessel.

15. {1} Any person who operates or allows to be operated any fishing vessel for the purpose of fishing —

{a/} without a licence;

{b/} in contravention of any condition of such a licence; or

{c/} in contravention of any direction,

is guilty of an offence.

{2} An application for a licence pursuant to subsection {1} in respect of a new fishing vessel shall be made before construction of the vessel is commenced and shall be accompanied by such plans, specifications or other information as the Director may require.

{3} The applicant may proceed with the construction of the new fishing vessel upon receiving the written approval to do so from the Director, subject to such conditions as may be specified therein.

{4} Where under a fisheries plan it is provided that no licence under this Part shall be issued for a specific type of fisheries unless the new fishing vessel is in replacement of a fishing vessel already issued with a licence for such type of fisheries, the Director shall not grant the application unless the fishing vessel to be replaced is disposed of in accordance with his directions.

Refusal to grant or renew application.

16. The Director may refuse to grant or renew an application for a licence under section 15(1) in respect of a new fishing vessel which was constructed without the approval of the Director or not in accordance with any conditions specified therein.

PART VII

FOREIGN FISHING VESSELS

Fishing etc. using foreign fishing vessels.

17. (1) No foreign fishing vessel shall be used or attempt to be used for fishing or for conducting any research or survey in relation to any fishery, in Brunei Darussalam waters unless —

(a) it is authorised to do so under any international fishery agreement between the Government and —

(i) the government of the country; or

(ii) any international organisation,

to which such vessel is registered or to which it belongs; and

(b) it is used for those purposes in accordance with a licence.

(2) Where a foreign fishing vessel is used in contravention of —

(a) subsection (1);

(b) any condition of a licence; or

(c) any directions,

the owner, master and every member of the crew of the vessel are guilty of an offence and on conviction, the owner and master are each liable to a fine not exceeding \$100,000, imprisonment for a term not exceeding 5 years or both and every member of the crew is liable to a fine not exceeding \$2,500, imprisonment for a term not exceeding one year or both.

(3) The reference in subsection (2) to "member of the crew" does not include an authorised officer who is on a foreign fishing vessel pursuant to any requirement of the licence.

Innocent passage through Brunei Darussalam waters.

18. (1) Except as provided in this section, a foreign fishing vessel shall not enter or remain in Brunei Darussalam waters.

(2) A foreign fishing vessel may exercise the right of innocent passage in Brunei Darussalam waters in accordance with this section and international law.

(3) The master of a foreign fishing vessel which is entering Brunei Darussalam waters for the purpose of exercising the right of innocent passage shall notify by radio any authorised officer or any commanding officer of any Government naval vessel of the name, the flag State, location, route and destination of the vessel, the types and amount of fish it is carrying and the circumstances under which it is entering Brunei Darussalam waters.

(4) Every foreign fishing vessel entering Brunei Darussalam waters for the purpose of exercising the right of innocent passage shall, without prejudice to any other written law and to any lawful requirement made thereunder, return to a position outside Brunei Darussalam waters as soon as the purpose for which it entered those waters has been fulfilled.

(5) Nothing in this section shall prejudice the right to use any foreign fishing vessel in accordance with any licence issued in respect of the vessel.

(6) Where a foreign fishing vessel is used in contravention of subsections (1) or (4), the owner, master and every member of the crew are each guilty of an offence.

(7) The master of a foreign fishing vessel who contravenes subsection (3) is guilty of an offence.

(8) Section 17(3) applies, with such variations as may be necessary, to subsection (6).

Undertaking to be included in international fishery agreement.

19. Every international fishery agreement referred to in section 17(1)(a) shall include an undertaking by the government of the country, or by the international organisation, which is a party to the agreement with the Government, to comply or ensure compliance by its fishing vessels with the provisions of this Order.

Application for licence.

20. An application for a licence may be made through the agent for the applicant in Brunei Darussalam, who shall undertake legal and financial responsibility for the activities to be carried out by the foreign fishing vessel.

Deposit.

21. (1) Without prejudice to section 20, the Director may require, on the issue of a licence, that such sum as he may determine shall be deposited in such manner as he directs as security for the activities to be carried on by the foreign fishing vessel.

(2) Any sum deposited pursuant to subsection (1) may be utilised to pay or defray any fine or claim which may be imposed or arise as a result of or through the activities carried out by the foreign fishing vessel and the balance of such sum, if any, shall be refunded on the expiry or cancellation of the licence.

Director to take account of certain matters in considering application for licence.

22. The Director shall, in considering an application for a licence, take into account the following matters —

(a) the needs of Brunei Darussalam fishermen and the provisions of the fisheries plans;

(b) the extent of co-operation given and contributions made by the country or international organisation, towards fishery research, identification of fish stocks, the conservation, management and development of fishery resources within Brunei Darussalam waters, and compliance with the laws of Brunei Darussalam relating to such resources by that country or international organisation in the development of the fishing industry of Brunei Darussalam, in the training of Brunei Darussalam personnel and the transfer of technology to the fishing industry of Brunei Darussalam;

(c) the terms of any international fishery agreement in force; and

(d) the reciprocity of treatment given to local fishing vessels by any country or international organisation.

PART VIII

SPORTSFISHING

Licence to hold or organise event etc.

23. Any person who holds or organises in Brunei Darussalam waters a sportsfishing event or tournament without a licence is guilty of an offence.

PART IX

LOBSTERS

Establishment of lobster fishing areas.

24. (1) The Minister may, by notification in the *Gazette*, establish areas in Brunei Darussalam waters as lobster fishing areas.

(2) In the notification under subsection (1), the Minister shall declare a closed time for lobster fishing.

(3) The limits of any area established as a lobster fishing area may be altered by the Minister by notification in the *Gazette* and the notification may also provide for the area to cease to be a lobster fishing area.

Restriction in relation to fishing for lobsters.

25. (1) Any person who —

(a) fishes for or has in his possession any lobster; or

(b) subject to subsection (3), operates or allows to be operated, a vessel with lobster traps or any other appliances for lobster fishing on board,

in a lobster fishing area during a closed time declared pursuant to section 24(2) is guilty of an offence.

(2) Any person who in Brunei Darussalam waters fishes for lobsters without a licence is guilty of an offence.

(3) Any person may transport lobster traps during a closed time for the purposes of the sale, purchase, repair or storage of those traps.

PART X

MARINE RESERVES AND MARINE PARKS

Establishment of marine reserves and marine parks.

26. (1) The Minister may, by notification in the *Gazette*, establish any area in Brunei Darussalam waters and, where appropriate, any adjacent or surrounding land, as —

(a) a marine reserve in order to regulate recreational and other activities in the area or part thereof to avoid irreversible damage to its environment; and

(b) a marine park in order to —

- (i) afford special protection to the aquatic flora and fauna of the area or part thereof and to protect, preserve and manage the natural breeding grounds and habitat of aquatic life, with particular regard to the species of rare or endangered flora and fauna;
- (ii) allow for the natural regeneration of aquatic life in the area or part thereof where such life has been depleted;
- (iii) promote scientific study and research in respect of the area or part thereof;
- (iv) preserve and enhance the pristine state and productivity of the area or part thereof.

(2) The limits of any area established as a marine reserve or marine park under subsection (1) may be altered by the Minister by notification in the *Gazette* and the notification may also provide for the area to cease to be a marine reserve or marine park.

Offence to do certain acts without a licence.

27. (1) Any person who, in any marine reserve or marine park, without a licence —

- (a) fishes or attempts to fish;
- (b) takes, removes or is in possession of any aquatic flora and fauna or part thereof, whether dead or alive;
- (c) collects or is in possession of any coral, dredges or extracts any sand or gravel, discharges or deposits any pollutant, alters or destroys the natural breeding grounds or habitat of aquatic life, or destroys any aquatic life;
- (d) constructs or erects any building or other structure on or over any land or waters within a marine reserve or marine park;

(e) anchors any vessel by dropping any kind of weight on or by attaching any kind of rope or chain to, any coral, rock or other submerged object; or

(f) destroys, defaces or removes any object, whether animate or inanimate, in a marine reserve or marine park,

is guilty of an offence.

(2) A licence to do any of the things referred to in subsection (1) may be issued where it is necessary for the proper management of the marine reserve or marine park or pursuant to any of the purposes referred to in section 26(1).

PART XI

INLAND FISHERIES

Promotion of development and management of inland fisheries.

28. The Director may promote the development and management of inland fisheries through —

(a) the conduct or co-ordination of research;

(b) the provision and maintenance of experimental and demonstration aquaculture stations, fishbreeding stations and training centres;

(c) the provision of advice and technical assistance;

(d) the provision of publicity and demonstration facilities and other connected services; and

(e) the provision of advice on measures for the prevention of fish diseases.

Regulations for this Part.

29. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for the proper conservation, development, management and regulation of inland fisheries and may, in particular and without limiting the generality of such power, make regulations for all or any of the following purposes —

(a) to promote and regulate aquaculture in riverine waters and in particular, provide for the leasing and licensing of lakes, swamps, mining

pools and other pools, land and other areas for the cultivation of fish, prescribe standards for the construction and operation of aquaculture establishments including the size and depth of ponds, measures for the prevention of fish diseases and controls over any particular species of fish which may be produced by cultivation;

(b) to regulate or prohibit any method of fishing in riverine waters or the use or possession of certain types of traps or nets, and to prescribe minimum mesh sizes for fishing nets;

(c) to prescribe the minimum weights and sizes of fish which may be caught in riverine waters for the purpose of sale, processing, consumption or sport, or to prohibit fishing for any prescribed species of fish;

(d) to designate persons, by name or office, to be licensing officers and to prescribe the powers to be exercised by such officers and by any officer authorised by the Director in writing in that behalf with respect to inland fisheries;

(e) for the purpose of the conservation of fish in riverine waters, to regulate and control the construction of any slides, dams or other obstruction, or the removal of sand or gravel or other alteration to the natural environment or habitat of fish; and

(f) to designate, prescribe, promote, provide or regulate any other matter for the proper conservation, development, management and regulation of inland fisheries.

PART XII

OFFENCES AND PENALTIES

Orders of court with respect to cancellation of licence.

30. (1) Where any person has been convicted of any offence against this Order, the court before which he is convicted may, in addition to any other penalty that may be imposed, order that any licence issued under this Order in relation to which the offence has been committed be cancelled.

(2) Where a licensee has been convicted of a second or subsequent offence under this Order, the court before which he is convicted may, in addition to any other penalty that may be imposed, order that such person be disqualified from holding a licence under this Order for a period not exceeding 5 years, and such person is guilty of an offence if he obtains or attempts to obtain any licence under this Order while he is so disqualified.

Fishing with explosives etc.

31. (1) Any person who —

(a) uses or attempts to use any explosive, poison, pollutant or other noxious substance, apparatus, prohibited gear or any other thing, for the purpose of killing, stunning, disabling or catching fish, or in any other way rendering such fish more easily caught;

(b) carries or has in his possession or under his control any explosive, poison, pollutant or other noxious substance, apparatus, prohibited gear or any other thing, with the intention of using such explosive, poison, pollutant or other noxious substance, apparatus, prohibited gear or thing, for any of the purposes referred to in paragraph (a); or

(c) is found in possession of or receives, any fish that is a prohibited species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) has been taken in contravention of the provisions of this Order, knowing or having reasonable cause to believe that it is such a fish,

is guilty of an offence.

(2) Any explosive, poison, pollutant or other noxious substance, apparatus or prohibited gear or any other thing referred to in subsection (1) found in the possession or under the control of any person shall be presumed to be intended to be used for any of the purposes referred to in subsection (1)/(a) unless the contrary is proved.

Aquatic mammals.

32. (1) No person shall fish for, disturb, harass, catch, sell or otherwise dispose of or take any aquatic mammal which is found in Brunei Darussalam waters.

(2) Where any aquatic mammal is caught or taken unavoidably during fishing, such aquatic mammal shall be released immediately or, if it is dead, the catching or taking thereof shall be reported to any officer authorised in writing in that behalf by the Director and the aquatic mammal shall be disposed of in accordance with such directions as the Director may determine.

(3) Any person who contravenes this section is guilty of an offence.

Wilful damage to fishing vessel etc.

33. Any person who wilfully damages or destroys any fishing vessel, fishing appliance or marine culture system is guilty of an offence.

Destroying incriminating evidence.

34. Any person who destroys or abandons any fish, fishing appliance, explosive, poison, pollutant or other noxious substance, apparatus, prohibited gear or any other thing with intent to avoid its seizure or the detection of any offence against this Order is guilty of an offence.

Taking or receiving fish from foreign fishing vessel.

35. Any person who takes or receives fish from a foreign fishing vessel without a licence is guilty of an offence.

Offence committed by partnerships, bodies corporate and agents and servants.

36. (1) Where a partnership is guilty of an offence against this Order, every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, is also guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where an offence against this Order which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of that body, or of any person purporting to act in any such capacity, he, as well as the body corporate, is also guilty of the offence and liable to be proceeded against and punished accordingly.

(3) In relation to a body corporate whose affairs are managed by its members, "director", in subsection (2), means any member of that body corporate.

(4) Where an offence against this Order is committed by any person acting as an agent or servant of another person, or being otherwise subject to the supervision or instruction of another person for the purposes of any employment in the course of which the offence was committed, that other person, without prejudice to the liability of the first-mentioned person, is liable under this Order in the same manner and to the same extent as if he had personally committed the offence if it is proved that the act which constituted the offence was committed with his consent or connivance or that it was attributable to any neglect on his part.

Compounding of offences.

37. (1) The Director and Deputy Director of Fisheries and any police officer not below the rank of Superintendent may compound any offence against this Order, except an offence under sections 15(1), 17(1) or 18, by collecting from the person

reasonably suspected of having committed that offence a sum of money not exceeding \$1,000.

(2) Where a fishing appliance and any fish caught is the subject-matter of any offence compounded under subsection (1), such fishing appliance and any fish caught may be confiscated and disposed of as directed by the Director.

Dangerous species of fish.

38. (1) Notwithstanding section 40, the Minister may provide in any regulations made under this Order which relate to the prohibition, regulation or control of the species of fish known as piranha or any other prescribed dangerous species of fish that a person who contravenes any provision thereof is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding one year or both.

(2) No prosecution in respect of an offence referred to in subsection (1) shall be instituted except with the consent of the Public Prosecutor.

Failure to comply with Order etc.

39. (1) Any person who does or attempts to do or causes or permits to be done or abets an act contrary to, or fails to comply with, the provisions of this Order or is in breach of the conditions subject to which any licence has been issued is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding one year or both.

(2) Where an offence is continued after conviction, there shall be payable by the offender for every day that the offence continues a fine not exceeding \$50, and where the offence continues for a period exceeding 10 days after conviction the offender is also liable to imprisonment for a term not exceeding 6 months.

Penalty for offences not otherwise provided for.

40. Any person who commits an offence against this Order, if no other penalty is provided, is liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding one year or both.

PART XIII

ENFORCEMENT

Powers of enforcement officers.

41. For the purpose of ensuring compliance with the provisions of this Order, any enforcement officer may, where he has reason to believe that an offence has been committed under this Order, without a warrant —

(a) stop, board and search any vessel within Brunei Darussalam waters and make any enquiry, examination and inspection concerning the crew, equipment or fishing appliances, or fish carried on board that vessel;

(b) stop, board and search, and inspect any vessel or vehicle transporting fish;

(c) require to be produced and examine any fishing appliance;

(d) examine any fishing stakes or marine culture system;

(e) require to be produced and inspect any licence, record, certificate or any other document required under this Order or under any generally accepted international rules and standards, and make copies of the same.

Powers of entry, seizure, arrest etc.

42. (1) An enforcement officer may, where he has reason to believe that an offence has been committed under this Order, without a warrant —

(a) enter and search any place in which he has reason to believe that an offence against this Order has been committed;

(b) take samples of any fish found in any vessel or vehicle inspected under section 41(b) or any place searched under paragraph (a);

(c) arrest any person who he has reason to believe has committed an offence under this Order;

(d) seize any vessel including its equipment, gear, furniture, appurtenances, stores and cargo, or any vehicle which he has reason to believe has been used in the commission of any offence or in relation to which any offences has been committed under this Order;

(e) seize any fish which he has reason to believe has been caught in the commission of an offence under this Order;

(f) seize any fish imported in contravention of regulations made under this Order;

(g) seize any explosive, poison, pollutant or other noxious substance, apparatus or prohibited gear or any other thing which he has reason to believe has been used, or was in the possession of someone, in contravention of section 31; or

(h) seize any unlicensed fishing appliance or marine culture system.

(2) Where any person is arrested by an enforcement officer, such officer shall comply with the provisions of section 33 of the Criminal Procedure Code (Chapter 7) as if he were a police officer.

(3) In effecting any seizure under subsection (1), an enforcement officer may use such force as may be reasonably necessary.

(4) A written receipt shall be given for anything seized under subsection (1).

(5) Where any vessel has been seized under subsection (1), the master and crew of the vessel shall take it to such port as the enforcement officer shall designate, being the nearest or most convenient port.

(6) The master of the vessel shall be responsible for the safety of the vessel, the crew and any other persons on board the vessel in bringing the vessel to the port so designated.

(7) If the master of the vessel fails or refuses to take the vessel to the port so designated, any enforcement officer or any person called upon to assist him may do so.

(8) If a vessel is brought to the port pursuant to subsection (6), no claim whatever may be made against any enforcement officer in respect of any death, injury, loss or damage occurring whilst the vessel is being brought to the designated port.

Power to investigate.

43. In relation to any offence against this Order, any authorised officer shall have the same powers of investigation as a police officer under Chapter XIII of the Criminal Procedure Code (Chapter 7).

Assistance to enforcement officers.

44. (1) Any enforcement officer exercising any power or performing any duty under this Order may do so with the aid of such persons as he reasonably requires to assist him in doing so.

(2) Any person called upon by any enforcement officer to assist him in the exercise of any of his powers or the performance of any of his duties under this Order shall not, without reasonable cause, refuse to render the assistance required and shall, when rendering that assistance, be deemed to be an enforcement officer.

Furnishing of information.

45. Any person who, when required in pursuance of this Order, fails to furnish any information or produce any document or any other thing relating to the commission of any offence against this Order or who furnishes any information which he knows or has reason to believe to be false or misleading is guilty of an offence.

Obstruction etc. of enforcement officers.

46. Any person who —

(a) wilfully obstructs or resists any enforcement officer in the exercise of any his powers and duties under this Order; or

(b) fails to comply with any lawful requirement imposed by any enforcement officer under this Order,

is guilty of an offence.

Authorised officers to declare office.

47. Any authorised officer, when exercising any of his powers or performing any of his duties under this Order shall on demand, produce to any person against whom he is taking action such identification or written authority to show that he is such an officer.

Limitation of liability.

48. (1) No action shall be brought against any enforcement officer in respect of any act or thing done or omitted to be done by him or by any of them in good faith and in the exercise, performance or purported exercise or performance, of any powers or duties under this Order.

{2} No action shall lie against any enforcement officer for any damage caused to any vessel (including its equipment, furniture, stores, cargo and fishing appliances), vehicle, aircraft, article or thing seized under this Order, unless there is evidence of negligence or malice.

{3} No person shall be entitled to any compensation for any expense incurred or damage occasioned by anything done or omitted to be done as mentioned in subsection (1), unless such damage was occasioned by negligence or malice and without reasonable cause.

Forfeiture.

49. Where it has been proved to the court that any vessel, vehicle, aircraft, article or thing seized under this Order is the subject-matter of or has been used in the commission of an offence against this Order, the court may order the forfeiture of that vessel, vehicle, aircraft, article or thing, notwithstanding that no person may have been found guilty of an offence.

Disposal of vessels etc. seized.

50. (1) Where any vessel, vehicle, aircraft, article or thing is seized under this Order and no prosecution has commenced in respect thereof, the vessel, vehicle, aircraft, article or thing shall be held for a period of one month from the date of seizure at the end of which period it shall be forfeited, unless a written claim thereto is received by the Director within that period from the person from whom the vessel, vehicle, aircraft, article or thing was seized.

(2) Where any written claim is received under subsection (1), it shall be referred by the Director to the court for its decision as to the disposal of the vessel, vehicle, aircraft, article or thing, which may, subject to section 51, be held pending the conclusion of the prosecution.

(3) The court shall issue a summons requiring the claimant and the person, if any, from whom the vessel, vehicle, aircraft, article or thing was seized to appear before the court and upon the appearance of the claimant or that person or upon his failure to do so after reasonable notice, the court shall proceed to examine the matter and make an order upon the facts proved.

Temporary return of vessels etc. seized.

51. (1) Where any vessel, vehicle, aircraft, article or thing is seized under this Order, the Director may temporarily return the vessel, vehicle, aircraft, article or thing to the owner thereof or to the person from whose possession, custody or control it was seized, subject to such conditions as the Director may impose and subject, in any case, to sufficient security being furnished to the satisfaction of the

Director that the vessel, vehicle, aircraft, article or thing shall be surrendered to him on demand and that those conditions, if any, shall be complied with.

(2) The security referred to in subsection (1) shall not be less than the aggregate value of the vessel (including its equipment, furniture, stores, cargo and fishing appliances), vehicle, aircraft, article or thing, the expenses incurred in the seizure of the vessel, vehicle, aircraft, article or thing and in any repatriation of the crew of the vessel, vehicle or aircraft and the maximum fine which could be imposed in respect of the offence.

(3) Any person who —

(a) fails to surrender on demand to the Director the vessel, vehicle, aircraft, article or thing temporarily returned to him under subsection (1); or

(b) fails to comply with any of the conditions imposed under subsection (1),

is guilty of an offence.

Costs of holding vessels etc. in custody.

52. Where any vessel, vehicle, aircraft, article or thing is held in the custody of the Government pending completion of any proceedings in respect of an offence against this Order, the costs of holding the vessel, vehicle, aircraft, article or thing in custody shall, if any person is guilty of that offence, be a debt due to the Government by the owner of the vessel, vehicle, aircraft, article or thing, and shall be recoverable accordingly.

Forfeiture and disposal of vessels etc.

53. (1) Where any person is guilty of an offence against this Order, the court may, in addition to any other penalty that may be imposed —

(a) order that the vessel (including its equipment, furniture, stores, cargo and fishing appliances), vehicle, aircraft, article or thing used in the commission of such offence or in relation to which such offence has been committed be forfeited; and

(b) order that any fish caught in the commission of such offence or the proceeds of the sale of any fish or other article of a perishable nature referred to in section 54, and any explosive, poison, pollutant or other noxious substance, apparatus, prohibited gear or any other thing used or intended to be used in the commission of such offence be forfeited.

(2) Any vessel (including its equipment, furniture, stores, cargo and fishing appliances), vehicle, aircraft, article or thing, explosives, poison, pollutant or other noxious substance, apparatus, prohibited gear or any other thing, or fish, ordered to be forfeited under subsection (1) or under section 50 shall be disposed of in such manner as the Director may think fit.

Sale of fish or other articles of perishable nature.

54. (1) Any fish or other article of a perishable nature seized under this Order may, on the direction of the Director, be destroyed or sold and the proceeds of the sale shall —

(a) be held to abide the result of any prosecution or claim;

(b) where there is no prosecution or claim, be paid to the person (if known) from whom the fish was seized, or otherwise shall be held for a period of one month from the date of such sale at the end of which period it shall be deemed to be forfeited.

(2) The Government shall not be liable to any person for any deterioration, howsoever caused, in the quality of any fish or other article seized under this Order.

PART XIV

JURISDICTION AND EVIDENCE

Presumption other than as to maps etc.

55. (1) Subject to subsection (2), where —

(a) any fish; or

(b) any fishing appliance or other equipment for fishing,

is found on board a foreign fishing vessel in Brunei Darussalam waters, the fish, fishing appliance or equipment shall be presumed, unless the contrary is proved —

(i) to have been caught in Brunei Darussalam waters; or

(ii) to have been used for fishing in Brunei Darussalam waters without a licence.

(2) A radio call from a foreign fishing vessel to any enforcement officer which is made before entering Brunei Darussalam waters —

(a) notifying that the vessel is exercising its right of innocent passage through Brunei Darussalam waters; and

(b) notifying its proposed route and the quantity of fish on board,

and showing proof, where the vessel is stopped, boarded and searched under Part XIII, that —

- (i) the fish on board are held in a sealed hold;
- (ii) the fishing appliance or other equipment for fishing are properly stowed and secured on the vessel so that they are not easily available for fishing; and
- (iii) the vessel is travelling through Brunei Darussalam waters from a point outside those waters to another point outside those waters by the shortest practicable route,

shall constitute a defence in proceedings for an offence against this Order.

Presumption as to maps etc.

56. For the purposes of this Order, a court shall presume that maps, plans or charts purporting to be made by the authority of the Government were so made and are accurate.

Proof of position of vessel.

57. (1) This section and section 58 shall apply for the purpose of proving in any legal proceedings the position of any vessel at any particular time or when any particular event occurred.

(2) Unless the contrary is proved, a document purporting to be an entry in the log book of an enforcement vessel certified by any enforcement officer shall be deemed to be such an entry.

(3) Unless in any legal proceedings the court otherwise directs, a document which is referred to in subsection (2) shall be received in evidence without the person who certified the entry or who gave the certificate having to be called as a witness.

Copy of log etc. of enforcement vessel.

58. A copy of the relevant entry in the log book of an enforcement vessel certified by any enforcement officer showing the position of any other vessel at any particular time or when any particular event occurred shall be presumed, unless the contrary is proved, to be the position of the vessel at that time or when that event occurred, as the case may be.

Evidentiary provision.

59. (1) The Director may grant a certificate with respect to any matter referred to in subsection (2).

(2) A certificate granted by the Director stating —

(a) that a licence was issued to an identified person on, or was suspended or cancelled on or with effect from, a date specified in the certificate;

(b) that any licence is or was, on a date specified in the certificate, in force in respect of an identified vessel;

(c) that any condition specified in the certificate is or was, on a date or during the period so specified, a condition of a licence;

(d) that an identified vessel is or was, on a date specified in a licence, entitled to fish or conduct any survey or research, at a location so specified;

(e) that an identified person is or was, on a date specified in the certificate, the owner, master or a member of the crew of a vessel so identified; or

(f) to the effect that the negative of any of the matters referred to in paragraphs (a) to (e) is the case,

shall be received in legal proceedings as evidence of that fact.

PART XV

GENERAL

Service of documents.

60. (1) Where any document is to be served under this Order on any person, that document may be served —

(a) in any case, by delivering a copy thereof personally to the person to be served;

(b) if the document is to be served on the master of a vessel, on a person employed on that vessel or on a licensee, by leaving the document for him on board the vessel with the person who is or appears to be in command or in charge of the vessel;

(c) by affixing a copy of the document to any conspicuous part of his usual or last known place of residence or the vessel; or

(d) by registered letter addressed to his usual or last known place of residence or if that person is a body corporate to its registered office.

(2) A document which is to be served on the master of a vessel registered in Brunei Darussalam or licensed under this Order may, if the master cannot be found, be served on the owner of the vessel or on the agent of the owner residing in Brunei Darussalam.

Exemption for certain purposes.

61. The Director may in writing, for the purpose of research or training or for the proper conservation and management of fisheries, exempt subject to such conditions as he may impose, any vessel or person from all or any of the provisions of this Order.

Registers of licences.

62. Registers showing particulars of the licences issued under this Order shall be in such form and maintained in such manner and kept at such place, as the Director may determine.

Division of Brunei Darussalam waters into zones.

63. (1) The Minister may, for the purposes of this Order, by order divide Brunei Darussalam waters into such number of zones as he may determine.

(2) In an order made under subsection (1), the Minister shall give to each zone the name or other identity by which it is to be known and the geographical co-ordinates specifying the geodetic datum in relation to each such zone.

(3) The Minister may cause to be prepared such charts as he thinks fit, showing the zones or any of the zones into which Brunei Darussalam waters are divided.

(4) A reference in a licence to a zone by the name or identity determined in an order made under subsection (1) shall be treated as a reference to the zone to which the order relates.

Regulations for Order, other than Part XI.

64. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations which he considers necessary or expedient for giving effect to and carrying out the proper conservation, development and management of fisheries, fishing and fish processing and in respect of related industries and for the implementation of the provisions of this Order, including but not restricted to all or any of the following purposes —

(a) to prescribe the number, nationality and composition of persons permitted to be employed or carried on fishing vessels;

(b) to establish the conditions to be observed by local and foreign fishing vessels within Brunei Darussalam waters including conditions relating to the stowage of their fishing appliances when not in use, and to regulate the conduct of their fishing operations generally;

(c) to provide for the licensing, regulation and management of any fishery;

(d) to establish closed seasons for fishing in any designated area, fishing for specified species of fish or fishing using specified methods of fishing;

(e) to prescribe limitations on the quantity, size and weight of fish caught and retained or traded;

(f) to prescribe minimum mesh sizes of nets;

(g) to designate prohibited areas for fishing in respect of all types of fish or certain species of fish or fishing using specific methods of fishing;

(h) to regulate activities in marine reserves and marine parks;

- (i)* to prescribe methods of fishing or fishing appliances;
- (j)* to provide for the licensing of fishing appliances and marine culture systems;
- (k)* to regulate or prohibit the erection, maintenance, working, repair and lighting of fishing stakes, fish aggregation devices and marine culture systems;
- (l)* to regulate the landing of fish, to provide for the management and control of fishing ports and fish-landing areas, and to appoint such agencies as may be required to effect such management and control;
- (m)* to prescribe standards for fish feeds;
- (n)* to prohibit or control the importation and exportation of live fish, including freshwater fish and aquarium fish, and in particular to prohibit or control the importation, sale, cultivation or keeping of live fish or any particular species of live fish which is not indigenous to any part of Brunei Darussalam waters;
- (o)* to promote and regulate aquaculture in Brunei Darussalam waters;
- (p)* to prescribe the conditions and procedures of application for any licence, certificate or other document required under this Order, their form and the amount of fees, deposits and security payable therefor;
- (q)* to provide for and improve the collection of statistics and to require any person engaged in fishing, marketing, processing or aquaculture to supply such information as may be required;
- (r)* to organise and regulate sportsfishing;
- (s)* to provide for the powers of authorised officers and fisheries officers;
- (t)* to prescribe penalties for offences;
- (u)* to provide for matters relating to the control and seizure of local and foreign fishing vessels;
- (v)* to provide for such other measures as are necessary or expedient to ensure that foreign fishing vessels are used for fishing within Brunei Darussalam waters or for fishing for sedentary species on the continental shelf only in accordance with the conditions of their licences;

(w) to require applicants for licences to execute bonds, make deposits or give other forms of security for the fulfilment of any obligation under their licences;

(x) to provide for compensation payable to the citizens of Brunei Darussalam or the Government in the event of any loss or damage caused by foreign fishing vessels to local fishing vessels, their fishing appliances or catches;

(y) to provide for the zoning, management development, control and protection of marine reserves and marine parks and for the purposes of Part X;

(z) to promote, regulate and carry out scientific research;

(za) to prescribe areas of Brunei Darussalam waters in which fishing shall be reserved to local fishing vessels and fishermen;

(zb) to prescribe areas in Brunei Darussalam waters through which foreign fishing vessels without a licence may pass to facilitate enforcement of the provisions of this Order and in such manner as not to deny or impair the right of innocent passage of such vessels;

(zc) for the control of endangered species of fish or to give effect to the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);

(zd) to control the movement of fish within Brunei Darussalam;

(ze) to prescribe measures for the control of fish diseases;

(zf) to provide for the management, development and control of lobster fishing areas and lobster;

(zg) to regulate any place used for processing, packing or storage of fish, the inspection thereof and the equipment therein, and to control by licensing any such place used for that purposes;

(zh) to control the methods of processing fish;

(zi) to regulate the inspection and examination of processed fish and fish to be processed and the standards for the control of the quality of such fish;

(zj) for the licensing, control and supervision and protection of any fishery and of the cultivation of fish or any particular species of fish;

(zk) the prescription of fees;

(zl) any other matter or thing required to be or which may be prescribed or regulated under this Order.

(2) Provision may be made in any regulations made under subsection (1)(zg) that any place to which that paragraph refers shall not be subject to the provisions of any other written law relating to the licensing of premises.

Amendment of Chapter 130.

65. Section 4 of the Brunei Fishery Limits Act is repealed.

Repeal of Chapter 61.

66. Subject to section 67, the Fisheries Act is repealed.

Savings.

67. (1) The persons holding the offices of Director and Deputy Director of Fisheries immediately before the commencement of this Order shall be deemed for the purposes of this Order to have been respectively appointed on the commencement of this Order to the same offices.

(2) Any licence issued under the Fisheries Act (Chapter 61) (repealed by this Order) which was in force immediately before the commencement of this Order shall remain in force for so much of the period remaining thereunder after the commencement of this Order.

(3) Any subsidiary legislation or appointment made, and any thing done, under the Fisheries Act (Chapter 61) (repealed by this Order) and in force immediately prior to the commencement of this Order and so far as it is not inconsistent with this Order, shall continue in force as if made or done under this Order, until it is amended, repealed or revoked under this Order.

Amendment of Fisheries Regulations.

68. The Fisheries Regulations are amended —

(a) by repealing regulation 2;

(b) in regulation 3, by substituting a fullstop for the semicolon at the end of paragraph (b) and by deleting paragraph (c);

(c) in regulation 5, by deleting paragraphs (a), (b) and (c);

(d) in the Schedule, by adding the following.—

"7. Sportsfishing \$50.00 per event or tournament".

Amendment of S 29/02.

69. The Fisheries (Piranha) Regulations, 2002 are amended, in regulation 4, by deleting "\$2,500 and to imprisonment for a term not exceeding one year" and by substituting "\$50,000, imprisonment for a term not exceeding one year or both".

Made this 5th. day of Jamadilakhir, 1430 Hijriah corresponding to the 30th. day of May, 2009 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM