I assent.

(L.S.)

GUIDO DE MARCO
President

16th January, 2001

ACT No. II of 2001

AN ACT to make provision for the regulation, conservation and management of the fisheries of Malta and matters incidental thereto.

BE IT ENACTED by the President by and with the advice and consent of the House of Representatives in the present Parliament assembled and by the authority of the same as follows:

PART I
PRELIMINARY

Title and commencement.

1. (1) The title of this Act is the Fisheries Conservation and Management Act, 2001.

(2) This Act shall come into force on such date as the Minister responsible for Fisheries may by notice in the Gazette appoint, and different dates may be so appointed for different purposes and for different provisions of this Act.

Interpretation.

2. In this Act unless the context otherwise requires -

"aquaculture establishment" means any area, enclosure, impoundment, premises or structure set up or used on land or in water for the cultivation of marine or freshwater fish and includes any cultivated oyster or other shellfish bed or raft or other structure used for the cultivation of oysters and other shellfish;

"Board" means the Fisheries Board established under article 5;

"commercial fisherman" means:

(a) in the case of an individual, a person who is engaged or who intends to engage in fishing for sale throughout the year or a specified season or part of a season each year and can satisfy the Director that during such time as he engages in fishing for sale he relies on his fishing activities for the whole or for part of his income; or

(b) in the case of a company, society or association of persons, one that satisfies the Director that it has an appreciable investment in the fishing industry or intends to make a substantial investment in the fishing or ancillary industry;

"commercial fishing" means the catching or taking of fish for sale;

"convention" includes a treaty, agreement or other arrangement;

"convention area" means, in relation to any international convention, the area to which the convention relates;

"convention fisheries officer" means a person appointed by the government of another country or having power under the laws of that country to enforce a convention, to which Malta is a party, and which provides for the safeguarding or conduct of fishing operations or operations ancillary thereto;

"convention fishing vessel" means a fishing vessel belonging to a country which is a party to a convention to which Malta is a party and the fishing vessels of which have been declared by the Minister by notice in the Gazette to be convention fishing vessels;

"coral" means the calcareous skeleton secreted by polypoid coelenterates of the class anthozoa;

"Director" means the Director responsible for fisheries appointed by virtue of article 4 or any person to whom he may delegate any of the functions under article 4(2);

"fish" means any aquatic animal, whether piscine or not, and includes shellfish, crustaceans, sponges, sea urchins, turtles, aquatic mammals and their young, fry, eggs or spawn and shells and parts thereof and fish meal;

"fisheries protection officer" means the Director and any of the fisheries protection officers provided for under article 4(4) and (5), and any person authorised by or acting under the orders of a fisheries protection officer for the purposes of this Act;

"fishing" means:

(a) the catching or taking of fish that occur or have grown naturally in the sea;

(b) any other activity which can reasonably be expected to result in the catching or taking of fish or the farming of fish;

(c) any operation at sea in support of or in preparation of any activity described in paragraphs (a) and (b);

"fishing licence" means a fishing licence or permit provided for under this Act;

"fishing vessel" means any vessel of whatever size and in whatever way propelled which is for the time being employed in fishing operations or for the processing, storage or carriage of fish or of any operations (including transhipment of fish) ancillary thereto, but does not include any vessel used for the transport of fish or fish products as part of a general cargo;

"fishing waters" means the fishing waters of Malta as defined in article 3;

"foreign fishing vessel" means a fishing vessel which is neither a local fishing vessel nor a convention fishing vessel;

"internal waters" means those seawaters on the landward side of the baselines from which the territorial sea of Malta is measured;

"licensed fishing vessel" means a vessel granted a licence or permit to fish pursuant to articles 8, 9 or 10;

"local fishing vessel" means any vessel -

(a) wholly owned and controlled by one or more persons ordinarily resident in Malta, or

(b) wholly owned and controlled by a company, society or association of persons incorporated in or established under the laws of Malta and controlled by one or more persons ordinarily resident in Malta;

"master" or "fish master" mean, in relation to a fishing vessel, the person for the time being in command or in charge of the fishing operations on board the vessel;

"Minister" means the Minister responsible for fisheries;

"processing", in relation to fish, includes cleaning, filleting, freezing, canning, salting, smoking, cooking, pickling, drying or otherwise preserving or preparing fish by any method;

"record of fishing vessels" means the record of local fishing vessels maintained by the Director under article 7;

"transhipment of fish" includes the passing of fish from one fishing vessel to another whether or not the fish has first been taken on board the vessel from which the fish is passed;

"vessel" means a steamer, motor vessel, launch, boat, hovercraft, submersible or floating craft of any description.

PART II
FISHING WATERS

Fishing.

3. The fishing waters of Malta comprise:

(a) the internal waters;

Cap. 226.

(b) the territorial waters declared under article 3(2) of the Territorial Waters and Contiguous Zone Act; and

(c) any other marine waters over which sovereign rights for the purpose of exploring and exploiting, conserving and managing the living resources therein are claimed by proclamation, law or convention for the time being in force, or having the force of law, in Malta.

PART III
ADMINISTRATION

Director responsible for fisheries and fisheries protection officers.

4. (1) This Act shall be administered by the Director who shall be a public officer, appointed by the Prime Minister, and who shall be responsible for:

(a) the conservation of naturally occurring fish stocks;

(b) the taking of such measures as he may consider appropriate for the protection of fish stocks from the effects of pollution whether continuous or short term and from the effects which are harmful or potentially harmful to fish stocks, and measures taken to eliminate or control pollution;

(c) the assessment of fish stocks and the collection of statistics including details of catches;

(d) the development and management of fisheries;

(e) the maintenance of a record of fishing vessels, their masters, captains, crew and any other person working on them;

(f) the monitoring, control and surveillance of fishing operations;

(g) the regulation of the conduct of fishing operations including aquaculture and operations ancillary thereto;

(h) the issue, variation, suspension and revocation of permits and licences for fishing, and equipment used for fishing, aquaculture, transhipment and other activities for which permits or licences are required under this Act;

(i) the collection of fees in respect of permits and licences and of entries in the fishing vessels register as well as the collection of fees for licences issued for all other categories of permits and licences mentioned in paragraph (h);

(j) the making of such reports to the Minister as the latter may require or the Director shall consider appropriate;

(k) the taking of appropriate measures in consultation with such authority as may from time to time be responsible for the environment for the safeguard against extinction of protected species;

(l) any other matters which shall require administration under this Act.

(2) The Director may, in writing, authorise any public officer to exercise any or all of the powers of the Director under this Act either concurrently with him or in his absence, subject to such conditions, including those relative to territorial restrictions, as he may stipulate in the authorisation.

(3) The provisions of subarticle (2) shall be without prejudice to the provisions of article 34(10).

(4) This Act shall be enforced by fisheries protection officers acting under the direction of the Director and for that purpose fisheries protection officers shall have the powers set out in article 19.

(5) The following persons shall be fisheries protection officers for the purposes of this Act:

(a) persons designated as fisheries officers by the Director;

(b) all members of the Malta Police Force;

(c) all members of the Armed Forces of Malta.

Fisheries Board.

5. (1) There is hereby established a board to be known as the Fisheries Board.

(2) The Board shall consist of the Director, *ex officio*, as chairman, and of the following members appointed by the Minister -

(a) a member of the Fisheries Department, after consultation with the Director, who shall be deputy chairman;

(b) one member from among and nominated by the commercial fishermen who is a person from amongst the commercial fishermen as defined in paragraph (b) of the definition of "commercial fisherman" in article 2 of this Act;

(c) one member from among and nominated from amongst the members of the *Federazzjoni tas-Sajjieda Dilettanti*;

(d) one member from among and nominated by fish market traders (*pitkali*);

(e) one member from among and nominated by fish retailers;

(f) seven other members from among persons having an interest or knowledge in matters relating to fisheries or the fishing industry, of whom four shall be nominated by fishermen's co-operatives registered under the Co-operatives Societies Act;

Cap. 278.

(g) one member from the Department for the Protection of the Environment nominated by the Minister responsible for that department;

(h) one member from the Armed Forces of Malta nominated by the Minister responsible for the armed forces.

(3) Members of the Board shall, subject to subarticles (4) and (5), be appointed for a term of three years.

(4) A member of the Board may resign his office at any time by giving notice in writing to the Minister.

(5) The Minister may at any time remove a member of the Board on grounds of disability to perform his functions, bankruptcy or neglect of duty.

(6) The quorum necessary for meetings of the Board shall be the chairman or, in his absence, the deputy chairman and five other members.

(7) The Director shall designate a public officer in his department to act as the secretary to the Board.

(8) Subject to the other provisions of this Act, the Board may regulate its own procedures and meetings in such manner as it deems proper.

Functions of the Board.

6. It shall be the duty of the Board to advise the Minister on any matter referred to it by the said Minister, and generally in relation to the development, administration and conservation of the fisheries of Malta and in particular shall -

(a) consider and make proposals for the making of regulations under article 38, or any other legislation which may affect the fishing industry;

(b) consider and make proposals for the introduction of measures prohibiting or restricting the catching of species of fish or other measures that would lead to the conservation of fish stocks;

(c) consider and make proposals for agreements or arrangements to be entered into pursuant to article 18;

(d) consider any matters referred to it by a member of the Board, by a government department or by a member of the public and make its recommendations thereon if and as the Board may consider appropriate;

(e) submit such proposals to the Government as it shall consider appropriate;

(f) submit an annual report of its activities to the Minister;

(g) have such other functions and duties as may be prescribed.

PART IV
LOCAL FISHING VESSELS

Record of local fishing vessels.

7. (1) The Director shall maintain a record of local fishing vessels including the owners, captains, and crew thereof.

(2) An owner of a local fishing vessel who intends to use the vessel for fishing may apply in the prescribed manner to the Director for registration in the record of fishing vessels.

(3) A vessel shall not be recorded under this article unless -

Cap. 234.

(a) it has been registered under the Merchant Shipping Act, if it is so required by law;

(b) the vessel carries such identification markings as may be prescribed;

(c) the vessel carries such equipment and complies with such other requirements as shall be prescribed;

(d) the owner of the vessel has supplied such information or complied with such other requirements or regulations as may be prescribed.

(4) The Director may cancel an entry in the record of fishing vessels under this article if any of the requirements of subarticle (3) cease to be satisfied by the vessel entered in the record, but shall restore such entry on being satisfied that the failure has been remedied.

(5) The certificate of entry in the record of local fishing vessels shall, subject to subarticle (4), be valid for one year and shall be renewable.

Local fishing vessel licences.

8. (1) No local fishing vessel shall be used for commercial fishing in -

(a) the fishing waters; or

(b) any area outside the fishing waters where a licence or permit to fish is required under this Act;

unless it is entered in the record of fishing vessels under article 7 and it is authorised so to fish by a licence or permit granted under this Act.

(2) Where a local fishing vessel is used in contravention of subarticle (1) the master, the owner and the charterer shall each be

guilty of an offence and shall on conviction each be liable to a fine (*multa*) of not less than one thousand liri (Lm1,000) but not exceeding twenty-five thousand liri (Lm25,000).

Permits for local fishing vessels to fish outside the fishing waters.

9. (1) The Minister may, by regulations, require the owners of fishing vessels who desire to fish outside or within the fishing waters to apply to the Director for a permit that allows fishing in areas specified in such permits, and as provided for in the regulations.

(2) Regulations made under subarticle (1) may also provide for permits which grant exclusive rights to fish in areas specified in such permits, and as provided for in the regulations.

(3) In any case other than that provided for in article 8(1)(b), any person who fishes without a permit when such permit is required by regulations made under subarticle (1), or fishes in an area for which he does not have a permit under such regulations, shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) of not less than five hundred liri (Lm500) but not exceeding five thousand liri (Lm5,000).

PART V
FOREIGN FISHING VESSELS

Fishing by foreign fishing vessels prohibited without a licence.

10. (1) Fishing by a foreign fishing vessel in the fishing waters is prohibited unless authorised by a licence granted under this Act.

(2) Where any fishing vessel is used in contravention of subarticle (1) the master, the owner and the charterer shall each be guilty of an offence and shall on conviction be liable to a fine (*multa*) of not less than four thousand liri (Lm4,000) but not exceeding fifty thousand liri (Lm50,000).

Notification of fish on board by foreign fishing vessels entering fishing waters.

11. (1) The master of a foreign fishing vessel that has fish on board shall -

(a) prior to entry of the vessel into the fishing waters; or

(b) prior to the vessel leaving an area of the fishing waters in which the master, owner or charterer is licensed to fish,

notify a fisheries protection officer of the amounts, descriptions and presentation of fish on board the vessel.

(2) If a master fails to give the notification required under

subarticle (1) he shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) of not less than two thousand liri (Lm2,000) but not exceeding twenty-five thousand liri (Lm25,000).

PART VI
ALL FISHING VESSELS

Licence requirements and conditions relating to local and foreign vessels.

12. (1) A fishing licence shall be granted to the master, owner or charterer in respect of a specified fishing vessel.

(2) The issue of each fishing licence shall be at the discretion of the Director who may, either authorise fishing generally, or for the purposes of conservation, may confer limited authority in writing by reference in particular to -

(a) the area in which fishing is authorised;

(b) the period, times or particular voyages during which fishing is authorised;

(c) the descriptions, quantities, size and presentation of fish which may be taken;

(d) the method of fishing.

(3) A fishing licence may authorise fishing either generally or subject to such conditions as may appear to the Director to be necessary or expedient for the regulation of sea fishing, or the conservation or management of fisheries in the fishing waters and in particular a licence may without prejudice to the generality of the foregoing conditions, contain conditions with regard to -

(a) the landing of fish caught under the authority of the licensee;

(b) the marking of the licensed fishing vessel;

(c) the records of fishing operations that shall be kept on board the licensed fishing vessel;

(d) the navigation equipment and charts to be carried on board the licensed fishing vessel; and

(e) the place or places where the licensed fishing vessel may carry out transhipment of fish,

and if the master and the owner or charterer of the fishing vessel concerned contravenes any of the conditions prescribed in the licence,

he shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than one thousand liri (Lm1,000) but not exceeding ten thousand liri (Lm10,000).

(4) A fishing licence may be -

(a) varied from time to time, or

(b) revoked or suspended,

if this appears to the Director to be necessary or expedient for the regulation of sea fishing, the conservation or management of fisheries in the fishing waters or for the economic benefit of Malta.

(5) No court may issue a warrant of prohibitory injunction or any other precautionary act, stopping the Director from doing anything which *prima facie* is in his power to do in accordance with this Act, before a final judgement that such action is illegal has been delivered:

Provided that where an appeal is made against the Director's decision in accordance with article 39 of this Act, and until a final decision is given on such appeal, the Director may not take any action which is directly related with the matter subject to that appeal.

(6) If a fishing licence is varied, revoked or suspended the Director may, if he considers it appropriate in all the circumstances of the case, refund the whole or any part of the fee charged for the licence.

(7) No action for damages may be instituted against the Director because of the exercise by him of the powers under sub-article (4).

Illegal holding of fish.

13. It shall be an offence for a master to retain or allow to be retained on board a fishing vessel, within the fishing waters, fish which has not been taken in accordance with a fishing licence provided for under this Act or in that quantity that does not exceed that amount permitted by the regulations for the protection of fish stocks.

Stowage of gear.

14. (1) At any time when a fishing vessel is in any area of the fishing waters or being a local fishing vessel is also in any area outside the fishing waters and either -

(a) it is prohibited by this Act from fishing in that area;

or

(b) it is covered, by a fishing licence or otherwise, to fish only for certain species or descriptions of fish in that area,

then its fishing gear or so much of the gear as is not required for permitted fishing shall be stowed in such manner that it is not readily available for use for fishing or in such manner as may be prescribed.

(2) If the provisions of this article are contravened -

(a) the master of the vessel concerned shall, on conviction, be liable to a fine (*multa*) of not less than two thousand liri (Lm2,000) but not exceeding twenty-five thousand liri (Lm25,000); and

(b) the court imposing the fine may order the forfeiture of any fishing gear found on or used by any person on the vessel or taken away by any other person from the vessel.

Statistical information.

15. The Director may, prior to entering in the record of fishing vessels a local fishing vessel or granting a fishing licence, require the master, the owner or the charterer of the fishing vessel specified in the application for entry in the record, or the application for the licence, as well as the fish market trader (*pitkal*), to provide him with such statistical information concerning fishing as he may direct.

Transhipment and export of fish.

16. (1) The Minister may provide by regulations for the licensing of the transhipment or receiving of fish by fishing vessels in the fishing waters or the transport from the internal waters or territorial seas by any vessel of fish transhipped from any other vessel.

(2) Regulations made under subarticle (1) may apply such restrictions and conditions on the granting of licences or permits as the Minister shall consider appropriate and in particular may provide for -

(a) the areas in which transhipping may take place;

(b) the times when fish may be transhipped or transported;

(c) the numbers of transhipments and transportations that may be undertaken and the quantities and descriptions of fish that may be transhipped or transported.

(3) Regulations made under subarticle (1) shall empower the Director to impose such conditions on the grant of licences or permits thereunder as he shall consider necessary for the regulation of the

transhipment or export of fish including conditions as to the treatment on board fishing vessels of fish received on board and different conditions may be imposed in respect of different fishing vessels or fishing vessels of different descriptions.

PART VII
SPECIAL ARRANGEMENTS

Fisheries research permits.

17. (1) The Minister, acting on the advice of the Director and after consultation with the Board, may grant a permit to a master, owner or charterer of a specified vessel authorising fishing for scientific research purposes in the fishing waters or specified areas of the fishing waters.

(2) The holder of a permit under subarticle (1) and the vessel specified in such permit shall, subject to the provisions of subarticles (3), (4) and (5), be exempt from the provisions of this Act, as specified in such permit.

(3) The research vessel shall be subject to inspection by the Director and the holder of the permit shall, on demand, submit to the Director a report of operations.

(4) A permit granted under subarticle (1) shall be subject to such conditions, which may include the application of provisions of this Act, as shall be specified in the permit.

(5) The Minister may by notice in writing given to the holder of a permit under subarticle (1) -

(a) revoke the permit;

(b) vary or revoke the conditions to which the permit is subject or specify further conditions to which the permit shall be subject.

Fisheries access agreements.

18. (1) The Minister may, after consultation with the Board, enter into negotiations for the conclusion of fisheries access agreements with other states and with associations representing foreign fishing vessel owners or charterers providing for the allocation of fishing licences to vessels from those states or associations.

(2) Any agreement negotiated under this article shall include a provision establishing the responsibility of the foreign state or association to take necessary measures to ensure compliance by vessels from that state or belonging to that association with the terms and conditions of the agreement and with the laws relating to fishing

in the fishing waters.

(3) For the purposes of this article the term "state" shall include any regional economic integration organisation to which the power to negotiate access agreements has been transferred by its member countries.

(4) No fisheries access agreement made under this article shall be ratified by the Government unless such ratification has been authorised by resolution of the House of Representatives.

PART VIII
ENFORCEMENT

General powers of fisheries protection officers.

19. (1) For the purpose of enforcing the provisions of this Act a fisheries protection officer may exercise the following powers with respect to any fishing vessel or any vessel engaged in fishing in the fishing waters:

(a) he may stop the vessel;

(b) he may require the master to stop fishing and take the fishing gear of the vessel back on board;

(c) he may require the master to facilitate the boarding of the vessel by all appropriate means;

(d) he may go on board the vessel and take with him such other persons as he may require to assist him in the exercise of his powers;

(e) he may require the master, the crew or any of them to produce, and the officer may examine and take copies of any certificate of registry, licence, official log book, official paper, article of agreement, record of fish caught and any other document relating to the vessel and to the crew or any member thereof or to any person on board the vessel, which is in their respective possession or control on board the vessel;

(f) he may muster the crew of the vessel;

(g) he may require the master to appear before him and give any explanation concerning the vessel and any crew or any person on board the vessel and any document mentioned in paragraph (e);

(h) he may make any search, examination or enquiry which he shall consider necessary to find out whether any

provision of this Act has been contravened;

(i) if he has reasonable grounds for suspecting that any person has committed an offence against this Act, he may without summons, warrant or other process, take the suspected offender, and take or require the master of the vessel to take the vessel in question together with the crew thereof, to a port or harbour in Malta for the purpose of carrying out any search, examination or enquiry and bring him or them before a competent court and detain him and them and the vessel in Malta until the alleged offence has been adjudicated upon;

(j) he may, having regard to the safety of the vessel, take steps to immobilise any fishing vessel seized, taken or detained in accordance with this article, for the purpose of preventing the vessel being taken by any person prior to the release of the vessel under article 23 or 24 or by the Court;

(k) in the case of any offence against article 8, 9 or 10 or regulations made under article 16(1), he may seize any vessel together with its equipment, stores and cargo which he believes has been used in the commission of such offence or in respect of which he believes such offence has been committed or that is the result of an offence;

(l) he may seize any fishing gear, instruments or appliances which he believes have been used in the commission of such offence;

(m) he may seize any fish which he believes have been taken or fish products produced in the commission of such offence;

(n) he may seize or take copies of any documents which he believes are relevant to any such offence.

(2) In exercising the powers referred to in subarticle (1) a fisheries protection officer may use or employ such force as may be reasonably necessary.

(3) The powers contained in this article may be exercised in respect of a fishing vessel irrespective of whether the vessel is at the time of such exercise engaged in fishing or any activities in any way related to fishing.

Powers of entry and search on land of fisheries protection officers.

20. For the purpose of enforcing the provisions of this Act a fisheries protection officer may -

(a) enter, at any reasonable time, any premises (other than a dwelling) used for carrying on business in connection with the operation of fishing vessels and activities ancillary thereto or with the treatment, storage or sale of fish;

(b) require any person on the premises to produce any documents relating to the catching, landing, transhipment, export, import, sale or disposal of fish;

(c) if he has reasonable grounds for suspecting that an offence under this Act has been committed and that the cause of the offence may be removed or suppressed -

(i) enter and search without a warrant, with or without assistance, any premises referred to in paragraph (a), or any vehicle, aircraft, vessel or other means of conveyance and open and search any baggage, pack or other thing;

(ii) seize any document or any gear or thing that he believes has been used in the commission of such offence;

(iii) seize any fish that he believes has been used, handled or processed in the commission of such offence.

Powers of fisheries protection officers and convention fisheries officers to enforce conventions.

21. (1) For the purpose of enforcing the provisions of any convention with respect to the conduct or safeguarding of fishing operations to which Malta is a party, a convention fisheries officer may in relation to a local fishing vessel and a fisheries protection officer may in relation to a convention fishing vessel or a foreign fishing vessel exercise anywhere within the convention area outside the fishing waters the powers under article 19.

(2) This article does not authorise a fisheries protection officer or convention fisheries officer to do anything not authorised by the convention he purports to enforce nor authorise him to exercise in relation to a vessel of a country which is a party to the convention any power which the government of that country has informed the other parties to the convention is not to be exercised in relation to its fishing vessels.

(3) Any person who on any fishing vessel within the fishing waters or on a local fishing vessel outside those waters -

(a) fails without a reasonable cause to comply with any requirement imposed or to answer any question asked by a fisheries protection officer under this article; or

(b) prevents or attempts to prevent any other person from complying with any such requirement or answering any such question; or

(c) assaults any such officer while exercising any of the powers conferred on him under this article or wilfully obstructs such officer in the exercise of any of those powers,

shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than five hundred liri but not exceeding two thousand five hundred liri.

(4) The provisions of subarticle (3) shall apply in relation to things done on a local fishing vessel in a convention area outside the fishing waters by or in relation to a convention fisheries officer who is exercising powers to enforce the provisions of the convention relating to that area as it applies in relation to things done on any fishing vessel within those limits by or in relation to a fisheries protection officer.

Indemnity.

22. No civil or criminal action shall lie against a fisheries protection officer or a convention fisheries officer in respect of any act done or omitted to be done by him in good faith in the purported exercise of his powers under this Act if there shall have been reasonable cause for such act or omission.

Release of vessel or thing if no proceedings instituted.

23. Where a fishing vessel or any other thing has been taken, seized or detained under article 19, the Director shall on the demand of the master, owner, charterer or agent release the vessel or thing if no proceedings are instituted within fourteen days of the arrival of the vessel or thing in a port or harbour.

Security for release of fishing vessel.

24. (1) Where a fishing vessel is taken, seized or detained under this Act and a charge is laid against the master, the owner or the charterer of the vessel in respect of the offence for which the vessel has been detained, the master, the owner or the charterer or the agent of the owner or of the charterer of the vessel may at any time before the determination of the charge apply to the Court by which the charge is due to be determined for the release of the vessel on the provision of security in accordance with this article.

(2) On hearing the application the Court, on ensuring that no evidence that may be required is thereby prejudiced, shall either -

(a) on being satisfied that reasonable security has been given to the Government in respect of the aggregate of the maximum penalty to which the defendant may be liable and the costs and expenses that the Government may recover under article 31, order the release of the fishing vessel; or

(b) order the release of the fishing vessel on the production, by any suitable person or persons approved by the Court, of a reasonable bond in favour of the Government in the prescribed form, and conditioned in accordance with subarticle (4), in an amount not less than the aggregate of the maximum penalty to which the defendant may be liable and the costs and expenses that the Government may recover under article 31.

(3) Notwithstanding the provisions of subarticle (2), the Court may, where it is satisfied that there are special circumstances to justify it doing so, order that the bond shall be in a specified amount that is not less than the minimum amount required by that subarticle.

(4) The conditions of the bond shall be that, if -

(a) the defendant is not found guilty of the charge; or

(b) the defendant, on being convicted of the charge, pays in full within fourteen days after he is convicted the amount of the fine imposed by the Court and the amount of all costs and expenses due by him to the Government under article 31,

then the bond shall be of no effect but that otherwise the bond shall remain in full force and effect.

(5) The amount specified in the bond shall be recoverable in full in any Court of competent jurisdiction as a debt due to the Government jointly and severally by the person or persons by whom the bond is given unless the person or persons prove the due performance of the condition for which the bond was made.

(6) For the purposes of this article "fishing vessel" includes all equipment on board or used by the vessel and also includes all fish that has been seized from the vessel under this Act and is detained on board the vessel in the custody of the Government.

Disposal of seized fish and other perishables.

25. Where any fish or other things of a perishable nature are seized under article 19 the Director may, after ensuring that all evidence that may be necessary is preserved, notwithstanding any other provision of this Act, either -

(a) return the fish or other thing to the person from whom it was seized on receiving security that is in the opinion of the Director adequate for the equivalent value of the fish or thing by way of bond or other stipulation conditioned for payment of such equivalent value in the event that such amount shall be adjudged by the Court to be forfeited to the Government; or

(b) cause the sale by public auction of the fish or other thing and if Court proceedings are instituted deposit the proceeds of sale in Court pending an order by the Court in respect of the forfeiture or otherwise of the proceeds or release the proceeds to the person from whom the fish or thing was seized in accordance with article 19.

PART IX
AQUACULTURE

Installation and operation of aquaculture establishment.

26. (1) No person shall install or operate an aquaculture establishment otherwise than under the authority of and in accordance with the conditions of an aquaculture permit granted by the Director under this Act. The issue of such permit shall be subject to consultation by the Director with the Chairman of the Malta Maritime Authority and the Chairman of the Planning Authority with regard to the allocation of an appropriate site for the aquaculture establishment.

(2) Any person who installs and operates an aquaculture establishment in contravention of subarticle (1) or who, without the authority of the owner of an authorised aquaculture establishment, harvests the products of that establishment shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than five thousand liri (Lm5,000) but not exceeding ten thousand liri (Lm10,000).

Aquaculture permit.

27. (1) An aquaculture permit shall be granted to the person specified therein and shall not be transferred without the prior written consent of the Director.

(2) An aquaculture permit shall confer on the permit holder exclusive rights to harvest the products of the aquaculture establishment within the area specified in the permit either on land or sea.

(3) An aquaculture permit shall be subject to such conditions as appear to the Director to be necessary or expedient for the regulation of aquaculture, the management of fisheries and the economic benefit of Malta and in particular a permit may contain,

without prejudice to the generality of the foregoing -

(a) conditions as to the siting, design and materials used in the construction of the aquaculture establishment;

(b) health conditions of fish;

(c) measures for the prevention of the escape of species of fish introduced into Malta for aquaculture;

(d) measures for the prevention of the spread of fish diseases to the wild stocks;

(e) commercial provisions relating to the marketing of fish and fish products.

PART X
PROHIBITIONS AND OFFENCES

Prohibited fishing methods.

28. (1) Any person who in the fishing waters or on a local vessel outside the fishing waters -

(a) uses any poison or other noxious substance for the purpose of killing, stunning, disabling or catching fish or in any way rendering such fish more easily caught; or

(b) carries or has in his possession or control, any poison or other noxious substance in circumstances indicating an intention of using such explosive, poison or other noxious substance for any of the purposes referred to in paragraph (a),

shall be guilty of an offence against this article and shall be liable, on conviction, to the penalty established in article 34 of the Explosives Ordinance. Cap. 33.

(2) Any poison, or other noxious substance found on board any vessel shall be presumed, unless the contrary is proved, to be intended for the purposes referred to in subarticle (1).

(3) Any person who lands, sells, receives or is found in possession of fish, knowing or having reasonable cause to believe them to have been taken in contravention of this article, shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than one thousand liri (Lm1,000), but not exceeding two thousand five hundred liri (Lm2,500).

Obstruction of fisheries protection officers and false information.

29. (1) Any person who -

(a) assaults, resists or wilfully obstructs a fisheries protection officer in the exercise of his powers under this Act; or

(b) refuses or neglects to comply with any order, requisition or direction lawfully made or given under this Act; or

(c) without reasonable cause fails to -

(i) answer any question asked by a fisheries protection officer; or

(ii) produce anything required to be produced,

in pursuance of this Act; or

(d) fails to allow a search or inspection under this Act; or

(e) prevents or attempts to prevent another person from complying with such orders, requisitions or directions or from answering such questions, producing anything or allowing a search or inspection,

shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) of not less than two hundred liri (Lm200) but not exceeding two thousand five hundred liri (Lm2,500).

(2) Any person who -

(a) for the purposes of obtaining any licence, permit or entry into the record of fishing vessels; or

(b) for the purported compliance with any requirement to provide any information under this Act,

provides information which he knows to be false in a material particular or recklessly provides information which is false in a material particular, shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) of not less than two hundred liri but not exceeding one thousand liri.

Offences, penalties and proceedings.

30. (1) Any person who contravenes any provision of this Act for which no penalty is specifically provided shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) of not less than two hundred liri (Lm200) but not exceeding five thousand liri

(Lm5,000).

(2) Where any person is convicted of an offence against this Act, the Court may, in addition to any other penalty that it may impose, order that any fishing gear, instruments or appliances used in the commission of such offence and any fish on board a fishing vessel or the proceeds of sale thereof, if already sold, shall be forfeited to the Government and if so forfeited shall be disposed of in such manner as the Director, acting in his discretion, may direct.

(3) For the purposes of any proceedings under this Act, any fish found on board a fishing vessel shall, unless the contrary is proved, be presumed to have been caught -

(a) within the fishing waters or in an area where the vessel is required to have a licence or permit to fish; and,

(b) within the vicinity of the vessel at the time the fish is so found, where the licence or permit restricts the vessel to fish in a particular area.

(4) An attempt to commit an offence under this Act shall itself constitute an offence and may be dealt with in like manner as if the attempted offence had been committed.

(5) Any master who transhipps, receives on board a fishing vessel, transports or in any other manner deals with fish caught or transhipped in contravention of this Act shall be guilty of an offence.

(6) A person convicted of a second or subsequent offence against this Act shall be liable, on conviction, to double the maximum penalty for that offence.

(7) Notwithstanding the provisions of any other law, proceedings in respect of an offence against this Act involving a foreign fishing vessel shall be barred by prescription by the lapse of ten years from the commission of the offence.

(8) The Director may, in respect of prosecutions and proceedings for offences under this Act, produce evidence and plead the case instead of, or together with, the Police before the Court.

(9) A certificate purporting to be signed by the Director or any officer authorised by him for that purpose, to the effect that on a date specified in the certificate -

(a) a fishing vessel specified in that certificate was not entered in the record of fishing vessels, licensed or specified in

a permit under this Act; or

(b) the accused person or any other named person was not the holder of a licence or permit under this Act,

shall, in the absence of proof to the contrary, be sufficient evidence of the matter stated in the certificate.

PART XI
COURT PROCEEDINGS, ADMINISTRATIVE PROCEEDINGS AND PENALTIES

Court proceedings. Cap. 9

31. (1) Notwithstanding the provisions of article 370 of the Criminal Code, the Court of Magistrates shall be the competent Court to try all offences against this Act.

(2) Subject to the provisions of subarticle (1), proceedings against any person for any offence against any of the provisions of this Act shall be taken before the Court of Magistrates as a Court of Criminal Judicature in accordance with the provisions of the Criminal Code: Cap. 9.

Provided that notwithstanding the provisions of article 376(1)(b) of the Criminal Code, the Court shall, at the request of any of the parties, take down the evidence given by the witnesses in the manner provided for in article 391 of the said Code and in article 3 of the Electro-magnetic Recording of Proceedings Act, or in any law for the time being in force. Cap. 9 Cap. 284.

(3) Except where specifically provided otherwise, the provisions of article 23 of the Criminal Code shall not be applicable to offences against this Act. Cap. 9.

(4) In respect of proceedings for offences against this Act the Court may award the Government such costs and expenses, including expenses incurred in exercise of the power under article 19(1)(i) and (j), incurred in relation to those proceedings as it may deem proper.

(5) Notwithstanding the provisions of article 413(1)(b) of the Criminal Code the Attorney General shall always have a right of appeal from any judgement given by the Court of Magistrates, sitting as a court of criminal judicature, in respect of proceedings for an offence against this Act. Cap. 9.

Convention offences.

32. The Minister may by order make such provisions as he may consider appropriate for the enforcement of any restriction or obligation relating to sea fishing contained in a convention to which the Government is a party and may provide in the order that any

contravention of any such restriction or obligation shall constitute an offence against this Act liable to the punishment of a fine (*multa*) as laid down in the order, which fine (*multa*) shall not exceed the sum of twenty-five thousand liri (Lm25,000).

Forfeiture of licence, permit or entry in record of fishing vessels.

33. (1) In the case of a second or subsequent conviction against this Act, the person convicted shall, in addition to any other penalty, forfeit any licence or permit, and any relative entry in the record of fishing vessels made under this Act shall be cancelled. The person convicted shall also forfeit any fees paid for any licence or permit forfeited as aforesaid or for any entry cancelled as aforesaid, and shall be incapable, for a period of three years from the day of the second or subsequent conviction, as the case may be, of holding any such licence or permit or of being so entered in the register under this Act.

(2) Notwithstanding the provisions of subarticle (1), the Minister may, in the circumstances of any particular case and upon application being made to him within thirty days from the date of conviction, send that application to the Committee appointed according to article 39(4).

(3) The Committee shall, within a period not longer than five days from the date when it shall have received the application from the Minister, after studying the case, hearing every person whom it deems appropriate, and receiving all the required advice, give its advice in writing to the Minister whether the Minister should order that the provisions of subarticle (1) are not to apply to any particular licence, permit or entry in the record of fishing vessels otherwise forfeited.

(4) The Minister shall accede to or refuse the application in accordance with the advice given by the Committee.

Administrative penalties.

34. (1) Where the Director has reasonable cause to believe that -

(a) an offence against this Act has been committed by any person in respect of a fishing vessel; and

(b) the offence is of a minor nature; and

(c) having regard to the previous conduct of the vessel and the person concerned, it would be appropriate to impose a penalty under this article,

he may cause a notice in writing in accordance with subarticle (2) in the appropriate form to be served on that person.

(2) A notice under subarticle (1) shall specify -

(a) the date and nature of the offence;

(b) a summary of the facts upon which the allegation that an offence has been committed is based (being a sufficient summary fully and fairly to inform the person of the allegation against him);

(c) any other matters (not being previous convictions) that the Director considers relevant to the imposition of a penalty; and

(d) the amount of the penalty due, and where the penalty due depends on a previous conviction, the date of such conviction,

and shall be endorsed with a statement setting out the provisions of this article.

(3) Any person on whom a notice under subarticle (1) is served may within thirty days after such service by notice in writing in the appropriate form served on the Director require that proceedings in respect of the alleged offence shall be dealt with by the Court, in which case the following provisions shall apply:

(a) no further proceedings shall be taken under this article by the Director; and

(b) nothing in this article shall be construed to prevent the institution of any proceedings in respect of the alleged offence or the conviction of the person for the offence by the Court or the imposition of any penalty or forfeiture under this Act upon such conviction.

(4) Any person on whom a notice under subarticle (1) is served who does not wish that proceedings in respect of the alleged offence shall be dealt with by the Court may by notice in writing served on the Director -

(a) admit the offence, and

(b) pay the amount of the penalty to the Director within thirty days after the notice of the penalty is served.

(5) Where under this article a person admits an offence, the Director shall impose a monetary penalty on that person in respect of the offence amounting to one third of the maximum penalty to which

the person would be liable if he were convicted of the offence by the Court.

(6) The penalty imposed under subarticle (5) shall be due as a civil debt enforceable by the competent Court of civil jurisdiction in favour of the Government and the declaration by the person on whom the penalty is imposed that he admits the charge shall constitute an executive title for the purposes of article 253 of the Code of Organization and Civil Procedure in the same manner as if it were a judgement of the competent Court of civil jurisdiction.

Cap. 12.

(7) Notwithstanding any other provisions of this Act or of any other enactment, where an offence has been admitted under this article no charge may be laid in respect of the offence against any person by whom it has been admitted.

(8) Where a person on whom a notice under subarticle (1) is served does not, within thirty days after the notice is served on him, admit the offence, the Director shall institute proceedings or cause proceedings to be instituted before the Court in respect of the alleged offence.

(9) Nothing in this article shall apply:

(a) in respect of any offence under article 8(2), article 9(3), or article 10(2); or

(b) to any offence in respect of which any charge has already been laid.

(10) The Director shall personally exercise his powers under this article and in the exercise of such powers shall not be subject to the direction or control of any other person or authority.

Detention or forfeiture of fishing vessel on failure to pay or secure fine.

35. (1) If any fine and, or amount of costs or expenses is adjudged to be due by the master, owner or charterer of any fishing vessel in respect of a contravention of any provision of this Act, or of any order made under article 32, the Court may, if no security, or if it considers that insufficient security, has been given to the Director, order that in default of payment forthwith the defendant shall give security for the payment of the amount due and if such security, to the satisfaction of the Court, is not given, the Court may order the detention of the fishing vessel concerned with such contravention and such fishing vessel may accordingly be detained in Malta until the amount due is paid or sufficient security shall be given to the satisfaction of the Court.

(2) If a fine is not paid or security is not given within thirty days of the order of the Court, the Court may order that in the case of any offence against article 8(2), article 9(3) or article 10(2), any vessel and its equipment used in the commission of the offence shall be forfeited to the Government and if so forfeited shall be disposed of in such manner as the Director acting in his discretion may direct.

PART XII
GENERAL

Monitoring system.

36. It shall be in the power of the Minister to establish a satellite-based monitoring system to monitor the position of fishing vessels as well as fisheries monitoring centres.

Information concerning fishing.

37. The Minister shall have the power to forward any information concerning fishing effort, by any fishing vessels, to any third party, as he shall deem fit.

Power to make regulations.

38. (1) The Minister may make regulations for the better carrying into effect of the purposes of this Act.

(2) In particular and without prejudice to the generality of subarticle (1), such regulations may provide for:

(a) anything which is to be or may be prescribed under this Act;

(b) the conservation, management and protection of fish resources including the establishment of closed areas and closed seasons, the prescription of the limits on the amounts, sizes and weights of fish caught, retained or traded, the prescription of mesh sizes of nets, the control and use of types of fishing gear, the control and prohibition of methods of fishing and the protection of fish stocks and their habitats from the actual or potential effects of pollution or from the actual or potential effects of measures taken to eliminate or control pollution;

(c) the establishment and management of marine areas for the preservation of fish stocks, including their means of sustenance;

(d) the licensing of any kind of fishing including any activity related to fishing and the various registers necessary including the fishing vessel register;

(e) the regulation of amateur and recreational fishing;

(f) a quota or total allowable catch for any fish or in

respect of any method of fishing in any part of the fishing waters and authorising the Director to allocate any such quota or total allowable catch to such commercial fishermen as he may specify by notice in the Gazette;

(g) the control of the exploitation of coral and sponge resources;

(h) the protection of turtles, dolphins and other aquatic animals;

(i) the regulation of the importation of live marine or freshwater fish and fry, eggs and spawn thereof;

(j) the promotion and control of the cultivation of fish including the issue by the Director of a code of practice for the maintenance and operation of aquaculture establishments;

(k) the regulation of the landing of fish including the designation of landing places and the control of the handling and transportation of fish and fish products;

(l) the regulation of the marketing of fish including the designation of fish markets, the control of fish auctions and the registration of fish buyers and dealers;

(m) the regulation of market intervention schemes;

(n) the commercial regulation of the export and import of fish and fish products;

(o) the control of quality standards and grading of fish sold, exported or imported;

(p) the payment of fees on applications for permits, licences and registrations and on the issue of permits, licences or registrations; as well as the provision by applicants for licences and licensees of bonds or other forms of security for securing their compliance with the obligations under the terms and conditions of their licences;

(q) the conditions and procedures for applications for any permits, licences or registrations, or other documents and the forms to be used therefor;

(r) the appointment of local agents for foreign fishing vessels;

(s) the placing of observers on fishing vessels;

(t) to regulate any satellite based monitoring systems that may be established under article 36, and to impose such obligations on fishing vessels necessary for the proper operation of such system;

(u) the control of public slipways;

(v) reports to be made for the purposes of this Act;

(w) compliance with, and the implementation of, obligations of Malta under any convention and, or treaty, and may include the application to convention vessels of any of the provisions of this Act which do not relate exclusively to foreign fishing vessels with any necessary modifications to provisions relating to any matters including qualifications for ownership of fishing vessels;

(x) health and safety regulations as may be deemed proper; and

(y) the imposition of a fine (*multa*) of not less than five hundred liri (Lm500) but not exceeding two thousand five hundred liri (Lm2,500) for any contravention of any such regulations.

Revision of Director's decisions.

39. (1) Where the Director refuses the issuing of a licence required by or under this Act, or modifies that licence or cancels the same, the person applying for the licence or the licensed person, as the case may be, shall have the right, by not later than five working days to appeal against the Director's decision by means of a letter addressed to the Minister wherein that person shall state the reasons why the decision of the Director should be cancelled or modified.

(2) The Minister shall, as soon as he receives the appeal in accordance with subarticle (1), send the said appeal to the Director so that, within two days, the Director may make a report in writing to the Minister, wherein he shall indicate the reasons why the appeal should be quashed; however the Director may, where it appears to him that the appeal is justified, change his decision in accordance with the appeal and inform the Minister, within the period given to him for his reply.

(3) When the Minister receives the Director's reply, or the time given for the reply shall have elapsed without the receipt, by the Minister, of such reply, the Minister shall immediately send the appeal and the Director's reply, if any, to the Committee established

under subarticle (4), so that the said Committee may give its advice, to the Minister on the appeal.

(4) There shall be a Committee which shall be composed of those members of the Fisheries Board appointed under article 5(2)(g) and (h) and of the three members of the same Board appointed under article 5(2)(f), who shall not have been nominated by the fisherman's co-operatives; the member appointed under paragraph (h) above-mentioned shall be the Chairman of the Committee.

(5) The Committee shall, within five days of its receipt of the appeal from the Minister, study the case, hear all persons whom it shall deem appropriate, receive all the advice necessary, and send its advice in writing, together with the transcript of any evidence heard and any advice given to the Committee, to the Minister as to the manner in which the appeal is to be dealt with.

(6) The Minister shall decide on the appeal in accordance with the Committee's advice and shall give an order in writing to the Director according to his decision; a copy of the Minister's decision shall also be sent to the appellant.

PART XIII
REPEALS AND TRANSITORY PROVISIONS

Amendment of the Code of Police Laws. Cap. 10.

40. (1) Articles 305 and 306 of the Code of Police Laws shall be deleted.

(2) Notwithstanding the provisions of subarticle (1), any subsidiary legislation made under any of the provisions of the articles therein mentioned shall, until other provision is made under or by virtue of this Act, continue in force and have effect as if made under this Act.

Repeal of the Fish Industry Act. Cap. 138.

41. (1) The Fish Industry Act is hereby repealed.

(2) Notwithstanding the provisions of subarticle (1), any subsidiary legislation made under any of the provisions of the Fish Industry Act therein mentioned shall, until other provision is made under or by virtue of this Act, continue in force and have effect as if made under this Act.

Passed by the House of Representatives at Sitting No. 460 of 8th January, 2001.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives