

Fordham International Law Journal

Volume 5, Issue 1

1981

Article 2

A Proposed Fishery Conservation and Management Act for the Republic of China

Joseph W. Dellapenna*

Ar-Young Wang†

*

†

A Proposed Fishery Conservation and Management Act for the Republic of China

Joseph W. Dellapenna and Ar-Young Wang

Abstract

This article has two parts. It begins with the text of the proposed (fishery) act. Following the text is a brief section-by-section analysis of the proposed act.

A PROPOSED FISHERY CONSERVATION AND MANAGEMENT ACT FOR THE REPUBLIC OF CHINA

*Joseph W. Dellapenna**
and
*Ar-Young Wang***

INTRODUCTION

The Republic of China adhered to a very conservative posture with regard to the law of the sea until long after it could have justifiably adopted a more assertive stance in view of customary state practice.¹ Thus as late as 1979, the Republic of China still adhered to a three-mile limit for its territorial sea, with a broader defense identification zone and no exclusive fishery or economic zones.

In April, 1979, the two authors of this text were asked to prepare a position study for the Ministry of Research and Development of the National Executive Yuan of the Republic. This study, which was published in the United States in 1980,² recommended adopting a twelve-mile territorial sea, with a 200-mile exclusive economic zone and full implementation of the Republic's authority over its continental shelf.³

After several months of study the National Executive Yuan, on September 6, 1979, adopted a decree incorporating these recom-

*Professor of Law, Villanova University; B.B.A. 1965, University of Michigan; J.D. 1968, Detroit College of Law; LL.M. (Public International and Comparative Law) 1969, George Washington University; LL.M. 1975, Columbia University; Member of the State Bar of Michigan.

**Associate Professor of Accounting, California State University, Sacramento, and Associate Research Fellow, Academia Sinica (R.O.C.); B.A. 1969, Chungsin Provincial University; Ph.D. (Economics) 1975, University of Cincinnati; J.D. anticipated 1982, McGeorge Law School.

1. For an historical survey of the Republic of China's approaches to the law of the sea, see Chiu, *China And The Question Of Territorial Sea*, 1 INT'L TRADE L.J. 29 (1975). See also Li, *Sovereignty at Sea: China and the Law of the Sea Conference*, 15 STAN. J. INT'L STUD. 225, 233-40 (1979).

2. Dellapenna & Wang, *The Republic of China's Claims Relating to the Territorial Sea, Continental Shelf, and Exclusive Economic Zones: Legal and Economic Aspects*, 3 B.C. INT'L & COMP. L. REV. 353 (1980).

3. The Republic already claimed authority over the continental shelf, but had not moved aggressively to enforce this claim.

mendations as the new position of the Republic of China on law of the sea questions. We recommended at that time that the Republic enact a new fishery conservation and management act as the first step in implementing its new approach. This primary focus on fishing, exemplified in the statute analyzed in this article, is a common first step in establishing a state's authority under newly adopted exclusive economic zones.⁴ Typically, legislation required to achieve this first step centers on fishing in the waters of the exclusive economic zone, and on the living resources of the continental shelf. Supplemental legislation is often required to refine aspects of the claims made by the fishery act and to address other law of the sea issues. In light of the firmly emerging state practice with regard to fishing at that time as well as the pressing need for such legislation covering Chinese and foreign fishing off the coast of the Republic of China we felt that the area of fishery law was ripe for legislation. Accordingly we targeted other issues of the law of the sea: mineral extraction,⁵ scientific research,⁶ ocean dumping,⁷ and the rights of landlocked or geographically disadvantaged states⁸ as subject matter for subsequent legislation, both because state practice (including the negotiations on the new Law of the Sea Convention) had not yet agreed upon what the new customary international norms should be,⁹ and because the pressure to make immediate use of such rights or resources was not so great.¹⁰

Early in 1980, we were commissioned to draft a fishery conservation and management law. The proposed law was drafted in

4. See Krueger & Nordquist, *The Evolution Of The 200-Mile Exclusive Economic Zone: State Practice In The Pacific Basin*, 19 VA. J. INT'L L. 321, 355-68 (1979); Moore, *National Legislation for the Management of Fisheries Under Extended Coastal State Jurisdiction*, 11 J. MAR. L. & COM. 153, 154 (1979-80).

5. See, e.g. Informal Composite Negotiating Text, Third Conference on the Law of the Sea (Eighth Sess.), U.N. Doc. A/Conf. 62/W.P. 10/Rev. 1, April 28, 1979 [hereinafter cited as I.C.N.T.], arts. 56(1)(a), 60(1) 77, 80.

6. *Id.* arts. 56(1)(b)(ii), 245-49. See also arts. 238-65.

7. *Id.* arts. 56(1)(b)(iii), 193. See also arts. 192-237.

8. *Id.* arts. 69-70.

9. For recent reports of the latest developments at the Law of the Sea Conference, where debate now centers on these and related questions, see Oxman, *The Third United Nations Conference On The Law of the Sea: The Eighth Session (1979)*, 74 AM. J. INT'L L. 1 (1980). See also Dellapenna & Wang, *supra* note 2; and Loguè, *The Nepal Proposal For A Common Heritage Fund*, 9 CAL. W. INT'L L.J. 598 (1979).

10. Estimates of the portion of the world's fish catch which comes from exclusive fishing zones range as high as 90%, Shyam, *The Emerging Fisheries Regime: Implications for India*, 8 OCEAN DEV. & INT'L L.J. 35 (1980). Exclusive economic zones would not have anywhere near so great an impact on minerals or other resources which are available from the zone.

1980, and was presented to various officials of several ministries in December of 1980, and at a seminar in Taipei in January, 1981, attended by representatives of government agencies, the practicing bar, and the insurance industry. During the drafting process, the political climate in the Far East changed substantially. In particular, the Republic of the Philippines and the Republic of China began to experience great friction over conflicting fishery claims, friction which resulted in the loss of lives of Chinese fishermen. As a result of this and other political changes in the situation, the Republic of China has begun to reevaluate its forward posture on fishery management. Thus, at this writing (January 1, 1982) the statute has not been enacted. We cannot now predict whether or when the proposed draft may be enacted. Nevertheless, since the proposed text has been included in the seminar proceedings which were published in Taiwan, and there being no objection from the authorities in Taiwan, we have decided to publish the text in the United States at this time.

Clearly, the proposed act is not published as a prediction of precisely what the Republic of China will ultimately enact. Its publication does, however, serve to illustrate the thinking which is now going on in one Third World country as it attempts to modernize its fishery conservation and management practices. In this sense, it not only sheds light on what is going on in Taiwan today, but it also could serve as a model for other nations, similarly situated, which may be considering either enactment of such a law for the first time, or revision of such laws as they may already have for dealing with such matters.

The draft law is based on the United States Fishery Conservation and Management Act of 1976, as amended.¹¹ However the draft law differs in some important respects in that it reflects the specific situation of the Republic of China. These changes in part reflect careful study of other recently enacted fishing laws from many other countries,¹² an Informal Composite Negotiating Text from the Law of the Sea Conference,¹³ and the opinions of various

11. 16 U.S.C. §§ 1801-1882 (1976 & Supp. III 1979).

12. In particular those of Australia, The Fisheries Act 1952, ACTS AUSTRAL. P., Act No. 7 as amended by Fisheries Amendment Act; and Act No. 99 (1978); and of Japan, Law No. 31 of 1977. Other nations whose laws were studied are: Argentina, Bahamas, Canada, Denmark, Gilbert Islands, Guyana, Iceland, Mauritania, Mexico, Micronesia, Morocco, New Zealand, Pakistan, Papua-New Guinea, Poland, Senegal, Tuvalu, the Union of Soviet Socialist Republics, and the United Kingdom.

13. I.C.N.T., *supra* note 5.

expert commentators on the proper forms for such a law.¹⁴ Finally, some of these changes reflect our own appraisal of the needs of the Republic of China arising from its legal traditions and experiences as well as other circumstances confronting the Republic. The product represents a comprehensive working model suitable, with relevant terminological changes, to use by other countries. We feel the act is particularly applicable to those nations with greater fiscal restraints on their enforcement capabilities than the United States, and without the tradition of federalism characteristic of United States law. There was also a conscious effort to simplify the language of the proposed act to avoid potentially confusing language found in sections of the United States Act.

Major substantive differences between the United States Act and the proposed act are found with regard to: the definition of "highly migratory species" (§ 1.02(14)); the inclusion of definitions of territorial sea (§ 2.01) and exclusive fishing zone (§ 2.02); provision of special protection for traditional fishing (§§ 1.02(24), 3.01(4)); the broader grant of authority to the Minister (§ 3.02); the definition of authority of enforcement officers (§ 3.03); the creation, structure, and functioning of regional fishery councils (§§ 3.02(d), (e), (f), (g), (h) and 3.04); arrangements for foreign fishing (§ 4.03(c), (d)); and in defining and punishing forbidden acts (§§ 5.01(a)(11), 5.02, 5.06).

14. See Anderson, *A Classification of Fishery Management Problems to Aid in the Analysis and Proper Formulation of Management Problems*, 4 OCEAN DEV. & INT'L L.J. 113 (1977); Christie, *Regulation Of International Joint Ventures In The Fishery Conservation Zone*, 10 GA. J. INT'L & COMP. L. 85 (1980); Cross, *The Behavior of Licensed Fishing Firms: A Contrast With Sole Ownership*, 8 OCEAN DEV. & INT'L L.J. 201 (1980); Donaldson & PONTECORVO, *Economic Rationalization of Fisheries: The Problem of Conflicting National Interests on Georges Bank*, 8 OCEAN DEV. & INT'L L.J. 149 (1980); Fluharty & Dawson, *Management of Living Resources in the Northeast Pacific and the Unilateral Extension of the 200-Mile Fisheries Zone*, 6 OCEAN DEV. & INT'L L.J. 1 (1979); Johnson & Middlemiss, *Canada's 200-Mile Fishing Zone: The Problem of Compliance*, 4 OCEAN DEV. & INT'L L.J. 67 (1977); Kaczynski, *Distant-Water Fisheries of the East European Countries: Their Present Economic Status and Future Activities in the Northeast Pacific*, 6 OCEAN DEV. & INT'L L.J. 73 (1979); Ouchi, *A Perspective on Japan's Struggle For Its Traditional Rights on the Oceans*, 5 OCEAN DEV. & INT'L L.J. 107 (1978); Phillips, *The Economic Resources Zone—Progress for the Developing Coastal States*, 11 J. MAR. L. & COM. 349 (1980); Ramp, *Regional Law of the Sea: A Proposal for the Pacific*, 18 VA. J. INT'L L. 121 (1977); Rosenne, *Settlement of Fisheries Disputes in the Exclusive Economic Zone*, 73 AM. J. INT'L L. 89 (1979); Stanford, *Canadian Perspectives on the Future Enforcement of the Exclusive Economic Zone: A Paper in Diplomacy and the Law of the Sea*, 5 DALHOUSIE L.J. 73 (1979). See also Christy, *Fisherman Quotes: A Tentative Suggestion for Domestic Management*, U.R.I. LAW OF THE SEA INST., Occ. P. No. 19. (1973); Krueger & Nordquist, *supra* note 4; Moore, *supra* note 4; Oxman, *supra* note 9.

This proposed act does not attempt to displace all other laws of the Republic of China relating to fishing. Nor does it exhaust all the possibilities for new legislation to foster the development of the Chinese fishing industry. Many specific details are left for regulations to be adopted by the Minister in charge (here the Minister of Economic Affairs). The proposed act sets about to create the institutional structure necessary to administer a recently extended fishing jurisdiction, to define the authority to be asserted within this jurisdiction over native and foreign fishing, and to permit the creation and implementation of a sound fishing conservation and management policy within that jurisdiction.

We have chosen to present the text of the proposed act first. Following the text there appears a brief section-by-section analysis of the proposed act. In this analysis references were kept to a minimum as the purposes of the analysis is to explain the proposed act rather than to document its sources.

INDEX

PART I—GENERAL

- § 1.01 PURPOSES
- § 1.02 DEFINITIONS

PART II—THE FISHERY CONSERVATION AND MANAGEMENT AUTHORITY OF THE REPUBLIC OF CHINA

- § 2.01 THE TERRITORIAL SEA
- § 2.02 THE EXCLUSIVE FISHING ZONE
- § 2.03 THE FISHERY CONSERVATION AND MANAGEMENT AUTHORITY

PART III—NATIONAL FISHERY CONSERVATION AND MANAGEMENT PROGRAM

- § 3.01 NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT
- § 3.02 AUTHORITY OF THE MINISTER
- § 3.03 POWERS OF OFFICERS
- § 3.04 REGIONAL FISHERY CONSERVATION AND MANAGEMENT COUNCILS
- § 3.05 FISHERY CONSERVATION AND MANAGEMENT PLANS

PART IV—FOREIGN FISHING

- § 4.01 FOREIGN FISHING
- § 4.02 INTERNATIONAL FISHERY AGREEMENTS
- § 4.03 LICENSES FOR FOREIGN FISHING
- § 4.04 IMPORT PROHIBITIONS

PART V—SANCTIONS

- § 5.01 OFFENSES
- § 5.02 CANCELLATION OR SUSPENSION OF LICENSES
- § 5.03 CIVIL PENALTIES
- § 5.04 CIVIL FORFEITURES
- § 5.05 CRIMINAL PENALTIES
- § 5.06 JURISDICTION OF COURTS

I. STATUTE

Part I. *General*§ 1.01 *Purposes.*

The interpretation and application of this Act shall be guided by the intent of the Legislative Yuan to achieve the following purposes:

(1) to conserve and restore the fishery resources of the Republic of China within its exclusive fishing zone and on its continental shelf;

(2) to encourage the negotiation, implementation, and enforcement of international fishery agreements;

(3) to promote the development of the domestic fishing industry under sound conservation and management principles;

(4) to assure achievement of the optimum yield from fishery resources of the Republic of China;

(5) to avoid interference with recognized nonfishery uses of the high seas except as necessary for the conservation and management of fishery resources;

(6) to assure that the national fishery conservation and management program is based upon the best scientific information available; and

(7) to permit foreign fishing consistent with the purposes of this Act.

§ 1.02 *Definitions.*

As used in this Act, unless the contrary intention appears,

(1) the term "Chinese fish processors" means facilities located within the Republic of China for, and Chinese vessels used or equipped for, the processing of fish for commercial use or consumption;

(2) the term "Chinese harvested fish" means fish taken by Chinese vessels within any fishery for which a fishery management plan prepared under this Act has been implemented;

(3) the term "Chinese vessel" means any fishing vessel documented under the laws of the Republic of China which has been built in the Republic of China, or lawfully imported into the Republic of China, or has been sold or otherwise disposed of in the Republic of China after having been forfeited pursuant to any law thereof;

(4) the term "Continental Shelf" means the seabed and subsoil of the submarine areas adjacent to the coast of the Republic of China to a depth of 200 meters, or beyond to where the depth of the superjacent waters admits of the exploitation of the material resources of such areas;

(5) the term "Continental Shelf fishery resource" means living organisms of any species which are, at the harvestable stage, either immobile on or under the Continental Shelf, or unable to move except in constant physical contact with the Continental Shelf;

(6) the term "Council" means any Regional Fishery Conservation and Management Council established under § 3.04 of this Act;

(7) the term "fish" means all forms of marine animal and plant life;

(8) the term "fishery" means one or more stocks of fish which can be treated as a unit for purposes of conservation or management and which are identified on a geographical, scientific, technical, or economic basis, as well as fishing for such stocks;

(9) the term "fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish;

(10) the term "fishing" means the taking of fish, or any attempt or other activity likely to result in the taking of fish, or any activities at sea in support of such activities, including processing or carrying of any taken fish;

(11) the term "fishing vessel" means any vessel, boat, ship, or other craft which is used for, or equipped to be used for, or of a type which is normally used for fishing;

(12) the term "foreign fishing" means fishing by a vessel other than a Chinese vessel;

(13) the term "high seas" means all waters beyond the territorial seas of the Republic of China and beyond any foreign nation's territorial seas as recognized by the Republic of China;

(14) the term "highly migratory species" means species of fish which in the course of their life cycle, spawn and migrate over long distances in waters of the oceans;

(15) the term "international fishery agreement" means any international agreement relating to fishing to which the Republic of China is a party;

(16) the term "maximum sustainable yield", with respect to any fishery, means the largest amount of fish which may be taken without impairing the biological capacity of the fishery resource to replace the fish taken within the normal reproductive span of the fishery resource;

(17) the term "Minister" means the Minister of Economic Affairs or his delegates pursuant to § 3.02(a) of this Act;

(18) the term "national standards" means the national standards for fishery conservation and management set forth in § 3.01 of this Act;

(19) the term "officer" means any official of the Republic of China who is charged with enforcement under § 3.02(i) of this Act, which may include members of the military forces of the Republic of China;

(20) the term "optimum yield" with respect to any fishery, means the amount of fish which, in being taken, provides the greatest overall benefit to the nation, being derived from the maximum sustainable yield through modification based on relevant economic, social, and ecological factors;

(21) the term "person" means any individual (whether a citizen of the Republic of China or not), association, partnership, corporation or other entity (whether situated in the Republic of China or not), and the Republic of China or any foreign state of any political subdivision or agency or instrumentality thereof;

(22) the term "processing", in relation to fish, includes the work of cutting up, dismembering, cleaning, sorting, or packing;

(23) the term "take", in relation to fish, means to catch, capture, harvest, or take for commercial use or for consumption; and

(24) the term "traditional fishing" means fishing by indigenous inhabitants of island possessions of the Republic of China if the fish are taken by methods and equipment, and in boats, substantially in accordance with the tradition of those inhabitants and the fish are landed on those islands by the boat in which they were taken.

Part II. *The Fishery Conservation and Management Authority of the Republic of China*

§ 2.01 *The Territorial Sea.*

The territorial sea of the Republic of China comprises all waters enclosed between the baseline of the territorial sea and its outer limit as measured by a line every point of which is twelve nautical miles from the nearest point on the baseline thereof. The National Executive Yuan is authorized to proclaim the baselines of the territorial sea in accordance with the norms of international law, including archipelagic baselines over any groups of closely interrelated islands which form an intrinsic geographical, eco-

conomic, or historic unit. Baselines may be proclaimed along all or any part of the coast of the Republic of China as the National Executive Yuan determines to be appropriate. Where no baseline is proclaimed, the baseline shall follow the low-water line along the actual coast.

§ 2.02 *The Exclusive Fishing Zone.*

The exclusive fishing zone of the Republic of China comprises all waters contiguous to the territorial seas and enclosed between the outer limit of the territorial sea and a line every point of which is 200 nautical miles from the nearest point on the baseline of the territorial sea except where there shall be established a narrower breadth either by an international fishery agreement or by proclamation of the National Executive Yuan.

§ 2.03 *Fishery Conservation and Management Authority.*

The Republic of China shall exercise exclusive fishery conservation and management authority in the manner provided in this Act over all fish within the Republic of China's territorial sea and exclusive fishing zone, and over its Continental Shelf fishery resources. The Republic of China shall not exercise unilateral fishery conservation and management authority over highly migratory species, but shall cooperate with such international agencies as may exist, or be created, to manage highly migratory species.

Part III. *National Fishery Conservation and Management Program*

§ 3.01 *National Standards for Fishery Conservation and Management.*

Any fishery conservation and management plan prepared under this Act, and any regulation promulgated to implement any such plan, must be consistent with the following national standards for fishery conservation and management:

(1) conservation and management measures shall prevent over-fishing while achieving an optimum yield from the fishery;

(2) conservation and management measures must be based on the best scientific evidence available;

(3) conservation and management measures must, to the extent practicable, treat an individual fish stock as a unit, and must, to the extent practicable, treat interrelated fish stocks in coordinated ways;

(4) conservation and management measures must not discriminate unreasonably between different Chinese persons; when it may be necessary to allocate fishing privileges among various Chinese persons seeking to fish, a preference must be given to vessels engaged in traditional fishing, and after such preference is satisfied, any other allocation must be made in such a way that no person shall acquire an excessive share of such privilege, that the allocation is fair to all Chinese persons, and that the allocation is reasonably calculated to promote conservation;

(5) conservation and management measures shall promote economic efficiency in the utilization of fishery resources although such measures need not always treat economic efficiency as a paramount value;

(6) conservation and management measures must allow for variations among, and contingencies in fisheries, fishery resources, and catches;

(7) conservation and management measures, where practicable, must minimize administrative costs and duplication; and

(8) conservation and management measures must conform to guidelines established by the Minister based upon these national standards.

§ 3.02 *Authority of the Minister*

(a) *Delegation.* The Minister may delegate in writing, either generally or otherwise, to any employee, agency, or instrumentality of the Republic of China, all or any of his powers and functions under this Act, except that there can be no delegation of the power to delegate, or of the power to grant, transfer, or cancel a license to a foreign fishing vessel. No power to grant, transfer, or cancel licenses to Chinese persons or Chinese vessels shall be delegated to any person other than persons holding, or performing the duties of, an office in the Ministry of Economic Affairs. The performance by a delegate of a power or function properly delegated shall be deemed to have been performed by the Minister. All delegations by the Minister are revocable in writing at will, and no delegation shall prevent the performance of a power or function by the Minister personally.

(b) *Licenses.* The Minister shall issue such licenses as are required under this Act to persons or to vessels for fishing in, or in a specified area of, the waters under the fishery conservation and management authority of the Republic of China. No foreign person

or foreign fishing vessel shall be licensed to fish within the territorial sea of the Republic of China. Licenses issued under the Act shall be issued on a form prescribed by the Minister, containing all required information in both Chinese and English. The license shall identify the persons or vessels authorized to fish under the license, as well as the activities authorized by the license, and the location or locations where such activities are authorized. Licenses shall also require compliance with all terms of any applicable, approved fishery conservation and management plan under the Act, or of any applicable international fishery agreement. All such limitations shall be included by the Minister on each license, including, but not limited to: the class or classes of fish which may be taken, processed, or carried; the quantity of each class of fish which may be taken; the rate at which each class of fish may be taken; the methods or equipment that may be used to take, to process, or to carry each class of fish; and the beginning and ending effective dates of the license. No license shall be issued for a period greater than twelve months. Once issued, licenses may only be transferred with the approval of the Minister. A license to a vessel shall by itself authorize all activities by persons related to the vessel and reasonably necessary to carry out the activities of the vessel as authorized by the license, without separate licenses for the persons so acting so long as the names of the persons so acting are endorsed on the license by the Minister.

(c) *Fees.* The Minister shall prescribe the fees payable for the issuance of a license. Regulations may prescribe different fees for licenses to persons and to vessels, and according to different classes of persons, vessels, or activity. Any fees for licenses for foreign fishing must not exceed those fees allowable under an applicable international fishery agreement, if any.

(d) *Councils.* The Minister shall determine the number and geographic scope of Councils under § 3.04 of this Act, including the responsibility for any fish stock which extends across the usual boundary between such Councils. In such a case the Minister may direct the concerned Councils to prepare a joint plan. The Minister shall promulgate uniform regulations for such Councils as prescribed in § 3.04 of this Act.

(e) *Fishery Conservation and Management Plan Guidelines.* Within sixty days of the effective date of this Act, the Minister must issue guidelines based on the national standards of § 3.01 of this Act to assist in the preparation of fishery conservation and management

plans. Such guidelines shall be revised from time to time as the Minister determines necessary for continued compliance with the national standards in light of knowledge or information subsequently acquired.

(f) *Review of Fishery Conservation and Management Plans.* Within sixty days of the receipt of any fishery conservation and management plan, or any amendment to any such plan, prepared by a Council, the Minister shall review such plan or amendment, and either approve, disapprove, or partially disapprove such plan or amendment, notifying the Council in writing of such action along with the reasons for disapproval or partial disapproval and any changes which are necessary for the plan or amendment to be approved. The Minister may only approve plans or amendments which comply with the national standards and other provisions of this Act. The Minister shall consult with other departments of the government when the review of a plan or amendment involves matters normally within the jurisdiction of such other departments. When a plan or amendment is wholly or partially disapproved, the Council shall have forty-five days from the receipt of notice of such action to change its proposed plan or amendment and to resubmit it. Review of resubmissions must be completed within thirty days of receipt by the Minister.

(g) *Preparation of Fishery Conservation and Management Plans.* Whenever any fishery requires conservation and management and the appropriate Council fails within a reasonable time to develop and submit to the Minister an adequate fishery conservation and management plan, or any necessary amendment to such a plan, including failure to resubmit a plan or amendment which has been wholly or partially disapproved, the Minister shall prepare such a plan or amendment after consulting with other interested departments of the government. After preparing such a plan or amendment, the Minister must transmit such plan or amendment to any affected Council for consideration and comment, which comments are to be delivered to the Minister within forty-five days after receipt of such plan or amendment by the Council. After the expiration of the forty-five day period the Minister may implement his plan or amendment, taking into account any reasonable comments from such Council received within the prescribed time. No limited access provision, as described in § 3.05(b)(4) shall be included in any plan or amendment prepared by the Minister unless first approved by a majority of each appropriate Council.

(h) *Implementation of Fishery Conservation and Management Plans.* As soon as possible after approving or preparing any fishery conservation and management plan or amendment, the Minister shall publish such plan or amendment and any regulations which he proposes to implement concerning such plan or amendment. Interested persons shall be afforded at least forty-five days after such publication within which to submit, in writing, data, views, or comments on the plan, amendment, or proposed regulations. If, in light of such submissions, the Minister deems it necessary to accord interested persons a hearing, he may schedule a hearing on such questions as he chooses. In such event the plan, amendment, or regulation shall take effect after a reasonable time to consider the evidence presented at the hearing. Otherwise the Minister shall determine the effective date as any date reasonable in light of all the information available to him, including any written submissions received during the submission period. In no event shall a date be selected before the expiration date of the submission period for data, views, or comments. To the extent practicable, implementation shall be put into effect in a manner which does not disrupt the regular fishing season for any fishery. The Minister shall thereafter exercise a general responsibility to carry out the fishery conservation and management plan or amendment in accordance with the provisions of this Act.

(i) *Enforcement Arrangements.* The Minister shall designate in writing employees, holding office within the Ministry of Economic Affairs, as officers to enforce compliance with this Act and with any fishery conservation and management plan, amendment, or regulation implemented, or license issued, pursuant to this Act. The Minister may so designate office holders in other departments of the government, including the military forces of the Republic of China, upon agreement with the head of those departments, and pursuant to such agreement, may also utilize necessary resources and facilities of such other departments (including aircraft or vessels) to enforce compliance.

(j) *Emergency Action.* If the Minister finds that an emergency exists involving any fishery resource, he may promulgate emergency regulations to the extent required by the emergency without regard to the provisions of subsection (f), (g), and (h) of this section. Any emergency regulation which changes any existing fishery conservation and management plan shall be treated as an amendment to such plan for the period the emergency regulation is in effect,

which shall in no event be longer than ninety days. During this period, if the Minister so decides, the emergency regulation shall be processed in the same fashion as an amendment prepared by the Minister after which it may be permanently implemented.

(k) *Fisheries Research.* The Minister shall initiate and maintain a comprehensive program of fishery research to carry out and further the purposes, policies, and provisions of this Act. Such program shall be designed to acquire knowledge and information, including, but not limited to, statistics on fishing, biological research on the characteristics of fish stocks and their interrelationships, studies of the impact of pollution on fish, and other matters bearing on the abundance and availability of fish.

(l) *Annual Report.* The Minister shall report to the Executive and the Legislative Yuans, not later than March 1 of each year, on all activities of the Councils and of the Minister with respect to fishery conservation and management plans, their implementing regulations, and all other steps taken to conserve or manage fish under this Act during the preceding calendar year.

§ 3.03 Powers of Officers

(a) *Enforcement Responsibilities.* In enforcing compliance with this Act and any fishery conservation and management plan, amendment, or regulation implemented pursuant to this Act, any officer may

(1) enter, board, search, or inspect any fishing vessel which he has reason to believe is being, has been, or is intended to be, used for fishing subject to the fishery conservation and management authority of the Republic of China;

(2) enter, search or inspect any land or premises, or vehicle or equipment, within the jurisdiction of the Republic of China which he has reason to believe is being, has been, or is intended to be used for fishing in contravention of this Act;

(3) require any persons whom the officer reasonably believes is or has engaged, or intends to engage, in fishing subject to the fishery conservation and management authority of the Republic of China, to produce any license which may be required under this Act, under which the person claims to act and other identifying documents to prove the name and abode of such person, and to permit the inspection and copying of all or any parts of such documents, and to give any information the person may have with regard to any fish in his possession;

(4) require the master of, or other person in charge of, a fishing vessel which the officer reasonably believes is, has been or is intended to be, used in fishing subject to the fishery conservation and management authority of the Republic of China, to produce any licenses which may be required under this Act and other documents of such fishing vessel for inspection and copying of all or any parts of such documents;

(5) require the master of, or other person in charge of, a fishing vessel which the officer reasonably believes is, has been, or is intended to be, used in fishing subject to the fishery conservation and management authority of the Republic of China, to give complete information concerning the vessel, crew, any other persons on board, and any fish on the vessel;

(6) seize, detain, remove, and secure any fishing vessel (together with its gear, appurtenances, stores, and cargo), or any other thing, which he reasonably believes is being, has been, or is intended to be, used in contravention of this Act;

(7) seize, detain, remove, and secure any fish which he reasonably believes have been taken in contravention of this Act;

(8) seize, detain, remove, or secure any other evidence related to any violation of any provision of this Act;

(9) arrest any person whom he reasonably believes has violated any provision of this Act;

(10) sell any fish seized by him as directed by an appropriate court under § 5.04(d) of this Act; and

(11) in lieu of seizing or arresting, issue a citation for a suspected offense in accordance with regulations promulgated by the Minister.

(b) *Subordination of Officers.* In addition, officers shall comply with all orders and directions of the Minister, and of any court with jurisdiction over an arrest or seizure.

§ 3.04 *Regional Fishery Conservation and Management Councils.*

(a) *Establishment.* The Minister shall from time to time direct the establishment of one or more Regional Fishery Conservation and Management Councils, describing the geographic limits of the authority of each Council. Each Council shall, to the extent practicable, include the entire range of each fishery included within its geographic limits and the principle bases of operation for Chinese persons or Chinese vessels engaged in such fishery.

(b) *Voting Members.* The voting members of each Council

shall be one member appointed by the chief executive officer of each province or independent municipality included within the boundaries of the Council and an equal number of qualified individuals appointed by the Minister. In no event shall the Minister appoint less than three members, each of whom must be a qualified individual. An individual is qualified if he is knowledgeable or experienced with regard to the conservation, management, or harvesting of the fishery resources of the geographic area concerned. Appointments shall be for a term of three years. Initial appointments shall be staggered so that one-third of the appointments shall expire each year. Members may be reappointed. Any individual appointed to complete an unexpired term because of the occurrence of a vacancy shall only serve for the remainder of the term.

(c) *Nonvoting Members.* The nonvoting members of each Council shall be one representative of the Minister of Foreign Affairs, one representative of the Minister of Defense, one representative of the Ministry of the Interior, and one delegate elected by the fishermen of each province or independent municipality (or part thereof) included within the geographic limits of the Council. Except for not voting, the same provisions shall apply to these members as apply to voting members.

(d) *Transaction of Business.* The voting members of each Council shall elect a Chairman from among the voting members. A majority of the voting members shall constitute a quorum, but one or more such members designated by the Council may hold hearings. All decisions of any Council shall be by majority vote of the voting members. Each Council shall meet within the geographical area concerned at the call of the Chairman, or of a majority of its voting members, or of the Minister. Any voting member of a Council who disagrees with any matter which is transmitted to the Minister may submit a statement to the Minister setting forth the reasons for such disagreement.

(e) *Staff and Administration.* Each Council shall appoint an executive director and such other full-or part-time employees as the Minister determines to be necessary to the performance of its functions. The Minister or the head of another department of the government (upon request of the Council and approved of the Minister) shall designate personnel of their departments to assist the Council in the performance of its functions. The Minister shall provide each Council such administrative and technical support services, including offices, equipment, and supplies, as are neces-

sary for the effective functioning of the Council. The Minister shall furnish each Council with all relevant information in his possession, consulting with other departments of the government where necessary to obtain relevant information. Each Council shall determine and publish its organizations and procedures for carrying out its functions under this Act in accordance with such uniform standards as are prescribed by the Minister. The Minister shall pay appropriate compensations to all members and employees of each Council who are not otherwise paid by any government department or subdivision of the Republic of China for their services, any actual unreimbursed expenses of members of Council or of committees and panels in the performance of their duties, and any other costs which the Minister determines to be necessary to the performance of the functions of the Councils.

(f) *Committees and Panels.* Each Council shall appoint, establish, and maintain a scientific and statistical committee to assist it in the development, collection, and evaluation of biological, economic, social and other information relevant to the Council's work. Each Council shall appoint, establish, and maintain such other advisory panels as are necessary or appropriate to carrying out its functions.

(g) *Functions.* Each Council, in accordance with the provisions of this Act, shall:

(1) prepare and submit to the Minister a fishery management and conservation plan with respect to each fishery within its responsibility, and from time to time such amendments as it deems necessary;

(2) prepare comments on any fishery conservation and management plan transmitted to it under § 3.02(g) of this Act or on any application for foreign fishing licenses transmitted to it under § 4.03(b) of this Act;

(3) conduct public hearings at appropriate times and in appropriate places in the geographical area concerned to allow all interested persons an opportunity to be heard in the development of fishery conservation and management plans and amendments to such plans, as well as regarding the administration and implementation of the provisions of this Act;

(4) submit a report to the Minister before the first day of February each year on the Council's activities during the immediately preceding calendar year and other reports as requested by the Minister or as decided on by the Council;

(5) review on a continuing basis, and revise as appropriate, the numerical data required to be specified in § 3.05(a) of this Act;

(6) perform any other functions requested by the Minister; and

(7) conduct any other functions provided for in this Act or necessary to the foregoing functions.

§ 3.05 *Fishery Conservation and Management Plans*

(a) *Required Provisions.* Any fishery conservation and management plan prepared under this Act must:

(1) contain all conservation and management measures applicable to foreign fishing and to fishing by Chinese persons and Chinese vessels which are necessary and appropriate for the conservation and management of the fishery, consistent with the national standards of § 3.01 of this Act and any other applicable law;

(2) contain a description of the fishery, including, but not limited to the number of vessels involved, the types and quantity of fishing gear used, the species of fishing involved and their usual locations, probable management costs, actual and potential revenues from the fishery, and the nature and extent of traditional fishing and foreign fishing, if any;

(3) assess and specify the present and probable future condition of the fishery, including the maximum sustainable yield and the optimum yield, and include a summary of the information utilized in making such specification;

(4) assess and specify the capacity of Chinese persons and Chinese vessels to harvest the optimum yield on an annual basis, the portion of such optimum yield (beyond the capacity of Chinese vessels) which can be made available on an annual basis for foreign fishing, and the capacity of Chinese fish processors to process on an annual basis that portion of the optimum yield within the capacity of Chinese vessels;

(5) specify the pertinent data to be submitted to the Minister regarding the fishery, including, but not limited to, the types and quantity of fishing gear used, catch by species in number of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the processing capacity of Chinese fish processors;

(6) identify the classes of persons, vessels, or activities to which licenses should be issued and any limitations which should be imposed on each class of license;

(7) assess and specify the present and probable future supply of and demand for crewmen, including on what kinds of fishing boats, fishing locations, and probable duration of employment;

(8) assess and specify the minimum requirement of living space for each crewman in each boat and the sanitary equipment as well as working environment required;

(9) describe any required training for Chinese fishermen, including the number of hours in specified training courses;

(10) assess and specify the reasonable share of fishing gains to Chinese crewmen, including the premiums of crewmen's life and medical insurance;

(11) contain the schedule for scientific experiments on fisheries within the jurisdiction of the Council, including in detail the area of the fishery and the species of fish on which those experiments shall be performed as necessary for the fulfillment of the fishery conservation and management plan; and

(12) identify the financial sources and loan rates for fishery investment, whether for new investment or for replacement capital.

(b) *Discretionary Provisions.* Any fishery conservation and management plans prepared under the Act may:

(1) designate zones where, and periods when, fishing shall be limited or prohibited generally, or as to types of vessels or types or quantities of gear;

(2) establish specified limitations on the taking of fish based on area, species, size, number, weight, sex, incidental catch, total biomass and other factors;

(3) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels (and their equipment), including devices which may be required to facilitate enforcement of this Act;

(4) establish a system for limiting access to the fishery if necessary to achieve the optimum yield, but only by according preference to traditional fishing, and thereafter by taking into account all present participation in the fishery, historical patterns of fishing and dependence thereon, the economics of the fishery, the capability of fishing vessels used in the fishery to be diverted elsewhere, the cultural and social framework relevant to the fishery, and other relevant considerations; and

(5) prescribe such other measures, requirements, conditions, or restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

(c) *Proposed Regulations.* Any Council may prepare proposed regulations which it believes necessary to implement its fishery conservation and management plan or amendment, and may submit such proposed regulations to the Minister for his consideration in implementing the plan or amendment.

(d) *Confidentiality of Statistics.* Any statistics submitted to any Council or to the Minister in compliance with the requirements of this section of the Act shall be confidential and shall not be disclosed except when required under court order. The Minister shall adopt regulations necessary to protect such confidentiality. Nothing in this provision shall prevent a Council or the Minister from making public any statistics in aggregate or summary form which neither directly nor indirectly discloses the identity or business of any person submitting such statistics.

Part IV. *Foreign Fishing*

§ 4.01 *Foreign Fishing.*

(a) *In General.* After August 1, 1981, no foreign fishing is authorized for the fishery resources subject to the fishing conservation and management authority of the Republic of China except pursuant to a valid applicable international fishery agreement and for which a valid license under this Act has been issued. In no event shall foreign fishing be authorized for vessels of a foreign nation which does not accord substantially the same fishing privileges to Chinese vessels, if any, as are authorized for foreign fishing vessels under this Act.

(b) *Applicable International Fishery Agreements.* An applicable international fishery agreement must either be effective before the effective date of this Act, or be agreed to according to the provisions of § 4.02 of this Act. In either event, the governing international fishery agreement must meet the following conditions:

(1) each international fishery agreement must acknowledge the exclusive fishery conservation and management authority of the Republic of China as established in this Act;

(2) the foreign nation and its fishing vessels and personnel fishing pursuant to an international fishery agreement will obey all

regulations promulgated by the Minister pursuant to this Act, including any regulations promulgated to implement any fishery conservation and management plan approved under this Act;

(3) the foreign nation and its fishing vessels and personnel shall not, in any year, take fish in amounts exceeding such nation's allocation of fish under subsection (c) of this section;

(4) foreign vessels and their masters and crews shall comply with all orders of an officer pursuant to this Act;

(5) the license of each foreign fishing vessel shall be prominently displayed in the wheelhouse of such vessel, and all the terms of each license shall be complied with;

(6) mechanical position-fixing devices and identification equipment (such as transponders) must be installed and maintained in working order on each foreign fishing vessel as directed by the Minister;

(7) duly authorized Chinese observers shall be permitted on board any foreign fishing vessel which shall reimburse the Republic of China for such observers;

(8) all fees required under this Act shall be promptly paid;

(9) agents shall be appointed and maintained in the Republic of China who are authorized to receive and respond to any legal process issued in the Republic of China with respect to the vessel, its owner, or its operator;

(10) the foreign nation and the owner or operator of any foreign fishing vessel licensed under the agreement shall assume responsibility, in accordance with rules prescribed by the Minister, for the reimbursement of Chinese citizens for any loss of, or damage to, their fishing vessels, fishing gear, or catch which is caused by the fishing vessel of that nation, owner, or operator; and

(11) the foreign nation shall apply, pursuant to § 4.03 of this Act, for any required licenses, promptly deliver such licenses to each owner or operator of each vessel to which a license is issued under that section, and take appropriate steps under its own laws to assure that all such owners and operators comply with all the provisions of this Act and all provisions of the applicable license.

(c) *Allocation of Foreign Fishing.* That portion, if any, of the optimum yield of any fishery within the fishery conservation and management authority of the Republic of China which is beyond the capacity of Chinese persons or Chinese vessels to take on an annual basis shall be available to foreign fishing. The Minister of Foreign Affairs, in cooperation with the Minister, shall allocate this

available portion of the optimum yield among the foreign nations whose vessels are entitled to fish within the waters subject to the fishery conservation and management authority of the Republic of China. In making this allocation the two Ministers shall take into account:

(1) whether, and to what extent, the fishing vessels of such nations have historically engaged in fishing in such fishery;

(2) whether such nation is willing to, and does, cooperate with the Republic of China in fishery research, conservation, and management;

(3) whether such nation is willing to, and does, cooperate with the Republic of China in the management of highly migratory species or fisheries wholly or partially located outside the exclusive fishery conservation and management authority of any nation;

(4) the extent to which such nation imposes tariff or nontariff barriers to the importation of fish or fish products from the Republic of China; and

(5) such other matters as the Minister of Foreign Affairs deems appropriate.

(d) *Foreign Fishing Report.* The Minister of Foreign Affairs, in cooperation with the Minister, shall prepare and submit a report to the Executive and Legislative Yuans not later than the first day of July each year setting forth: a list by species of all allocations made to each foreign nation pursuant to this section; a list of all licenses issued pursuant to § 4.03 of this Act; and a list of all tariff and nontariff barriers imposed by such nations on the importation of such species from the Republic of China.

(e) *Preliminary Allocations and Licenses for Foreign Fishing.* Whenever the Minister of Foreign Affairs transmits to the Minister an application for a license under § 4.03(c) of this Act, and there is no applicable fishery conservation and management plan for the fishing involved, the Minister shall make a preliminary determination of the optimum yield for such fishery, the capacity of Chinese persons and Chinese vessels to take the optimum yield on an annual basis, and the portion available for foreign fishing, and an allocation of this portion among interested foreign nations. The Minister may also condition the issuance of licenses to take this preliminary allocation on the submission to the Minister of pertinent data as described in § 3.05(a)(5) of this Act and on compliance with conservation and management measures consistent with the national standards of § 3.01 of this Act and consistent with provisions of §

3.05 of this Act. Such preliminary allocation and license conditions shall remain in effect until revised by the Minister, or until the implementation of an applicable fishing conservation and management plan.

§ 4.02 *International Fishery Agreements.*

(a) *Negotiations.* The Minister of Foreign Affairs shall negotiate:

(1) international fishery agreements pursuant to the conditions in § 4.01(b) of this Act;

(2) boundary agreements as provided in subsection (b) of this section;

(3) international fishery agreements securing access of Chinese vessels to an equitable share of the fish within the exclusive fishing conservation and management zones of foreign nations;

(4) international fishery agreements governing access to, and conservation and management of, fish outside the exclusive fishery conservation and management authority of any nation; and

(5) any other agreement not in violation of any law of the Republic of China, or of international law, necessary and appropriate to further the purposes, policies, and provisions of this Act.

(b) *Boundary Negotiations.* The Minister of Foreign Affairs, in cooperation with the Minister, may initiate and conduct negotiations with any adjacent or opposite foreign nation to establish the boundaries of the fishery conservation and management zone of the Republic of China in relation to such nation in accordance with the norms of international law.

(c) *Nonrecognition.* The Republic of China shall not recognize the claim of any nation to an exclusive fishery conservation and management zone (or its equivalent) if such nation fails to recognize traditional fishing by Chinese vessels, or that highly migratory species are only to be managed by applicable international fishery agreements, or imposes conditions on the fishing of Chinese vessels within its claim or such a zone which are not related to fishery conservation or management.

(d) *Legislative Oversight.* No international fishery agreement shall become effective with respect to the Republic of China before the close of the first sixty calendar days of continuous session of the Legislative Yuan after the date on which the Executive Yuan transmits such agreement to the Legislative Yuan. If, during this time, the Legislative Yuan adopts a resolution disapproving the proposed

agreement, it shall not thereafter become effective until such time as the Legislative Yuan shall approve it, with or without modifications secured through further negotiations.

§ 4.03 *Licenses for Foreign Fishing.*

(a) *When Required.* On or after August 1, 1981, no foreign fishing shall be permitted within the exclusive fishing zone of the Republic of China, or for Continental Shelf fishery resources beyond that zone, unless such fishing is done from a vessel having on board a valid license issued under this section for such vessel.

(b) *Applications.* Each foreign nation with which the Republic of China has made an applicable international fishery agreement shall submit to the Minister of Foreign Affairs each year an application for a license under this section on behalf of each of its fishing vessels that wishes to engage in fishing described in this section. The application shall be made on forms prescribed by the Minister in consultation with the Minister of Foreign Affairs. Any application made under this section shall specify:

(1) the name and official number or other identification of each fishing vessel for which a license is sought, together with the name and address of the owner thereof;

(2) the tonnage, capacity, speed, processing equipment, type and quantity of fishing gear, and such other pertinent information with respect to each such vessel as the Minister may require;

(3) each fishery in which each such vessel wishes to fish;

(4) the estimated amount of fish (in tons) which each such vessel will take in each fishery during the time its license will be in force;

(5) the amount of Chinese harvested fish (in tons), if any, which each such vessel proposes to receive at sea;

(6) the proposed location, duration, and season for such fishing; and

(7) any other pertinent information and material which the Minister may require.

(c) *Approval.* Upon receipt of a proper and complete application for a license under an applicable international fishery agreement, the Minister of Foreign Affairs shall promptly transmit such application, together with his comments and recommendations thereon, to the Minister. The Minister of Foreign Affairs shall also promptly transmit a copy of the application to the appropriate Council. Each Council will prepare and submit within forty-five

days of receipt thereof to the Minister such written comments on the application as it deems appropriate, including recommendations, if any, with respect to approval and with respect to appropriate conditions and restrictions thereon. The Council shall consider the comments of any interested person in the formulation of its comments. The Minister, after consulting with other interested department heads, and taking into account the comments submitted by the appropriate Council, shall issue the license if he determines that the fishing described in the application will meet the requirements of this Act. In the case of any application which proposes to receive Chinese harvested fish at sea, the Minister may only approve such application to the extent that the portion of the optimum yield which (within the capacity of Chinese persons and Chinese vessels to take) is beyond the capacity of Chinese fish processors, and only after allocating such excess Chinese harvested fish among those foreign nations desiring their vessels to receive such fish at sea. The Minister shall promptly transmit a copy of each approved application with the conditions and restrictions to be attached to the license, or the disapproval of any application and a statement of his reasons therefor, to the Minister of Foreign Affairs for transmittal to the foreign nation involved. The Minister shall also transmit copies of these documents to the appropriate Council. When any application is disapproved, the foreign nation whose application was disapproved may submit a revised application under this section.

(d) *Conditions and Restrictions.* The Minister shall establish conditions and restrictions which shall be included on each license issued under this section and which must be complied with by the licensed fishing vessel, its personnel, and its owner or operator. Such conditions and restrictions shall include the following:

(1) all of the requirements of any applicable fishery conservation and management plan, of any regulations promulgated to implement such plan, or of any conditions or regulations adopted pursuant to a preliminary allocation of foreign fishing;

(2) the requirement that no license may be used by any vessel other than the fishing vessel for which it is issued without the approval of the Minister which must be endorsed in writing on the license;

(3) the requirements of § 4.01(b) of this Act;

(4) if there is no authorization to receive Chinese harvested fish at sea, then the restriction that no such fish shall be received at sea;

(5) if there is authorization to receive Chinese harvested fish at sea, then the maximum amount of such fish which the vessel may receive at sea;

(6) if there is authorization for the foreign fishing vessel to use Chinese Port facilities; and

(7) any other condition or restriction related to fishery conservation and management which the Minister prescribes.

(e) *Fees.* A reasonable schedule of fees shall be established and published by the Minister in consultation with the Minister of Foreign Affairs. In establishing such fees the Minister shall take into account the cost of administering this Act with regard to foreign fishing, including fisheries research, conservation, management, and enforcement, as well as the fees charged elsewhere for fishing by Chinese vessels within exclusive fishing zones claimed by other nations. Such fees shall be applied in a nondiscriminatory fashion to the vessels of each foreign nation which does not discriminate against fishing by Chinese vessels. The fees shall be paid by the owner or operator of any foreign fishing vessel for which a license is issued under this Act.

(f) *Issuance.* If a foreign nation notifies the Minister of Foreign Affairs of its acceptance of the proffered conditions and restrictions to its licenses, the Minister of Foreign Affairs shall promptly transmit such notification to the Minister. Thereafter, upon payment of the applicable fees, the Minister shall issue to such foreign nation, through the Minister of Foreign Affairs, licenses for the appropriate fishing vessels of that nation.

§ 4.04 *Import Prohibitions.*

(a) *Determinations by the Minister of Foreign Affairs.* The Minister of Foreign Affairs shall determine if:

(1) he has been unable to conclude with any foreign nation, within a reasonable time, an international fishery agreement allowing Chinese vessels equitable access to fisheries over which that nation asserts exclusive fishery management authority on terms not more restrictive than those established in § 4.04(d), (e), of this Act, because of either the refusal of such nation to negotiate with the Republic of China, or because such nation failed to negotiate in good faith;

(2) any foreign nation is not allowing Chinese vessels to fish for highly migratory species in accordance with a governing international fishery agreement, whether or not such nation is a party thereto;

(3) any nation is not complying with its obligations under an existing international fishery agreement concerning fishing by Chinese vessels in any fishery over which that nation asserts exclusive fishery management authority; or

(4) any Chinese vessel is seized while on the high seas in violation of any governing international fishery agreement, without any authorization from any other international agreement to which the Republic of China is a party, or in consequence of any claim of maritime jurisdiction which is not recognized by the Republic of China.

(b) *Prohibitions.* Upon making any of the determinations of subsection (a) of this section, the Minister of Foreign Affairs shall promptly certify the same to the heads of other interested departments of government. It shall thereafter be prohibited to import into the Republic of China any fish or fish products from the fishery involved, and also any other fish or fish product from the nation concerned if the Minister of Foreign Affairs finds this to be appropriate to carry out the purpose of this section. Such prohibitions shall continue until the Minister of Foreign Affairs certifies to the heads of other interested departments of government that the reasons for the imposition of the prohibition no longer exist.

Part V. *Sanctions*

§ 5.01 *Offenses.*

(a) *By Persons.* It shall be unlawful for any person to:

(1) violate any provision of this Act or any provision of any regulation promulgated, or of any license issued, pursuant to this Act;

(2) use any vessel to engage in any fishing within fishery conservation and management authority of the Republic of China without a valid license applicable to the activity in question, or to engage in fishing during a period when such license is suspended, or after it is canceled.

(3) violate any provision of, or regulation under, an applicable or governing international fishery agreement;

(4) refuse to permit any officer to board, and to search or inspect for purposes of enforcing this Act, any vessel under the person's control;

(5) forcibly assault, resist, oppose, impede, or intimidate, or interfere with any officer in the conduct of enforcement of this Act;

(6) resist a lawful arrest for any offense prohibited by this Act;

(7) ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act or any regulation, license, or international fishery agreement promulgated, issued, or entered into, under this Act;

(8) interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any offense prohibited by this section;

(9) make any false statement, or to furnish any information, which is false or misleading in any particular, in any application under this Act;

(10) give false or misleading information or to refuse to give information, to an officer when lawfully required by an officer to give information; or

(11) impersonate an officer.

(b) *By Vessels.* It shall be unlawful for any Chinese vessel, and its owner or operator, to transfer directly or indirectly, or to attempt to so transfer, any Chinese harvested fish to any foreign fishing vessel unless such foreign vessel has been issued a license under § 4.03 of this Act which authorizes the receipt at sea of Chinese harvested fish of the species concerned. It shall be unlawful for any foreign fishing vessel, and its owner or operator, to engage in fishing within the territorial sea of the Republic of China. It shall also be unlawful for any foreign fishing vessel to receive Chinese harvested fish at sea within the territorial sea or exclusive fishing zone of the Republic of China, unless in compliance with the conditions and restrictions of a valid license issued under § 4.03 of this Act authorizing such receipt. It shall be unlawful for any fishing vessel to engage in fishing in violation of any provision of, or regulation, license, or international fishery agreement, under this Act.

§ 5.02 *Cancellation or Suspension of Licenses.*

The Minister may cancel a license issued under this Act, or cancel such a license in its application to an area within the fishery conservation and management authority of the Republic of China, if the Minister is satisfied that there has been an offense under § 5.01 of this Act by the person to whom, or vessel to which (or its

owner or operator), the license has been issued, or if the civil penalty or criminal fine imposed under this Act has not been paid and is overdue. In such cases, if the Minister deems it appropriate, instead of canceling the license, the Minister may suspend the license for the period of time deemed appropriate, or to suspend the license in operative parts, including by imposing additional conditions and restrictions on the license. In the event of a cancellation or suspension, in whole or in part, of a license by the Minister, he shall give written notice to the holder of the license, and when the license is presented by its holder, the Minister shall endorse all such changes in Chinese and English on the license. After such written notice is given by the Minister, such license shall no longer be valid for any purpose until it is properly endorsed. Any license which is canceled or suspended for nonpayment of a civil penalty shall be reinstated by the Minister promptly upon the payment of the civil penalty together with the interest thereon at the prevailing rate. The Minister shall determine if any cancellation of any license shall be prejudicial to the right of the license holder to obtain a license for a subsequent year.

§ 5.03 *Civil Penalties.*

(a) *Assessment.* Any person who is found by the Minister, after notice and an opportunity to be heard, to have committed an offense prohibited by § 5.01 of this Act shall be liable to the Republic of China for a civil penalty not in excess of \$1,000,000 (New Taiwan Dollars) for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Minister, by written notice, taking into account the nature, circumstances, extent, and gravity of the offenses committed, the degree of culpability, any history of prior offenses, the ability of the violator to pay, and such other factors as justice requires.

(b) *Review.* Any person against whom a civil penalty has been assessed under this section may obtain review thereof in the appropriate court of the Republic of China by filing notice of appeal in such court within thirty days from the date of such order, and by simultaneously sending a copy of such notice by certified mail to the Minister. The Minister shall promptly file in such court a certified copy of the record upon which such violation was found and the penalty assessed. The findings and order of the Minister shall be set aside by such court if not supported by substantial evidence.

(c) *Action upon Failure to Pay Assessment.* If any person fails to pay an assessment of a civil penalty under this section after it has become final and unappealable, or after the appropriate court has entered final judgment in favor of the Minister, the Minister shall refer the matter to the Attorney-General of the Republic of China who shall institute an appropriate action to recover the penalty. In such action the validity and appropriateness of the final order or judgment, assessing or upholding such penalty, shall not be reviewed.

(d) *Compromise or Other Action by the Minister.* The Minister may compromise, modify, or remit, with or without conditions, any civil penalty which may be, or has been, imposed under this section.

§ 5.04 *Civil Forfeitures.*

(a) *In General.* All or any part of a fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, any fish taken or retained (including the proceeds thereof), in connection with or as a result of the commission of any offense prohibited by § 5.01 of this Act (other than any offense for which the issuance of a citation under § 3.03(a)(11) of this Act is a sufficient sanction) shall be subject to forfeiture to the Republic of China pursuant to a civil proceeding under this section.

(b) *Jurisdiction of Courts.* Any district court of the Republic of China which has jurisdiction under § 5.06 of this Act, shall have jurisdiction, upon application by the Attorney-General on behalf of the Republic, to order any forfeiture or other actions provided for in this section.

(c) *Judgment.* If a judgment is entered for the Republic of China in a civil forfeiture proceeding under this section, the Attorney-General shall seize any property or other interest declared forfeited to the Republic which has not previously been obtained under this section. The Minister shall take possession of all forfeited property or other interest, or otherwise direct the disposition or management of such property or interest.

(d) *Bonds or Proceeds.* Any property or other interest seized under this section shall be returned, without delay, upon the posting of a bond (payable in currency of the Republic of China), or other security, in the appropriate court for the full value of the property or other interest seized and conditioned on payment of the monetary value of such property or other interest pursuant to order

of the court. Judgment on such bond or security shall be recoverable against both the principal and any sureties in the event of breach of any condition thereof as determined by the court. The court may direct the sale of any fish or other perishable property seized under this section for not less than the fair market value of such property. The proceeds of any such sale, or any proceeds seized under this section, shall be deposited in such court pending disposition of the matter involved.

(e) *Rebuttable Presumption.* For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an offense prohibited by § 5.01 of this Act were taken or retained in violation of this Act.

§ 5.05 *Criminal Penalties.*

(a) *Criminal Offenses.* Offenses prohibited by § 5.01(a) (4), (5), (6), (8), (9), (10), (11), and § 5.01(b) of this Act shall be crimes.

(b) *Punishment.* Each crime under this Act shall be punishable by a fine of not more than \$2,000,000 (New Taiwan Dollars) or imprisonment for not more than six months, or both. If, in the commission of any such crime, the person uses a dangerous weapon, or causes bodily injury to any other person, or places any officer in fear of imminent bodily injury, the crime is punishable by a fine of not more than \$5,000,000 (New Taiwan Dollars) or imprisonment for not more than ten years, or both.

§ 5.06 *Jurisdiction of Courts.*

The district courts of the Republic of China shall have exclusive original jurisdiction over any case or controversy under this Act according to normal rules of venue. Any such court at any time may:

- (1) enter restraining orders or injunctions;
- (2) issue warrants, process in rem, or other process;
- (3) prescribe and accept satisfactory bonds or other security; and
- (4) take such other actions which it deems to be in the interests of justice.

II. ANALYSIS

§ 1.01 *Purposes.* This section sets forth the goals sought to be achieved by the Act. Such goals shall serve as guides to the Execu-

tive Yuan, the Minister, or his delegates, in interpreting their responsibilities and authority under the Act. This section attempts as well to guide the courts in the troublesome task of interpretation. There are three broad purposes of this section: to ensure proper conservation and management of the fishery resources of the Republic; to assure maximum development of the Republic of China's domestic fishing industry; and to foster mutually beneficial international cooperation in fishery management. These purposes are spelled out in greater detail throughout the Act to be certain that those charged with interpreting the Act will adopt the proper understandings of its goals. Those goals are in turn designed to correspond with the likely consensus of nations as to the requirements of international law.¹⁵

§ 1.02 *Definitions*. Most of the definitions are provided to save needless repetitions elsewhere in the Act by providing for expanded meanings of the words defined in this section. Such definitions make other provisions of an already complex act more comprehensible by not cluttering these other provisions with unnecessary references to the various alternate meanings provided by the terms as defined here. Only two of the definitions deserve special comment. "Highly migratory species" is defined in the United States law as only referring to tuna of various species.¹⁶ We have opted for the more comprehensive definition used internationally¹⁷ which includes (besides tuna), mackerel, marlin, sailfish, swordfish, whales, dolphins, ocean sharks, and other such species. The term "optimum yield" should be understood as generally being the same as or less than the "maximum sustainable yield" but could in some unusual circumstances exceed this latter criterion. Thus, while the "maximum sustainable yield" is an objective datum determined by biological science, the "optimum yield" reflects all relevant factors and ultimately depends on the judgment of the Council or the Minister respectively.¹⁸

15. Cf. I.C.N.T., art. 56 (rights, jurisdiction and duties of the coastal state in the exclusive economic zone).

16. 16 U.S.C. § 1802(14) (1976). See also Kask, *Tuna: A World Resource* U.R.I. LAW OF THE SEA INST., Occ. P. No. 2, (1970).

17. See I.C.N.T., art. 64 Annex I.

18. Cf. *Maine v. Kreps*, 563 F.2d 1043 (1st Cir. 1977), *Maine v. Kreps*, 563 F.2d 1052 (1st Cir. 1977). See also Christy, *supra* note 14.

The four categories of fisheries which are customarily¹⁹ classified for convenience in gathering statistics, and for fishery policies evaluations, are not used in the Act. These categories might be defined as follows:

a. "Deep-sea fisheries" are fisheries that operate fishing vessels of over 50 tons in size.

b. "Inshore fisheries" are fisheries that operate powered vessels of less than 50 tons in size.

c. "Coastal fisheries" are fisheries that make use of non-powered boats or operate without boats.

d. "Aquaculture" includes culture of fish, shellfish, etc., in brackish and fresh water and in shallow seas.

The deep-sea fisheries and inshore fisheries are two major fisheries of the Republic, and occupied 39.8% and 40% respectively in total fish production of this nation in 1977.²⁰ These two major fisheries will occupy about 46.7% and 31% respectively in the total fish production planned by the authorities in 1986.²¹

The deep-sea fisheries consist mainly of otter trawl (single vessel operation), bull trawl (paired vessel operation), and tuna long-line.²² There are presently 344 vessels totaling 46,649 tons of otter trawl and 368 vessels of bull trawl totaling 79,342 tons, both operating mainly in the areas of the Taiwan Strait, East China Sea, South China Sea, Sunda Shelf and North Australia Sea, some larger vessels even reaching to the coasts of Alaska and West Africa.²³ There are presently 680 vessels, aggregating 139,995 tons, of tuna long-line. Their fishing extends to the Pacific, Indian and Atlantic Oceans.²⁴

The inshore fisheries consist mainly of drag-netters, purse-seiners, long-liners, hand-liners and spear fishing boats. Presently,

19. ANNUAL REPORT OF FISHERIES STATISTICS IN TAIWAN (1980) [copies available from the authors, hereinafter cited as ANNUAL REPORT].

20. STATISTICAL YEARBOOK OF TAIWAN (Republic of China 1980) [hereinafter cited as STATISTICAL YEARBOOK].

21. A. Wang & H. Liu, *Studies on Problems and Policies of Deep Sea Fisheries for the Republic of China* (1978) (copies available from the authors).

22. ANNUAL REPORT, note 19 *supra*.

23. Wang, *Economic Studies on Taiwan's Purse Seine Fishing Industry* (study prepared for the Fishery Division of the Sino-American Joint Commission on Rural Reconstruction (hereinafter cited as J.C.R.R.)) FISHERIES SERIES No. 22 (June 1976) (copies available from the authors).

24. ANNUAL REPORT OF TUNA LONGLINE FISHERIES OF TAIWAN, the Institute of Oceanography, National Taiwan University (1971-1976).

there are 10,477 vessels totaling 146,526 tons, fishing within thirty nautical miles of the Republic's surrounding waters.²⁵

Aquacultures presently cover 53,496 hectares producing 139,628 tons yearly (16.3% of total fish production of the nation in 1977).²⁶ The coastal fisheries use set net fishing, fishing with lights, beach seining, and gill netting. These fisheries produce yearly 32,992 tons occupying only 3.8% of the whole nation's fish production.²⁷

These traditional categories will still be used by the Minister and the Councils. They do not, however, serve the major purposes of this Act unless some preference is to be given in the Act to one or another of these types of fishery. If such a preference is included, then the proposed Act should be changed to include these definitions, and to create such a preference. Since the Minister and Councils can accord such a preference from time to time as appropriate (see § 3.01(4)), we believe such a preference is best left to their flexible management decisions, rather than frozen into the Act for all times, places, and conditions.

§ 2.01 *The Territorial Sea*. This section simply defines the territorial sea as presently permitted by norms of international law.²⁸ This section also authorizes the Executive Yuan to adopt a system of straight baselines where it is deemed appropriate and consistent with international law.²⁹ In particular, authority is given to the Executive Yuan to adopt straight baselines around islands of the Republic of China which form a complete and discrete unit insofar as this is permitted by international law.³⁰ This is intended at present to apply primarily to the Penghu Islands.³¹

§ 2.02 *The Exclusive Fishing Zone*. This section defines an exclusive fishing zone consistent with the emerging norms of international law, both with respect to state practice,³² and with respect to the Informal Composite Negotiating Text.³³

25. ANNUAL REPORT note 19 *supra*.

26. *Id.*

27. *Id.*

28. See I.C.N.T., arts. 3, 4. See also Dellapenna & Wang, *supra* note 2, at 362-63.

29. See I.C.N.T. arts. 5-7, 10-14.

30. *Id.* arts. 46-7.

31. Dellapenna & Wang, *supra* note 2, at 374-76.

32. *Id.* at 356-9, 369-74. See also Krueger & Nordquist, *supra* note 4, at 373, 390-400 and Moore, *supra* note 4, at 155-57, 178-82.

33. I.C.N.T. art. 57.

§ 2.03 *Fishery Conservation and Management Authority*. This section is designed to make clear that the fishery conservation and management authority of the Republic of China under this Act extends to all fishery resources within the authority of the Republic as permitted by international law, whether within the territorial sea,³⁴ within the exclusive fishing zone,³⁵ or on the Continental Shelf beyond the exclusive fishing zone.³⁶ No definition of the Continental Shelf is given as this is a question about which no international consensus has yet emerged.³⁷

Fish migrating in the deep high seas trace long trips across many exclusive zones along lines which are hard to predict. Such fish as tuna and mackerel migrate within a relatively wide range. Despite the practical difficulty of managing these fish and in view of the uncertainty in international law of allowing coastal nations to regulate these species, these migratory species are still of particular importance to fishermen of the Republic of China.³⁸ Given the dependence of the Chinese fishermen on these species, it is worth noting that attempts to manage these fish may well be worth the risk of conflict, with such neighbors as Japan, which such a program might generate.³⁹ There are more than 5,000 full-time fishermen and more than 400 small size fishing vessels, scaling from twenty to thirty tons, in purse seine fisheries in Northern Taiwan,⁴⁰ excluding fishermen's dependents and people engaging in related fishery processing and marketing.

That new fishing grounds near to traditional ones exist and are abundant in migratory fish is proven by the fact that Japanese large purse seine ship groups catch over 300,000 tons annually in the southern area of the East China Sea.⁴¹ The Japanese ships operate

34. *Id.* art. 19(2)(i).

35. *Id.* art. 56(1)(a).

36. *Id.* art. 77.

37. *Id.* art. 76, which provides in relevant part that: "The continental shelf of a coastal state comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance."

38. Wang, *Efficient Management and Cost-Benefit Analysis for the Large Scale Purse Seine Fishing Industry in Taiwan*, J.C.R.R. FISHERIES SERIES No. 26 (June 1977).

39. *Id.* at 6-15.

40. Wang, *supra* note 23, at 2-12.

41. Wang, *supra* note 38, at 13.

mainly within 100 nautical miles of the Republic's coast. The quantities caught by Japanese are more than ten times the quantities caught by the Republic's inshore fishermen in the same area.⁴² The principal opportunity for expansion in the Republic's region lies with the bonito and skipjack tuna, which are species of tropical and subtropical waters, especially in the southern Pacific Ocean. A recent major survey of the skipjack tuna stocks (with a high degree of feasibility for being caught) found 1.2 million tons in this area.⁴³ A suitable exploitation of this resource will solve most of the fishery problems the Republic now faces. Nevertheless, we believe the problems of conflict with other nations seeking to exploit these same fish as they cross through several related exclusive fishing zones make a cooperative regional approach a better solution to their management than any attempt at unilateral management. Such an approach can strengthen new or existing ties of the Republic rather than creating conflict which would tend to weaken such ties. Thus, this section disavows unilateral claims of such management authority. If the next few years demonstrate little hope for creating such regional management schemes, the Act could be simply amended to include such species.

§ 3.01 *National Standards for Fishery Conservation and Management.* The heart of this Act is the fishery conservation and management program set forth in §§ 3.01-3.05. Section 3.01 sets forth in some detail the standards to guide and control any conservation and management activities under Parts III and IV of the Act. These standards reiterate the more general terms of the purposes set forth in § 1.01(1), (3), (4), and (6), but with much greater specificity. The emphasis in these standards is on scientific conservation and management of fisheries (§ 3.01(1), (2), (3), and (6)), and secondarily on efficient management (§ 3.01(1), (5), and (7)). An additional important standard is designed to prevent unreasonable discrimination among Chinese fishermen, while also assuring no interference with traditional fishing by indigenous inhabitants of the Republic's islands by mandating a preference for such fishing (§ 3.01(4)). Finally, the Minister is given the power to supplement these standards with consistent guidelines (§ 3.01(8)), which guidelines will presumably be more detailed than the statutorily pre-

42. ANNUAL REPORT, *supra* note 19.

43. Wang & Liu, *supra* note 21, at 128-29.

scribed standards. The emphasis on scientific and economic management is required by the emerging consensus in state action⁴⁴ and in the Informal Composite Negotiating Text.⁴⁵

§ 3.02 *Authority of the Minister.* This section sets forth the ample authority of the Minister under the Act, beginning with his authority to delegate his authority. Delegations and revocations thereof shall be in writing. No delegation may be made of the power to deal in any way with a license to a foreign fishing vessel because of the foreign policy implications of such actions. The power to deal with Chinese licenses may only be delegated within the Ministry of Economic Affairs. Other powers may be delegated to any employee, agency, or instrumentality of the Republic of China. No delegation, however, can prevent the Minister from personally exercising any of his authority under the Act.

When licenses are required under this Act (see §§ 3.05(a)(6), 4.01(a), 4.03(a)), the Minister shall issue the licenses on forms prescribed by him containing all required information in both Chinese and English. This last requirement is to facilitate dealings with foreign nations and foreign fishing vessels. Detailed requirements are provided as to the necessary information to be contained on each license. Finally, the section provides that a license to a vessel operates as a license for all who work on or with the vessel if their names are endorsed on the license. The Minister shall also prescribe the fees payable for each class of license subject to any applicable international fishery agreement.

Although primary responsibility for preparing fishery conservation and management plans rests with the Regional Fishery Conservation and Management Councils, the Minister has considerable authority over this process. First he creates and defines the authorities of each Council. It is anticipated that as few as one (covering all of Taiwan Province and Taipei and Kaohsiung Cities), or as many as three (Northern Taiwan and Taipei; Penghu; and Southern Taiwan and Kaohsiung), such Councils shall be immediately created under the Act. The Minister will also promulgate uniform regulations of conduct of the Councils, and under § 3.04(b) to appoint half or more of their membership.

With regard to plans themselves, the Minister shall issue guidelines for the plans and review them after the Council adopts one,

44. Moore, *supra* note 4, at 158-60.

45. *Id.* at 157-8; I.C.N.T., arts. 61, 62.

prepare a substitute plan if any Council fails to submit a plan within a reasonable time, and implement any plan finally adopted or approved by him. Detailed rules are provided as to the timetable, procedures, and standards which are to guide each step of this process. The same provisions will apply to any proposed amendment of an existing plan. The only real limitation on the Minister's power if he disapproves the work of any Council is that he cannot institute any limitation of access without approval of a majority of each appropriate Council.

The Minister is given authority to designate officers to enforce compliance with the Act, or plans, regulations, or licenses under it. These officers may be officeholders within the Ministry of Economic Affairs or may be within other departments of government (including the military, § 1.02(19)—a common practice of other states for enforcing their fishery jurisdiction).⁴⁶ The Minister is also given authority to take interim measures outside the normal procedures to deal with emergency situations. Changes in fishery conservation and management plans under these emergency powers are limited to ninety days duration, during which time they may be normally processed for permanent implementation if the Minister so desires. Finally, the Minister is given responsibility to initiate and carry out a comprehensive program of fishery research, and to give annual reports, on or before March 1 of each year to Executive and Legislative Yuans.

As the foregoing illustrates, the Minister has primary responsibility for carrying out the provisions of this Act, and comprehensive authority to carry out this responsibility. Procedural guidelines are provided to the Minister, but many details necessary to carry out his responsibilities are left to his judgment.

§ 3.03 *Powers of Officers.* Enforcement officers are given ample power where appropriate to enter, board, search, inspect, or interrogate and to enforce this Act, and any plans, regulations, or licenses under it. If the officer reasonably believes there is or has been a violation, he may arrest, seize, detain, remove, or secure as appropriate. If this involves seizing fish, the officer may sell the fish as directed by the appropriate court and deposit the proceeds with the court (see also § 5.04(d)). Finally, the officer may only issue

46. Fidell, *Fisheries Legislation: Naval Enforcement*, 7 J. MAR. L. & COM. 351 (1976); Moore, *supra* note 4, at 172.

citations in lieu of seizing or arresting as permitted by regulations to be promulgated by the Minister. In this, as in all actions of officers, they are subordinate to the authority of the Minister or an appropriate court. These broad ranging powers are fully consistent with international consensus as expressed in state practice⁴⁷ and in the Informal Composite Negotiating Text.⁴⁸

§ 3.04 *Regional Fishery Conservation and Management Councils*. The operation of this Act is made to hinge on the activities of the Councils whose makeup and functioning (once created by decision of the Minister, § 3.02(d)) are prescribed by this section. The voting membership of each Council shall consist of a member appointed by the chief executive of each province or independent municipality included within the boundaries of the Council, and an equal number (but never less than three) appointed by the Minister. Additional nonvoting members shall be appointed by other interested Ministers (of Foreign Affairs, Defense, and Interior), and elected by the fishermen of each province or independent municipality (or part thereof) included within the Council. These members shall all serve staggered three-year terms which may be renewed. Detailed provisions are made for Council procedures, the hiring of a staff, the provision of administrative and technical support services, and the payment (when necessary) of members, staff, and other expenses. Finally, provision is made for scientific and statistical committees and advisory panels to assist the Councils.

The primary function of such Councils will be to prepare fishery conservation and management plans or amendments thereto. As part of this responsibility the Councils will hold hearings, comment on certain actions by the Minister, provide continuing review of the data necessary under the plan, and to report annually to the Minister on its activities. Finally, the Council is to perform any additional function requested by the Minister, or provided elsewhere in the Act, or necessary to its enumerated functions.

Section 3:04 is closely modeled after the comparable provisions of the United States fishing law,⁴⁹ but the language has been both

47. Krueger & Nordquist, *supra* note 4, at 368-71; Moore, *supra* note 4, at 172-74.

48. I.C.N.T., art. 73(1).

49. 16 U.S.C. § 1852 (1976).

compressed and simplified. If points are unclear in this section, one can refer to the comparable provision in the American law for clarification. The major change from the American model is in the creation of the Councils by the Minister, and the membership of the Councils, especially the inclusion of nonvoting fishermen elected by the concerned fishermen which has no counterpart in the American law.⁵⁰

§ 3.05 *Fishery Conservation and Management Plan*. These plans are the primary management device under the Act. Such plans are required to contain all necessary conservation and management measures, a description of the fishery involved and of its present and future condition (including its maximum sustainable yield and its optimum yield), an assessment of the capacity of Chinese to harvest and to process the optimum yield, specification of pertinent data to be submitted to the Minister, identification of classes of licenses, and proposals for managing employment, research, and investment in the Chinese fishing industry. Additionally, the plan may include various other appropriate provisions such as limitations based on the area or type of fishing, or on preferences for different classes of fishermen. The plan may also propose regulations to implement the plan. Finally, provision is made for confidentiality for the data gathered pursuant to the Act. In interpreting this section one must keep carefully in mind the purposes of the Act (§ 1.01), the national standards (§ 3.01), and any guidelines issued by the Minister (§ 3.02(e)).

The Republic of China is a great consumer of animal protein—about 150 kg. per person per year, of which about 37.4 kg. comes from fish products.⁵¹ At the beginning of 1977, the population in Taiwan, the Republic of China, was 16,508,000. As the population increases steadily, about 300,000 per year, the people living in this small island will increase to about twenty million by the end of 1986.⁵² This is one of the most important pressures on the Republic's fisheries to promote their fisheries production. For satisfying this demand pressure, the government has set production goals, for these four categories to the end of 1986, of 700,000 tons for deep-sea fisheries, 460,000 tons for inshore fisheries, 300,000

50. *Id.* § 1852(c).

51. Wang & Liu, *supra* note 21, at 126.

52. STATISTICAL YEARBOOK, note 20 *supra*.

tons for aquaculture, and 40,000 tons for coastal fisheries, totaling 1,500,000 tons. Compared to current production totaling 855,000 tons, another 645,000 tons production increment will be necessary. Among this incremental quantity, 360,000 tons must be attributed to deep-sea fisheries.⁵³ In order to achieve these goals the Minister must not only coordinate the fishery management and conservation plans under this Act, but he must also coordinate these plans with other regional and national management schemes (see §§ 4.01-4.04).

Currently China's fishing fleet suffers from many problems. Specific reference can be made to fishermen's low education, unsuitable working environment, short supply of new crewmen, and labor intensity. In turn, these problems unfavorably influence the fish production. The fishery management and conservation plan attempts to deal with each of these problems individually.

Among all of the fishermen, only 0.3% earned a college education, 8.2% were graduated from senior high school, 13.8% were graduated from junior high school, and the rest (77.7%) received no more than six years of schooling.⁵⁴ This poor education of most fishermen is the main obstacle to adoption of new fishing gear and new fishing methods.

Each year the tuna long-line fishing boats, spend on the average, 258 days at sea.⁵⁵ The normal day's working schedule consists of fourteen hours, with only five hours of sleep per day. The average number of fishermen on each boat is twenty-five, and they live in very limited space. This crowded living environment and the long hours of work frequently cause fishermen to become short tempered and hence unproductive.

The turnover rate in tuna long-line fishery was about 38% in 1973, 52% in 1974, and 65% in 1976. This ever increasing rate is attributable to the lack of leadership ability in the fishing boat captains, the moodiness of the fishermen, and the crewmen's small share in the gross profits.⁵⁶

53. ANNUAL REPORT, *supra* note 19. See also Wang & Liu, note 21 *supra*, Table 1.

54. Chen & Tu, *The Operation and Management of the Taiwan Tuna Fishing Industry*, TAIPEI MARKETING RES. ASS'N at 22-23 (June 1976).

55. Wang & Liu, *supra* note 21, at 30-32.

56. Fu, *Some Problems of Fishermen Training Programs in Taiwan*, CHINESE FISHERY WEEKLY (Jan. 2, 1978).

There are currently about 400 boats in tuna long-line fishery using twenty-five fishermen per boat.⁵⁷ The capital-labor ratio is much higher in Chinese tuna long-line fishing boats than in comparable Japanese or American vessels.⁵⁸ In other words, the technology of the tuna fishery in Japan and the United States is more advanced than that of the Republic of China. The careful design of future Chinese fishing boats, contemplated by the proposed act, will increase the living space for fishermen, and more importantly, advance new fishing techniques to save labor. The laborsaving machines, if successfully adopted and operated by Chinese fishermen, would save at least seven men per boat,⁵⁹ or a total of 2,800 men even if there were no increase in the 400 long-liners currently in operation. This innovation on labor saving will not only relax the pressure of the short labor supply but also increase each fisherman's income by thirty-nine percent if all other factors remain unchanged.

A reasonable labor share in gross profits and the continuance of fishermen training programs will also help to solve this problem.

§ 4.01 *Foreign Fishing*. After August 1, 1981, no foreign fishing will be permitted except pursuant to a valid applicable international fishery agreement and pursuant to a valid license under this Act. This section provides the conditions governing such international fishery agreements, the standards for the allocation of foreign fishing among foreign nations, an annual foreign fishing report obligation, and transitional provisions to govern foreign fishing pending the adoption of fishery conservation and management plans. The date of August 1, 1981, was selected simply to provide adequate time for the Republic to deliberate and enact this law, and thereafter to set up the necessary administrative processes and to give notice to interested foreign nations. If appropriate, a different date might properly be selected.

Since there are obviously important foreign policy concerns involved in foreign fishing, important responsibilities are given under Part IV to the Minister of Foreign Affairs, as well as to the Minister of Economic Affairs. Sections 4.01-4.04 must be read carefully to distinguish these joint and several responsibilities.

57. Chen & Tu, *supra* note 54.

58. *Id.*

59. *Id.*

The requirement of an applicable international fishery agreement assures an orderly process for issuing foreign fishing licenses. In addition, such an agreement will require that governments, which encourage their nationals to engage in fishing under this Act, will deal diplomatically (at least informally) with the Republic of China, countering in part the diplomatic isolation presently confronting the Republic.⁶⁰ Since a strict condition of reciprocity is provided, no nation can acquire the right to fish under the terms of this Act unless it also recognizes a right in Chinese vessels to fish for a reasonable share of the catch off their coasts⁶¹ (which also serves to reduce the Republic's diplomatic isolation). In addition to procedural conditions to be met by such agreements, several specific requirements deserve mention. The license of each foreign fishing vessel must be prominently displayed in the wheelhouse of such vessel, and each such vessel must install and maintain identifying position-fixing devices as directed by the Minister. All such vessels must permit Chinese observers on board and reimburse for observational expenses. Each vessel, or its owners or operators, must make arrangements to be responsible for paying any damage to Chinese vessels, and to subject itself to legal process in the Republic of China. These provisions (including the requirement of fees) are not unusual in state practice,⁶² and find their counterpart in the Informal Composite Negotiating Text.⁶³

The allocation standards are essentially those adopted by the United States,⁶⁴ which are largely consistent with the standards found in the Informal Composite Negotiating Text.⁶⁵ The one international standard which is not directly addressed by the standards is a preference for landlocked or geographically disadvantaged states.⁶⁶ While these last rights are still controversial and may not be recognized internationally,⁶⁷ if such rights are finally recognized under international law they would certainly be appropriate for the

60. See Dellapenna & Wang, *supra* note 2, at 370-73 (for discussion of how the international fishery agreement could benefit the R.O.C. fishermen with reciprocity of fishing rights in the waters of interested nations *e.g.* United States and Japan.).

61. *Id.* at 370-71; 16 U.S.C. § 1821g (1976).

62. Moore, *supra* note 4, at 164-71, 175.

63. I.C.N.T., art. 62(4).

64. 16 U.S.C. § 1821e (1976).

65. I.C.N.T., art. 62(3).

66. *Id.*, arts. 69-70.

67. Phillips, *supra* note 14, at 350-55.

Minister of Foreign Affairs to consider under subsection (5) of § 4.01(b). Also noteworthy is the emphasis on the willingness of the foreign state to cooperate with the Republic of China (either bilaterally or in multilateral regional structures, especially relating to highly migratory species). Once again the emphasis is on applying pressure against continuing diplomatic isolation, and in particular on helping assure that the Republic of China is included in (at least informally) any new regional arrangements.⁶⁸ Finally, to encourage development of the domestic Chinese fishing industry only such portion of the optimum yield as is beyond the capacity of Chinese persons or Chinese vessels to catch may be allocated to foreign fishing. This again is permitted by state practice⁶⁹ and the Informal Composite Negotiating Text.⁷⁰

The most noteworthy aspect of the Minister of Foreign Affairs' annual foreign fishing report is that it must include a list of all tariff and nontariff barriers to the importation of Chinese-harvested or Chinese-processed fish if the nation imposing the barrier has sought licenses for foreign fishing. The preliminary allocation and preliminary license provisions are designed to assure that the negotiation and implementation of international fishery agreements will not have to await the workings of the regional fishery Councils.

§ 4.02 *International Fishery Agreements*. This section permits the negotiation of agreements authorizing foreign fishing subject to the jurisdiction of the Republic of China, boundary agreements with adjacent states, agreements to assure access of Chinese vessels to fisheries under the jurisdiction of foreign nations, and agreements for international conservation and management of fisheries outside the jurisdiction of any nation. The boundary negotiations are to be completed in accordance with international law (which requires the application of undefined "equitable principles" with secondary recourse to median or equidistant lines).⁷¹ This section

68. See Alexander, *Regional Arrangements in the Oceans*, 71 AM. J. INT'L L. 84 (1977); Park, *The South China Sea Disputes: Who Owns the Islands and the Natural Resources?*, 5 OCEAN DEV. & INT'L L.J. 27, 48-51 (1978); Ramp; *supra* note 14, and Valencia, *Southeast Asia: National Marine Interests and Marine Regionalism*, 5 OCEAN DEV. & INT'L L.J. 421 (1978) (for a discussion of possibilities of such new regional arrangements).

69. Moore, *supra* note 4, at 160-63.

70. I.C.N.T., art. 62(1), (2).

71. I.C.N.T., art. 74(1). See generally, *Continental Shelf Cases, Judgment*, I.C.J. Reports 1969, p. 3 (Germany v. Denmark; Germany v. Netherlands); *The Delimitation of the Continental Shelf Between the United Kingdom and France Arbitration* (30 June 1977),

also prohibits agreements which recognize any foreign claim unfairly discriminatory of Chinese fishing. In addition to allow the Republic of China to participate (at least informally) in regional or universal management schemes for highly migratory species, no recognition of exclusive claims to manage such species is permitted. Finally, legislative oversight is assured by not sanctioning any such agreement before the legislative Yuan has been given a chance to disapprove the agreement. This section presents no threat to existing agreements since under § 4.01(b) it applies only to agreements made after the effective date of the Act (unlike the retroactive effect of the United States law).⁷²

The following analysis, reflecting the growing need for worldwide unity of fishery management, should be helpful in guiding the Minister of Foreign Affairs in negotiating new international fishery agreements. The pressing need of the Republic of China to further develop her deep sea fisheries necessitates strong and effective action to further the planned growth in this area. Related to these negotiations will be the need for the Minister of Economic Affairs to propose further investment and related programs in several kinds of fisheries to assure their ability to play the role assigned to them. Although not all of these domestic programs are within the scope of this Act, they are nonetheless discussed here to provide full guidance to the two Ministers in planning negotiations under this section.

Although the substantial increases planned for the Republic of China's fishing industry will in part be achieved by the more intensive utilization of the fish stock within its exclusive economic zone, considerable growth is also planned for the deep sea fisheries, much of which is not within the exclusive control of the Republic (summarized in Table 1).⁷³

reprinted in H.G. Knight, *THE LAW OF THE SEA* at 270 (1978 ed.). See also Adede, *Toward the Formulation of the Rule of Delimitation of Sea Boundaries Between States with Adjacent or Opposite Coasts*, 19 VA. J. INT'L L. 207 (1979); Hodgson & Cooper, *The Technical Delimitation of a Modern Equidistant Boundary*, 3 OCEAN DEV. & INT'L L.J. 361 (1976); Nakauchi, *Problems of Delimitation in the East China Sea and the Sea of Japan*, 6 OCEAN DEV. & INT'L L.J. 305 (1979); Nweihed, *EZ (Uneasy) Delimitation in the Semi-enclosed Caribbean Sea: Recent Agreements between Venezuela and her Neighbors*, 8 OCEAN DEV. & INT'L L.J. 1 (1980); and Oxman, *supra* note 9, at 29-32. See D. Bowett, *THE LEGAL REGIME OF ISLANDS IN INTERNATIONAL LAW* (1979), at 139-89.

72. 16 U.S.C. § 1821b (1976).

73. Wang & Liu, *supra* note 21, at 126-40.

TABLE 1 mt = metric ton

Fisheries	1977 (mt)	1986 (mt)	Quantity of Increase (mt)
Trawlers	204,783	320,000	115,217
Tuna long-line	122,524	150,000	27,476
Large purse-seine	2,187	200,000	197,813
Squid fishery	3,000	20,000	17,000
Others	6,913	10,000	3,087
Total	339,407	700,000	360,593

The 115,217 mts. of trawlers' incremental production will derive mainly from the public high sea trawler fishing grounds near West Africa and New Zealand. The 197,813 mts. of large purse-seines' incremental production will derive mainly from the fishing grounds adjacent to the international 200-foot isometric line, geographically near to the East China Sea and the South China Sea. The main source is mackerel, a highly migratory species. The 3,087 mts. of other fisheries consist of skipjack tuna to be caught in the high seas in the West Pacific Ocean and the South Pacific Ocean, and sauries to be caught in the high seas near the Sea of Japan.

A good deal of these planned increases will take place in fishing grounds which are now within the exclusive management of other coastal nations and which are currently customary fishing grounds for the Chinese fishing fleets. Some limited form of joint management becomes necessary, especially regarding the seas off northern Australia, West Africa, and Alaska.⁷⁴ The waters off Australia are especially important since the Republic's fishermen annually catch 80,000 tons there⁷⁵ (9.0% of the Republic's entire production, and 23.6% of its deep sea production). Agreements have already been made in most of these areas to establish quotas and to provide for the exchange of data. The agreements should be revised to provide larger Chinese quotas, and to arrange for joint fisheries research in these waters.

74. See, e.g., AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF CHINA CONCERNING FISHERIES OFF THE COASTS OF THE UNITED STATES, 28 U.S.T. 1904, T.I.A.S. No. 8529 (Sept. 15, 1976).

75. Allen, *Extended Fishing Zone Calls for Major Increase in Research Efforts and Budget*, AUSTRALIAN FISHERIES at 3 (Dec. 1977).

Other fishing areas being developed by Chinese fishermen are on the high seas and outside the exclusive fishing zones of every country. Those areas include the tuna fisheries in the Pacific Ocean, the Indian Ocean and the Atlantic Ocean, the squid fisheries in the Sea of Japan and in the New Zealand Sea, and the sauries fishery which scientists have located and started to harvest in the Sea of Japan. The Republic of China has a very successful performance record for tuna long-line fishing. That continued performance is threatened however because new fishing boat construction has been suspended by the alternative energy replacement program which will not allow any increment on tonnages of tuna long-line fishing boats anywhere in the country.⁷⁶ This program was enacted in 1975 when the worldwide energy crisis caused the Republic's tuna long-line fishery to become extremely expensive to operate.⁷⁷ Fortunately, at the present time the tuna wholesale price in the international market is very high and will increase more in the predictable future. This attractive profit in the tuna long-line fishery naturally stimulates the fishermen's willingness to reenter such fishing activities. Thus the limitation on building new fishing boats under the alternative energy replacement program should be canceled. If it is not, this should be carefully considered in negotiating quotas for other coastal nations' exclusive fishing zones.

There are only four fishing boats currently fishing for squid in the Sea of Japan and the New Zealand Sea. A new fishery policy providing substantial encouragement for stimulating new investment in squid fishing boats will be necessary. The exploitation of sauries resources in the Sea of Japan is currently done by two experimental fishing boats. Policies should be developed to encourage the exploitation of these resources. Squid and sauries are potentially among the most productive fishery resources in the world. The production of squid is presently about 900,000 tons,⁷⁸ which could be increased, without difficulty, to 5,000,000 tons in the near future; the current production of sauries is about 300,000 tons⁷⁹ which could be increased easily to 3,000,000 tons annually.

76. Wang & Liu, *supra* note 21, at 114-16.

77. Chen & Tu, *supra* note 54.

78. Gih, *Present Status and Further Development of Fishery Resources of the Ocean*, J.C.R.R. FISHERIES SERIES NO. 16 (March 1976) [hereinafter cited as Gih]; Wang & Liu, *supra* note 21, at 128-29.

79. Moiseev, *Development of Fisheries for Traditionally Exploited Species*, 30 J. FISHERY & RESEARCH Bd. CANADA 2109-20 (1973); and Wang & Liu, *supra* note 21, at 70-88.

A further commercially attractive fishery resource which has not been exploited by the Republic of China's fishermen is the skipjack tuna in the west-central Pacific Ocean. The maximum sustainable yield is conservatively estimated at 1.2 million tons.⁸⁰

There are two main kinds of fishing methods to catch this particular skipjack tuna. One is the Japanese polehook method and the other is the American purse-seine method. This skipjack tuna resource is highly migratory, with a very attractive price. It is utilized mainly by the Japanese fishermen at the present time. This skipjack fishing ground, in the west-central Pacific Ocean, is a shorter distance from Taiwan than from Japan, indicating its attractiveness for future development. To avoid conflict with Japan, a joint or regional management scheme is necessary.

Many fishery resources within other coastal nations' exclusive fishing zones which have not been utilized by the Republic of China could be cooperatively developed to the mutual advantage of both nations. This includes areas off Central and South America, South-eastern Asia, and West Africa. Argentina, especially, has expressed her willingness for fishery cooperation. Unfortunately, the fishing companies in Taiwan are too small to provide the necessary capital. Japan has cooperated with sixty-nine countries in various kinds of fisheries.⁸¹ Even when the resulting production is not included in the Japanese fishery production statistics, we can reasonably assert that this internationally cooperative production will contribute substantially to the success of the Japanese fishing industry.

There are also fishery resources beyond 200 miles from any coast which do not belong to any sovereign nation, but which have not been utilized by the Republic of China or others. These resources are of low population density⁸² which results in a low catch rate and a high production cost. Nevertheless, the Republic of China will have to pay attention to this resource since its population increase in the future will cause an increasing demand for fish and an increasing price, which should be sufficient to cover the high cost. In such undeveloped fisheries there are many unknown parameters in the methods of catching and the techniques of fish processing, which will discourage new investment. These resources stand relatively low in the food chain, and being highly reproduc-

80. Moiseev, *supra* note 79; Wang & Liu, note 21 *supra*.

81. Wang & Liu, *supra* note 21, at 129.

82. Moiseev, *supra* note 79; Wang & Liu, *supra* note 21, at 129.

tive in nature, they can be renewed very quickly.⁸³ These untraditional fisheries include lanternfish,⁸⁴ lightfish,⁸⁵ and Antarctic krill.⁸⁶ Among these three fish, Antarctic krill are considered the most accessible, because they are physically dense and easy to catch. Their annual potential production can easily reach 1.35 billion tons,⁸⁷ whereas their current production is only 20,000 tons worldwide.

To develop these several new fishery resources will require considerable investment which will have to be aided in some ways by the government. In planning among the possible choices, several of which will require new international agreements, the following data (summarized in Table 2) should be helpful.⁸⁸

TABLE 2

Fisheries	Quantity of Increase	Tonnages Required
Trawler	115,217	50,000
Tuna long-line	27,476	27,000
Large scale		
purse-seine	197,813	20,000
Squid	17,000	9,000
Others	3,087	3,000
Total	360,593	110,000

As shown in Table 2, the trawler fishery will require the participation of fifty fishing boats ranging from 500 tons to 2,000 tons (based on increased tonnage). The long-line tuna fishery will need eighty fishing boats ranging from 200 tons to 500 tons. Thirty fishing fleets of five fishing boats each will be required to support the large purse-seine fishery. Additionally, thirty fishing boats of 300 tons and three fishing boats of 700 tons are necessary to support the squid fishery and other fisheries, respectively.

83. Smith, *Economics of Production from Natural Resources*, 58 AM. ECON. REV. 409 (1968) (detailed discussion of the bio-economics of renewability and sustainable yield).

84. See Gih, *supra* note 78.

85. *Id.*

86. Everson, *The Living Resources of the South Ocean*, SOUTHERN OCEAN FISHERIES SURVEY PROGRAMME, GLO/SO/1977.

87. *Id.*

88. See generally, Wang & Liu, *supra* note 21.

The present new shipbuilding cost in Taiwan in U.S. dollars is \$2,778 per ton. Therefore, \$305.6 million will be necessary for new shipbuilding plus an additional \$115 million for new fishing gear, nets, and other operation expenses.

Moreover, as many as twenty-four new scientific research boats would be ideal for conducting necessary fishing research, including research on new fish stocks, on the operation of new gear, and on existing fishing grounds. Budget constraints will probably preclude such a large investment, but at least the following four boats should be constructed:

1. One experimental boat (of 3,000 tons) for the purpose of investigating Antarctic krill and hakes;
2. One 1,000 ton deep water trawler experimental boat for the purpose of exploring the new fishing grounds on the high seas near West Africa and New Zealand, and in the Pacific Ocean;
3. One 700 ton boat for skipjack and tuna purse-seine fishing to explore this abundant resource in the Central Pacific Ocean and the West Pacific Ocean (the boat may also serve to investigate sauries if necessary); and
4. One 500 ton experimental boat for squid fishing.

Total expenditure for these 5,200 tons of experimental boats is \$22 million. That figure is based upon current shipbuilding costs for experimental purposes of \$4,167/ton.

There remain problems of overcoming the Republic of China's low education levels for fishermen, their unsuitable working conditions, the short supply of new crewmen, and excessive labor intensity discussed above in connection with § 3.05.⁸⁹ Also to be considered is the Fishery Harbor Construction and Maintenance Program which is budgeted at \$1.76 billion. This program is scheduled to be finished in nine years, and will benefit all fisheries, not exclusively the deep sea variety. Additional considerations in assessing various possible negotiating strategies will be: advances in fish processing, coordination of fish marketing, and the special tax system applied to the fishing industry.

If appropriate steps, including new international fishery agreements, are implemented to realize the planned increase of 360,000 tons by 1986, the annual catch of the Republic of China will increase as well by 360,000 tons. This is the equivalent of the beef

89. See notes 55-59 *supra*.

which could be grown on 1,000,000 hectares of farm land, or equivalent to 2,160,000 mts. of rice.⁹⁰ These benefits are substantial, but to achieve them there must be a fully coordinated fishery management program, established under this Act. The negotiating responsibilities of the Minister of Foreign Affairs must always be placed squarely within this framework.

§ 4.03 *Licenses for Foreign Fishing.* This section requires the licensing of each foreign fishing vessel which seeks to engage in fishing under the Act. The section then sets forth the conditions and procedures for granting such licenses. Since the purposes of the law include the development of all aspects of the domestic Chinese fishing industry (including Chinese fish processing), licenses are required in order for vessels to receive fish at sea from Chinese vessels, but only if such amounts of fish are beyond the capacity of Chinese fish processors to utilize.⁹¹ The license is to set forth (in Chinese and in English) all the parameters which limit this foreign fishing. The licenses are to be issued through the foreign government whose flag the foreign fishing vessel flies in order to assure that the foreign government accepts the conditions of the Chinese license and agrees to be responsible for the compliance of its vessels.⁹²

§ 4.04 *Import Prohibitions.* When any foreign nation refuses to permit Chinese vessels to fish their historic fishing grounds or otherwise interferes with Chinese fishing rights under international law, the Minister of Foreign Affairs is to convey that information to the other heads of departments of the government. Thereafter importation to the Republic of China of fish or fish products from the fishery involved (or if the Minister of Foreign Affairs so decides, from the country involved) shall be prohibited until the Minister certifies that the violations have ended. This is a relatively modest sanction within the Republic's power to discourage invasion of Chinese fishing rights. There is some flexibility in the standards involved to permit the Minister of Foreign Affairs to withhold the sanction in an appropriate case.⁹³

90. See *STATISTICAL YEARBOOK*, *supra* note 20.

91. *But see* Christie, *supra* note 14.

92. Moore, *supra* note 4, at 174-75.

93. *Cf.* 16 U.S.C. § 1825 (1976) (under U.S. law the Secretary of State has the power to certify a similar determination to the Secretary of the Treasury for prohibitory action).

§ 5.01 *Offenses*. This section lists the various types of violations covered by the Act. Specifically, violations range from instances of fishing without proper licensing, to interference with or impersonation of an officer charged with supervisory duties. In addition the Act treats as a violation any misconduct under regulations or international fishery agreements made pursuant to the Act. Note that mere possession of fish taken in violation of this Act is an offense even if the holder neither took the fish nor knew of the illegal taking. Also defined in the Act are violations chargeable against the vessel (which must be found before a license issued to a vessel may be suspended or cancelled under § 5.02). Basically, violations by vessels are of two sorts: illegal fishing by the vessel, or illegal transfers of fish at sea.

Sanctions for such offenses by vessels, vary within discretion of the Minister. Note that the Minister may, by regulation, define certain classes of offenses for which the sanction may be the issuance of a citation by an officer under § 3.03(a)(11). This permits an expeditious disposition of minor offenses which deserve nothing more than that an official record be kept of them.

§ 5.02 *Cancellation or Suspension of Licenses*. Once the Minister is satisfied that an offense has been committed by any person or any vessel, he may cancel or suspend any license issued to such offending person or vessel as he deems appropriate. A similar sanction may be imposed for a failure to pay a civil penalty or criminal fine imposed under the Act. Suspension may be either whole or partial, and could include the imposition of new conditions. All such cancellations or suspensions require that the offending party be notified in writing and that the license involved be endorsed in both Chinese and English to reflect the sanction. Once notice is effected, the license involved is altogether void. The Minister will reinstate licenses after payment of penalties or fines, and also must determine if the suspension or cancellation shall prejudice subsequent license applications for the persons or vessels involved. These are common sanctions.⁹⁴

§ 5.03 *Civil Penalties*. This section provides for the assessment, review, enforcement, and compromise of civil penalties of up to \$1,000,000 (in New Taiwan dollars designated hereinafter by sym-

94. Krueger & Nordquist, *supra* note 4, at 371.

bol NT). This figure is approximately the same as the maximum allowed under the United States act.⁹⁵ Civil penalties are to be assessed by the Minister after giving the accused person a hearing. Such penalties are subject to immediate review in an appropriate court. The standard of review shall be whether there was substantial evidence for the findings and order of the Minister. No subsequent review of the order is permitted in the enforcement proceeding, although the Minister may compromise and settle the claim of a civil penalty at any time.

The purpose of such civil penalties is to permit a quick disposition of minor offenses by administrative processes, an approach not at all unusual in the laws of other states.⁹⁶

§ 5.04 *Civil Forfeiture*. Fishing vessels or fish involved in violations of this Act are subject to forfeiture after proceedings in the proper court. All seized property is subject to release upon the posting of a bond or other security, except that fish may be sold to prevent spoilage. This approach is common state practice⁹⁷ and is presently required in the Informal Composite Negotiating Text.⁹⁸ Note that the court may order a forfeiture of less than the full ownership of the seized property, an approach thus far found only in the United States law.⁹⁹ Upon the determination, however, that the fish seized were in fact illegally taken, complete forfeiture will result upon completion of a proper proceeding.

This section also creates an evidentiary presumption that all fish found on board a fishing vessel caught violating the Act were taken illegally. This is a presumption now found in the law of most states.¹⁰⁰ It simply serves to solve what could be difficult evidentiary problems involving fish caught over a period of time and mixed together on board the ship. In this regard, fishing support ships are included in the definition of "fishing vessel" (§ 1.01(11)).

95. 16 U.S.C. § 1858a (1976) (civil penalty not to exceed \$25,000 for each violation).

96. Krueger & Nordquist, *supra* note 4, at 370-71. See also Fidell, *Enforcement of the Fishery Conservation and Management Act of 1976, The Policeman's Lot*, 52 WASH. L. REV. 513, 550 (1977); and Moore, *supra* note 4, at 173-74.

97. Krueger & Nordquist, *supra* note 4, at 371; Moore, *National Legislation for the Management of Fisheries Under Extended Coastal State Jurisdiction*, 11 J. MAR. L. & COM. 153 at 173-74.

98. I.C.N.T., art. 73(2).

99. 16 U.S.C. § 1860c (1976); Krueger & Nordquist, *supra* note 4, at 371.

100. Moore, *supra* note 4, at 175-76.

Thus such ships are required to be licensed, and they and their fish could be forfeited under this section.

Note that in practice, in some other countries at least, such forfeitures are actually quite rare,¹⁰¹ and less extreme sanctions are more commonly employed. The Republic of China should also move cautiously when considering the forfeiture of foreign owned vessels, although the forfeiture of illegally caught fish may prove more feasible.

§ 5.05 *Criminal Penalties*. The more aggravated sorts of offenses involving a potential for injury to officers are made criminal offenses by this section. Such crimes are punishable by fines of not more than NT \$2,000,000 and imprisonment for up to six months unless there is an actual injury to any person, or the use of a dangerous weapon, or an officer is placed in fear of imminent bodily injury. In such cases the fine may be up to NT \$5,000,000 and imprisonment could be up to ten years. Although such criminal penalties would be banned by the Informal Composite Negotiating Text,¹⁰² they are quite common in state practice.¹⁰³ The fines are not unreasonably large given the degree of aggravation required for imposition of the largest fines.¹⁰⁴

§ 5.06 *Jurisdiction of Courts*. This section confirms the jurisdiction of the district courts and authorizes them to take any necessary steps to conduct cases brought under the Act. Although no express grant of authority is given regarding civil suits by Chinese injured by wrongful acts of foreign fishing vessels, even these suits are aided by the Act's requirement that the owners or operators of such vessels make themselves amenable to suit in the Republic's courts and that they give security (under rules to be prescribed by the Minister) for reimbursement of such injuries (§ 4.01(b)(9), (10)).

101. Fidell, *Ten Years Under The Bartlett Act: A Status Report on the Prohibition on Foreign Fishing*, 54 B.U. L. Rev. 703 (1974); Krueger & Nordquist, *supra* note 4, at 371.

102. I.C.N.T. art. 73(3).

103. Moore, *supra* note 4, at 173.

104. *Id.*

