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Mexico's Fishing Law: Translating the Transition

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Jorge A. Vargas*

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I. INTRODUCTION

A. Background

Mexico is an oceanic nation. Geographically situated between North and South America, it occupies the largest coastline in Latin America totaling 11,500 kilometers (including islands) along the Gulf of Mexico, the Caribbean, the Gulf of California and the Pacific Ocean.¹ Its exclusive economic zone (EEZ), estimated to cover some three million square kilometers,² is the seventeenth largest in the world and the third largest in the northern hemisphere, after that of the United States and Canada.

Mexico also possesses three million square hectares of internal waters, formed by estuaries and coastal lagoon areas, particularly apt for aquiculture projects. Its geomorphological continental shelf—abundant in hydrocarbons, natural gas, and poli-metallic deposits, as well as in living marine resources, in particular shrimp and lobster—cover a submarine area of 358,000 square kilometers.³ According to the estimates of the U.S. Geological Survey, jointly with the United States, Mexico borders the fourth largest oil and natural gas deposit in the world, situated in the deepest and central portion of the Gulf of Mexico.⁴

Notwithstanding the richness and variety of its magnificent coastlines, relatively benign weather, and abundant marine resources, fishing activities in Mexico have been considerably neglected for most of this century. In part, this abandonment of the fishing sector was due to a very restrictive and nationalist legislation that created a monopoly over the most commercially valuable fishing species (i.e., shrimp,

1. The length of Mexico's coastline, including islands, totals 11,592.77 km., equaling 8,475.06 km. in the Pacific Ocean and the Gulf of Mexico, and 3,117.71 km. in the Caribbean. EL RÉGIMEN JURÍDICO DE LA PESCA EN MÉXICO [MEXICO'S LEGAL FISHING REGIME] SEPES-UNAM 393 (1994) [hereinafter REGIME].

2. The EEZ totals 2,946,825 sq. km.: 2,175,325 sq. km. in the Pacific Ocean and the Gulf of Mexico, and 771,500 sq. km. in the Caribbean Sea. *Id.*

3. Mexico's submarine continental shelf totals 394,603 sq. km., divided into 159,908 sq. km. in the Pacific Ocean and the Gulf of Mexico and 234,695 sq. km. in the Caribbean Sea. *Id.*

4. Jorge A. Vargas, *Mexico's Legal Regime Over Its Marine Spaces*, 26 INTER-AM. L. REV. 189, 219 (Winter 1994-95) [hereinafter *Marine Spaces*].

lobster, and Pismo oyster) in favor of fishing cooperatives. Other factors included the lack of coastal and marine infrastructure, especially an inadequate number and type of fishing vessels; the absence of fishing research centers and marine technologies; and, in particular, the lack of incentives to attract Mexican and foreign entrepreneurs to invest in this sector of the Mexican economy. Thus, the modernization and capitalization of Mexico's fishing industry is a relatively recent phenomenon.

During the last two decades, Mexico has placed greater emphasis on developing and modernizing its fishing activities. This is mainly reflected by the adoption of the following official policies:

- (1) Mexico's establishment of a 200-nautical mile EEZ in early 1976, as a result of an amendment to Article 27 of Mexico's Federal Constitution.⁵ The adoption of the EEZ—one of the first to be adopted at a global scale—provides Mexico with the largest oceanic space in Latin America and one of the most important on a global basis, given the volume of variety of marine resources found in this area ranging from fish, sedentary species, hydrocarbons, natural gas, and rich deposits of manganese nodules. In general, the establishment of the EEZ served as a driving force that has turned Mexico towards the oceans and increased the utilization and protection of its resources.
- (2) The Fishing Department created in 1976, was transformed in 1982 into the Fishing Secretariat (*Secretaría de Pesca*) and is currently serving as a component of the Secretariat of the Environment, Natural Resources and Fishing (*Secretaría de Medio Ambiente, Recursos Naturales y Pesca*, known as SEMARNAP);
- (3) The enactment of the new Federal Fishing Act⁶ (Fishing Act or *FA*) and its Regulations⁷ (Regulations or *FR*). These legislative enactments have been characterized as a modern and flexible legal regime that eliminated those traditional and conservative policies that hindered the development of Mexico's fishing sector in the past.

5. JORGE A. VARGAS, *LA ZONA ECONÓMICA EXCLUSIVA DE MÉXICO* (V Siglos ed., 1980).

6. "Ley de Pesca" [Fishing Act], D.O., 25 de junio de 1992 (Mex.) [hereinafter Fishing Act]. The Fishing Act entered into force 30 days after its publication. An informal English translation of the Fishing Act appears in Part XV.C at the end of this article. All original sources are on file with the author.

7. "Reglamento de la Ley de Pesca" [Regulation of the Fishing Act], D.O., 29 de septiembre de 1999 (Mex.) [hereinafter Regulations]. The Regulations entered into force the following day of their publication.

- (4) The importance given to the fishing sector in Mexico's National Development Plan 1995-2000⁸ which, in pertinent part, reads:

Fishing development is based upon a comprehensive approach centering on research and resource assessment needs, basic infrastructure, fishing fleet, transportation and commercialization. The diversification and development of new fisheries and of underutilized resources is to be promoted, jointly with industrial and rural aquiculture. It is imperative to restructure the fisheries, adding transparency to the granting of licenses, renewals and fishing permits. This policy shall give special attention to the generation of employment, increase the availability of marine foodstuffs destined to improve the nutritional needs of larger groups of the population, and the acquisition of foreign income associated with those species where Mexico is more competitive. This development shall be based upon actions directed at guaranteeing water quality, improving the handling and planning of coastal zones, increasing research and technological development, aquiculture sanitation and specific training and technical assistance programs.⁹

As a result of this National Development Plan, Mexico aspires: (1) to increase the total per capita marine food consumption from 1.4 kilograms to 17.8 kilograms with which 80% of the annual fishing production would be destined to direct human consumption, (2) to diversify and consolidate its foreign market by producing new and better quality products, and (3) to strengthen the use of technologies and the conduction of research as the axis for the development, management, and regulation of the fishing sector.¹⁰

Today, Mexico captures 1.5 million tons of fish yearly, out of that 85% are utilized for domestic consumption. This places Mexico within the first twenty countries on a global scale. Fish exports generate half a billion dollars for Mexico every year. Mexico has 59 fishing ports, 31 in the Pacific Ocean and the Gulf of California and 28 in the Gulf of Mexico and the Caribbean Sea. The Mexican fishing fleet consists of over 3,000 large boats and some 75,000 small boats. Fishing is practiced in oceanic areas as well as in rivers and lakes at the artisan level.¹¹

8. "Plan Nacional de Desarrollo 1995-2000" [National Development Plan 1995-2000], D.O., 31 de mayo de 1995 (Mex.).

9. *Id.* at 92-93.

10. Decreto por el que se Aprueba el Programa Sectorial de Mediano Plazo denominado, "Programa de Pesca y Acuicultura 1995-2000" [Fishing and Aquiculture Program 1995-2000], D.O., 13 de marzo de 1996 (Mex.) [hereinafter Program].

11. Data taken from the Legislative bill for a new Fishing Act submitted by the President of the Republic to the Mexican Congress (*Iniciativa del Presidente de la República*). REGIME, *supra* note 1, at 80-81.

B. Applicable Statutes

1. Principal Statutes

In Mexico, fishing activities are governed by the Fishing Act of 1992 and its 1999 Regulations. The Fishing Act is a federal statute that derives from Article 27 of Mexico's Constitution which provides that "the ownership of all the natural resources in the continental shelf and in the submarine areas of the islands" belongs to the Nation, including:

the territorial sea in the extension and terms established by international law; the maritime internal waters; lagoon waters and estuaries, permanently or intermittently connected with the sea; those of natural inland lakes which are directly connected with streams having a constant flow; those of rivers and their direct or indirect tributaries . . . ; those of lakes, lagoons and estuaries whose basins, zones or rivers are crossed by the boundary lines of two or more States or by the boundary line of the Republic and a neighboring country¹²

These natural resources are inalienable and imprescriptible and cannot be exploited, used, or enjoyed by private individuals or by legal entities (*i.e.*, companies) established in accordance with the applicable Mexican laws, except by means of licenses (*concesiones*) granted by the Federal Executive pursuant to the rules and conditions established by law.¹³ Accordingly, the Fishing Act controls fishing activities in areas under federal jurisdiction.

In contrast to the Fishing Act passed by Mexico's Federal Congress, the Regulations are formulated by a branch of the Federal Executive directly involved in the application and implementation of the Act, in this case SEMARNAP. Like their U.S. counterparts, under Mexican law, regulations are administrative enactments formulated to interpret, clarify, detail, and expand the substantive provisions of the corresponding act. In compliance with constitutional law, regulations must not contradict the provisions of any act.

The Regulations are composed of 161 sections (*artículos*), addressing questions such as the National Fishing Registry's closed fishing seasons (*vedas*), commercial fishing, fishing licenses and permits, fishing in high seas and in waters under foreign jurisdiction, placement of fishing gear and devices in federal waters, loading and unloading of fishing species, sport fishing, consumption of domestic fishing, aquiculture, introduction of foreign species in waters under federal jurisdiction, water sanitation, inspection and surveillance, and violations and sanctions.

12. CONST. art. 27 (Mex.).

13. *Id.*

2. Other Statutes

Since fishing activities involve a variety of activities which take place in a number of geographical and technical areas, it is only evident that fishing activities are regulated by several other statutes. Although a full discussion of these statutes is beyond the scope of this article, they are provided as a reference. These other federal statutes include: (1) the Federal Oceans Act¹⁴ (*Ley Federal del Mar*), (2) the General Act of National Assets¹⁵ (*Ley General de Bienes Nacionales*), (3) the Federal Waters Act¹⁶ (*Ley Federal de Aguas*), (4) the General Means of Communication Act¹⁷ (*Ley de Vías Generales de Comunicación*), (5) the General Act of Ecological Balance and Environmental Protection¹⁸ (*Ley General del Equilibrio Ecológico y la Protección al Ambiente*), (6) the Ports Act¹⁹ (*Ley Federal de Puertos*), (7) the Foreign Investment Act²⁰ (*Ley de Inversión Extranjera*), and (8) the Federal Public Administration Act²¹ (*Ley de la Administración Pública Federal*).

C. SEMARNAP

SEMARNAP is statutorily empowered to administer the Fishing Act and its Regulations.²² The Fishing Act enumerates twelve specific functions to be performed by SEMARNAP, among these are: to formulate and update the National Fishing Chart (*Carta Nacional Pesquera*); to promote the construction and equipment of fishing vessels; to protect turtles and marine mammals; to establish fishing zones and protected areas; and, in particular, to set the maximum volumes of allowable catch and regulate the use of fishing gear, number of vessels, fishing seasons, and the size and weight of specimens.²³

14. "Ley Federal del Mar" [Federal Oceans Act], D.O., 8 de enero de 1986 (Mex.), translated in 25 I.L.M. 889, 900 (1986) [hereinafter FOA]. FOA was published with corrections in the D.O., 9 de enero de 1986. FOA entered into force the day of its publication.

15. "Ley General de Bienes Nacionales" [General Act of National Assets], D.O., 26 de diciembre de 1969 (Mex.).

16. "Ley Federal de Aguas" [Federal Waters Act], D.O., 1 de diciembre de 1992 (Mex.).

17. "Ley de Vías Generales de Comunicación" [Federal Act of General Means of Communication], D.O., de junio de 1992 (Mex.).

18. "Ley General del Equilibrio Ecológico y la Protección al Ambiente" [General Act on Ecological Balance and Environmental Protection], Editorial Porrúa (1994) (Mex.).

19. "Ley Federal de Puertos" [Federal Ports Act], D.O., 19 de julio de 1993 (Mex.).

20. Mexico: Foreign Investment Act of 1993, Dec. 27, 1993, 22 I.L.M. 207 (1994).

21. "Ley de la Administración Pública" [Federal Public Administration Act], D.O., 4 de agosto de 1994 (Mex.) [hereinafter the Administration Act].

22. Originally, these functions were given to the Fishing Department (*Departamento de Pesca*), established in 1976 and later transformed into the Secretariat of Fishing (*Secretaría de Pesca*) in 1982. This Secretariat became a part of SEMARNAP in 1989. Since this year, SEMARNAP exercises direct control over fishing activities throughout Mexico.

23. "Ley de Pesca" [Fishing Act] art. 3, D.O., 25 de junio de 1992 (Mex.).

Pursuant to the Federal Public Administration Act (FPAA), which enumerates the specific functions of each federal agency composing Mexico's central administration, SEMARNAP is authorized to regulate the utilization of marine resources by issuing the corresponding environmental norms and technical standards and to promote, foster, and give technical advice regarding the production, industrialization, and commercialization of marine resources, in coordination with any other competent entities.²⁴

SEMARNAP also maintains a close interaction and coordination with the Secretariats of Navy, Commerce and Industrial Development (SECOFI), Communications and Transport (SCT), Foreign Affairs (SRE), Agriculture, Livestock and Rural Development (SAGDR), Agrarian Reform (SRA), Public Education (SEP), and other secretariats.

II. FISHING AND AQUICULTURE PROGRAM FOR 1995-2000

A. *Official Enactment by President Ernesto Zedillo*

In accordance with the National Planning Act (*Ley de Planeación*), President Zedillo formally enacted the Fishing and Aquiculture Program for 1995-2000 (Program) by Presidential Decree on March 13, 1996.²⁵ The Program is obligatory to all agencies, forming a part of Mexico's Federal Public Administration mandate, within the scope of their respective jurisdictions. However, SEMARNAP is the public entity empowered to promote and coordinate any actions with the social, public, and private sectors in order to fulfill and enforce the Program. Given its legal, political, and economic importance, an overview of some of the major components of the Program follows.

B. *Objectives*

The Program is based on these four objectives:

- (1) To accomplish a full and sustainable development of fishing and aquiculture activities;
- (2) To attain a sustainable development of the fishing resources without affecting their renewal capabilities and the environmental quality of their aquatic habitat;
- (3) To ordain economic activities in this area to promote and comply with the formal commitments towards responsible fishing (*pesca*

24. Administration Act, art. 32.

25. Decreto por el que se Aprueba el Programa Sectorial de Mediano Plazo denominado, "Programa de Pesca y Acuicultura 1995-2000" [Fishing and Aquiculture Program 1995-2000], at 26-106, D.O., 13 de marzo de 1996 (Mex.).

- responsable), thus establishing the bases to attain a sustainable development of fishing and aquiculture activities;
- (4) To promote permanently the economic and social development of fishing and aquiculture activities to guarantee Mexico's sovereignty over its Exclusive Economic Zone.

C. Fishing Production in Mexico

Stagnation in Mexico's fishing industry acted as a catalyst for the enactment of the Program. Mexico's national fishing production grew considerably in the period 1977-1981, totaling 1,565,465 metric tons (MT) in 1981. However, between 1982 and 1983 there was a substantial decrease, and a gradual recovery until 1989, when a total of 1,519,882 MT was achieved. The national production continued to decrease in subsequent years, until 1994 when 1,260,019 MT was achieved, indicating a reduction of 19.5% and 17.1% when compared with 1981 and 1989, respectively.

In general, this reduction may be attributed to the fact that fishing and aquiculture activities continue to be divorced from the productive sector. Also, there were significant levels of operational inefficiency which resulted in very low indices of productivity in the operation of the Mexican fishing fleet and in the industrialization and commercialization processes. As a consequence, large sectors of the Mexican population have very low levels of fish consumption, especially those sectors that consist of individuals with very low economic levels who live in rugged and mountainous areas, relatively distant from Mexico's coastlines.

The social and economic marginalization of coastal and river fishermen is quite evident in Mexico today. These activities are reported by SEMARNAP as part of the "Minor fleet" (*Flota menor*), composed of 70,930 primitive vessels, equivalent to 95.4% of Mexico's fishing fleet. The national fish consumption in the country is supplied by these vessels.

Other serious problems associated with fish production stem from a variety of factors, including fishing and port sectors having an obsolete infrastructure; the lack of technical support for small vessels; an inadequate infrastructure for conserving, handling, and processing fish products; and a lack of credit and financing systems designed to assist fishing activities.²⁶

26. See *id.* at 32-33.

III. FISHING INDUSTRY OF MEXICO

A. *Fishing Areas*

In Mexico, commercial fishing activities are centered in the northern states of Baja California, Baja California Sur, Sinaloa, and Sonora, totaling 53% of its total fishing production. Fishing activities are also prevalent in the Gulf of Mexico and the Caribbean Sea, particularly in the States of Tamaulipas, Veracruz, Campeche, and Yucatan.

B. *Fishing Regions and Resources*

Based on the biological characteristics of its fishing resources, Mexico may be divided into six regions:

- (1) the Gulf of Mexico;
- (2) the Caribbean Sea;
- (3) the western part of Baja California;
- (4) the Gulf of California;
- (5) the Pacific Ocean littoral; and
- (6) the water inland resources, composed of fourteen land-locked states.

Mexico's fishing resources may be divided into five large categories:

1. *Small Pelagic Fish*

This is represented by the Pacific sardine, whose population has increased considerably. In 1981, Mexico caught a total of 715,177 MT of this species. It is considered feasible to catch up to 400,000 MT under optimal conditions.

Over the last six years, the total annual production of pelagic fish amounted to 36,000 MT. Several species are considered to offer a tremendous potential in the Gulf of Mexico and in the Pacific, in particular sierra, peto, jurel, pámpano, lisa, labranca, robalo, and Spanish sardine.

2. *Large Pelagic Fish*

Yellowfin tuna is the most important fishery. Its potential catch has been estimated to increase to 150,000 MT per year, especially when including other tunids, such as barrilete, bonito, blackfin tuna, and melva in both littorals: the Gulf of Mexico and the Pacific.

Sharks and cazón have been subject to an intense fishing effort. However, it is estimated that oceanic sharks (*tiburones oceánicos*) may offer an interesting alternative, possibly offering a volume of 35,000 MT per year.

The "Picudos" in both littorals offer an attractive potential. It is estimated that it may be feasible to catch up to 6,000 MT in the Pacific every year.

3. *Crustaceans*

Shrimp production has declined considerably because of sustained and intense fishing efforts both in high sea and in protected waters. It is expected that Mexico will be able to catch up to 75,000 MT per year in both littorals.

Lobster is exploited to its maximum point in the western coast of Baja California and in the Mexican Caribbean. Currently, exploratory fishing is taking place in areas located in northeastern Mexico and in the central-south Pacific littoral to determine commercial feasibility. Langostilla is considered an important potential resource given its great abundance in the region. It is estimated that 40,000 MT per year may be caught every year. However, it is indispensable to develop feasible economic alternatives for its commercialization and to open new markets.

4. *Demersal Fish*

A total of 52,000 MT of demersal fish may be captured every year. Unfortunately, most of these species close to the coastline are close to their point of maximum utilization. Some of the fish in this category include mero, cabrillas, vaqueta, chernas, pargos, mojarras, mojarrones, viajaiba, besugo, and ronco. Offshore the Baja California peninsula, merluza and bacalao negro offer interesting prospects for their commercial exploitation.

5. *Molluscs*

The commercial exploitation of Giant squid, a migratory species estimated to produce 110,000 MT of catch per year, has been nil. Octopus in the Yucatan's continental shelf offers potential catch 16,000 MT per year.

Clams and snails in the western coast of Baja California and in the Gulf of California are in the verge of over-exploitation. In contrast, similar species offshore Campeche and in the Pacific are under-exploited.

The abalone fishery, whose annual production reaches 3,000 MT, and caracol reina, in the Mexican Caribbean, offer no possibilities for increasing their annual production.²⁷

27. *Id.* at 37-39.

C. Mexico's Fishing Fleet

Mexico's fishing fleet is composed today of 74,336 vessels. Out of these, 3,406 vessels belong to the major fleet (4.6%) and 70,930 to the minor fleet (95.4%). The major fleet is divided into 2,386 shrimp boats, 834 scale boats, 92 tuna boats, and 94 sardine boats.

It is recognized that the shrimp boats are in a severe process of deterioration, made up of vessels which were constructed more than 20 years ago. In contrast, the tuna fleet is among the most modern and efficient in the world. This is the only oceanic fleet in Mexico. Because of the tuna embargo imposed by the United States, this fleet was considerably reduced.

Mexico's fishing fleet presents contrasting asymmetries. For instance, there is no appropriate planning to determine the adequate size of the fleet for each of the existing fisheries, the country lacks naval architects and engineers who may be able to design the right type of modern and efficient vessels, construction methods are antiquated, and the navigational equipment tends to be old and inefficient. Propulsion systems tend to increase navigation and productivity costs considerably because of inefficient use of fuel. In addition, there are technical and operational problems associated with the conservation processes for fishing products; most of the electronic equipment used is technically obsolete; and the training of crew and fishing operators is less than mediocre, especially with regards to navigation techniques, maritime safety, and pollution control. Consistent with available data, it is evident that Mexico's fishing fleet is in dire need of modernization.

D. Industrial Plants

The construction and development of industrial fishing plants has been sporadic and uneven. In the early 1980s, a considerable increase in the number of plants took place, from 306 in 1977 to 445 in 1981. Later on, the construction rate was adversely affected by the drastic variations in the catches of sardines and anchovette.

Today, Mexico has an industrial processing capacity of some 839 MT per hour, equivalent to 6,700 MT per working shift. During 1989-1994, this capacity decreased from 57% to 52% as a result of the reduction of minor pelagic species. From another perspective, the consumption of fish is the largest in Mexican coastal states, where people prefer to eat fresh fish, reducing the prospect of industrializing local marine resources.

Thus, in 1994, only 593,552 MT of fish was processed, generating 272,986 MT of finished fish products (46% efficiency). This reflects a 40% reduction compared to the volume processed in 1981, and led to the closure of plants in Sonora and Sinaloa.

Finally, the industry is highly centered on a few industrial processes. For example, in 1994, fish flour production absorbed 39.7% of the processed raw

materials, freezing consumed 32.9%, and canning used 26.5%. Other industrial processes absorbed less than 1% of the processed raw materials.²⁸

FISH PROCESSING INDUSTRY

- Is composed by 387 plants, having a processing capacity of 605 tons/hr.
- In 1997, these plants produced 401,000 tons of finished products.
- Since 1995, these plants have been subject to "Industrial Technical Recommendations."

E. Foreign Trade

From 1977 to 1994, the fish products export reflected a surplus. In 1994, fish exports totaled \$US468.7 million dollars. Of this total, shrimp represented 66%, tuna 6%, lobster 4.6%, and abalone 2.8%. Mexico's foreign markets are the United States, 87.4%; Japan, 1.5%; Italy, 1.2%; and Spain, 0.5%. Thus, Mexico urgently needs to diversify its foreign market.

Most Mexican fish exports consist of fresh and frozen fish, which maintain a relatively low price because they do not incorporate any significant value added. In order to enhance its fishing exports, Mexico must alleviate the fishing industry's tremendous technological dependence on foreign countries, in particular the United States. Currently, Mexico lacks any industrial processes that can substitute the need to import electronic equipment, marine engines, freezers, fishing gears, research instruments, and other technical equipment.²⁹

IV. FISHING AND ITS LEGAL CLASSIFICATIONS

A. Fishing Defined

Fishing is defined by Article 29 of the Regulations as, "the act of extracting, capturing, collecting or harvesting, by means of any procedure, biological species

28. *Id.* at 50-51.

29. *Id.* at 54.

or biogenic elements whose total, partial or temporary way of living is water, as well as any prior or ulterior acts pertaining thereto.”³⁰

Under Mexican law, to engage in fishing activities (*i.e.*, extracting, capturing, collecting or harvesting), a license, permit, or authorization is required, depending on the type of “fishing activity” involved.³¹ In other words, a special express and official authorization must be granted by SEMARNAP in favor of: (1) a Mexican national, (2) a Mexican legal entity, (3) a foreign individual, or (4) a foreign legal entity prior to engaging in any fishing activity in Mexican waters under federal jurisdiction, whether these waters are fresh waters or marine waters. In the case of foreigners, the country of origin to which the foreign individual or foreign entity in question belong must have a valid and updated fishing agreement with Mexico.

B. Types of Fishing Activities

Fishing activities in Mexico are divided into two large categories:

- (1) Capturing or extracting activities for:
 - (a) Commercial fishing purposes;
 - (b) Developmental fishing;
 - (c) Educational fishing;
 - (d) Sport-recreational fishing; and
 - (e) Domestic consumption fishing.
- (2) Harvesting or aquiculture activities for:
 - (a) Commercial;
 - (b) Developmental; and
 - (c) Educational purposes.³²

Depending on the specific type of fishing activity to be performed, the interested party may obtain a license, a permit, or an authorization from SEMARNAP.

C. Licenses

Under Mexican Administrative Law, a license (*concesión*) refers to the authorization issued by the federal government and granted to a given individual or legal entity, through the competent agency, to exploit or utilize natural resources or national assets under the exclusive jurisdiction of Mexico. The license is issued pursuant to a specific number of modalities, requirements, and conditions, with particular public interest considerations and the availability and conservation of the

30. “Reglamento de la Ley de Pesca” [Regulation of the Fishing Act] art. 29, D.O., 29 de septiembre de 1999 (Mex.).

31. “Ley de Pesca” [Fishing Act] art. 4, D.O., 25 de junio de 1992 (Mex.).

32. Regulations, art. 30.

resource in question. A license must be obtained by the interested party to engage in the following types of fishing activities:

- (1) Commercial fishing;
- (2) Commercial aquiculture; and
- (3) Operation of factory-ships or floating plants.³³

Pursuant to the Fishing Act, licenses are valid for a minimum of five years and a maximum of twenty. In the case of aquiculture, licenses may be issued for a maximum of fifty years. Licenses may be extended up to the same period of time when originally issued in compliance with the applicable provisions.³⁴

D. Permits

In general, a permit is a unilateral act exercised by SEMARNAP allowing an individual or legal entity to conduct certain fishing activities under the specific conditions established by the applicable laws. Permits must be obtained in the following cases:

- (1) Commercial fishing;
- (2) Operation of factory-ships or floating plants;
- (3) Developmental fishing;
- (4) Sport-recreational fishing;
- (5) Fishing activities needed to support license applications;
- (6) Fishing by foreigners, when an EEZ surplus is available; and
- (7) Developmental aquiculture.³⁵

33. *Id.* art. 31, para. I.

34. Fishing Act, art. 6.

35. Regulations, art. 31, para. II.

BASIC LEGAL RULES

- Permits and licenses are required to engage in commercial fishing.
- Permits are issued for a maximum of four years.
- Licenses are issued for a minimum of five years and a maximum of twenty years.
- Both may be renewed.

Basically, the difference between a license and a permit depends on the amount of investment in commercial fishing activities. Permits are also subject to the modalities dictated by the public interest and are always conditioned on the availability and conservation of the resource in question. Permits shall be valid for a period not exceeding four years and may be transferred in accordance with the law, except for those granted for: (1) developmental fishing, (2) sport-recreational fishing, and (3) fishing works required as a basis for commercial fishing license applications.³⁶

Permits for developmental fishing (*pesca de fomento*) may be granted by SEMARNAP to those who prove to have a technical and scientific capability for that activity.³⁷ Permits for sport-recreational fishing may be issued to both Mexican nationals and foreign individuals.³⁸

In general, license and permit holders must strictly comply with the specific obligations or conditions imposed on them by SEMARNAP in the corresponding document, in addition to the obligations enunciated by the Fishing Act and its Regulations. For example, they are to inform SEMARNAP of the fishing methods and techniques to be utilized during their activities.³⁹

36. Fishing Act, art. 11.

37. *Id.* art. 12.

38. *Id.* art. 13.

39. *Id.* art. 6.

E. Authorizations

Authorizations must be obtained in the following cases:

- (1) Educational fishing;
- (2) Fishing in high seas or in waters under foreign jurisdiction by Mexican registered vessels flying the Mexican flag;
- (3) To install fixed fishing gear in waters under federal jurisdiction;
- (4) To collect reproducers, larvae, post-larvae, eggs, seeds, alevins or in any other stage of development, from a natural environment;
- (5) Educational aquiculture;
- (6) To introduce live specimens in bodies of water under federal jurisdiction;
- (7) To unload in foreign ports or to transship species captured by vessels flying the Mexican flag;
- (8) To unload fishing products in any condition in Mexican ports by foreign fishing vessels; and
- (9) To substitute rights derived from the corresponding titles.⁴⁰

F. Other Requirements and Exemptions

1. Purpose and Content of the "Fishing Log"

Pursuant to Mexican law, every fishing vessel must maintain a "Fishing Log" (*Bitácora de Pesca*). The Fishing Log must detail the record of all the fishing activity conducted by a given vessel. The Fishing Log's principal objective is to provide a repository of fishing information and other related data associated with the vessel, which is eventually to be conveyed to the competent Mexican authorities to determine compliance with the terms of the license or permit granted.⁴¹ Specifically, the Fishing Log must contain the following information:

- (1) Name of the license or permit holder;
- (2) Name and date of the corresponding title;
- (3) Vessel's name;
- (4) Date and place of departure and arrival;
- (5) Fishing zone, number and duration of fishing operations;
- (6) Fishing landings indicating species, number of species and species weight (in kilograms or both); and

40. Regulations, art. 31, para. III.

41. Fishing Act, art. 6.

- (7) Name, position and signature of the individual recording the information.⁴²

Depending on the type of fishery and fishing method, the Fishing Log may also need to maintain information regarding the nationality of the license, permit, or authorization holder; nationality of the vessel; number, type, and other specifications of auxiliary vessels and fishing gear or fishing equipment; engines and fuels used; number of the crew participating in each trip; geographical position, depth, speed, initiation, and ending time for each fishing effort; amount and kind of fish bait; size, weight, and sex of the captured fish; data on transshipment of fishing products; and oceanographic and meteorological conditions prevailing at the time in the fishing zone.

2. Fishing Activities Exempt From Licenses, Permits, or Authorization

The Fishing Act expressly provides that only the following three activities are exempt from the required authorizations, permits, or licenses from SEMARNAP: (1) self-consumption fishing activities (*pesca de consumo doméstico*) conducted by individuals who reside in riverbanks and along coastlines, (2) sport-recreational fishing (*pesca deportivo-recreativa*) conducted by coastline individuals, and (3) aquaculture in water deposits not subject to federal jurisdiction.⁴³

3. Proof of Legal Origin for Necessary Assets and Equipment

The Fishing Act provides that applicants of licenses, permits, and authorizations must prove “the legal origin of the assets and equipment necessary to accomplish the objective stated in the application or in the acquisition, leasing or construction program.”⁴⁴ This legal origin (*procedencia legal*) must be proven by these documents: (1) notice of arrival, harvesting, production, or collection; or (2) the invoice or donation/adjudication receipt. In the event of species obtained from sport-recreational activities, the legal origin is to be proven by the corresponding permit.⁴⁵

Invoices (*Facturas*) involving aquatic living species or fishing products must be issued by: (1) individuals who have captured, harvested, or collected species for harvesting purposes; (2) individuals who are managers of factory-ships, floating plants, commercial-processing plants, or freezing houses in relation with any kind of fish products; and (3) merchants.⁴⁶ It should be noted that Mexican law details the form and content of invoices.

42. Regulations, art. 36.

43. Fishing Act, art. 4.

44. *Id.* art. 5.

45. *Id.* art. 10.

46. *Id.* art. 11.

When fishing products need to be transported, the respective legal origin must be proven by means of a valid "Certificate" (*Certificado de la Legal Procedencia*) issued by SEMARNAP when the fishing products originate from a zone subject to official fishing ban (*veda*). This certificate is required when using Mexico's general means of transportation (*i.e.*, public roads, free and toll highways, navigable rivers, air transport, etc.) to transport any fishing products, whether fresh, in ice, or frozen, from coastal zones or places subject to a fishing ban for arrival at the places where these fishing products are to be commercialized (either in bulk or for industrial purposes).

Applicants interested in obtaining this certificate must file the corresponding application with SEMARNAP, informing the federal agency of the date, place, and conditions under which the fishing products will be transported. The application should include the following information:

- (1) The corresponding license, permit, or authorization in the case of species captured in waters under federal jurisdiction, or the appropriate notice of arrival, harvesting, production or collection, or when necessary, the invoice or donation/adjudication receipt;
- (2) The official importation customs request (*pediment de importación*) in the event of species captured in foreign waters, or when appropriate, the respective certificate mandated by the Convention on the International Trade of Endangered Species of Flora and Fauna;
- (3) Sanitation certificate regarding (a) aquatic living organisms or (b) when a specific technical norm has been established by SEMARNAP, affecting products and sub-products.⁴⁷

4. *Substitutions of Licenses and Permits*

Holders of licenses and permits for commercial and aquiculture fishing activities who are interested in obtaining SEMARNAP's authorization to substitute the rights derived from the corresponding titles shall file a written application enclosing a certified copy of the substitution agreement. Pursuant to the Fishing Act, SEMARNAP is to authorize the requested substitution in the following cases:

- (1) When the license or permit is valid and in force;
- (2) When at least a year has elapsed in the effective exercise of the rights derived from the corresponding title;
- (3) When the assignee complies with all the requirements established by the applicable Mexican laws and regulations; and

47. Regulations, art. 38.

- (4) When all the assets devoted to implementing the object of the license or permit are transferred to the assignee by means of a legally valid mechanism or when the assignee proves to have the required assets for that purpose.

SEMARNAP is to give a decision on the matter within twenty-one working days. In the event that this federal agency does not give the official answer within the twenty-one day period, the application is deemed to have been formally approved (approval by default is known in Mexico as *aprobación ficta*).⁴⁸

G. Termination, Revocation, and Annulment of Licenses, Permits, and Authorizations

1. Termination

The Fishing Act is very specific in pointing out that licenses, permits, and authorizations are terminated (*extinción por caducidad*) in the following cases:

- (1) When the holders do not initiate the authorized fishing exploitation activities within the period of time stipulated by SEMARNAP;
- (2) When the holder suspends activities, without reasonable cause, for more than thirty consecutive days; and
- (3) In aquiculture cases in waters under federal jurisdiction, when the holder does not comply with the originally proposed and then duly authorized investment plan.⁴⁹

Curiously, the Regulations include, in a somewhat irregular fashion, two additional cases that do not appear in the Fishing Act, namely:

- (1) When an individual does not finish the proposed works and facilities within the established time; and
- (2) When an individual does not initiate the investments, construction of works and facilities, or acquisition of equipment within the time frame stipulated in the corresponding license, permit, or authorization.

48. *Id.* arts. 37, 38.

49. Fishing Act, art. 16; *see also* Regulations, art. 138.

2. Revocation

The licenses, permits, and authorizations may be revoked when their respective holders:

Adversely affect the environment or place it under an imminent risk; the holder fails to provide information in the terms and periods determined by SEMARNAP, or incurs in falsehood upon file it; the holder does not comply with the technical conditions prescribed by SEMARNAP, without a reasonable cause, within the deadline established for that purpose; the holder transfers the authorization or, without SEMARNAP's express and written consent, assigns to a third party the rights derived from the license, permit or authorization; or if the holder files bankruptcy, liquidation, termination or involuntary bankruptcy.⁵⁰

In any of the above cases, the original holders may not be granted another license, permit, or authorization until four years have elapsed, beginning from the date when the formal and definite declaration of termination or revocation was made. This would be the case when the interested party (*i.e.*, the holder) does not challenge SEMARNAP's resolution either through the corresponding administrative proceedings or via "*amparo*." The Fishing Act provides similar treatment to be given to holders involved in annulment cases attributable to them.

3. Annulment

Pursuant to Article 18 of the Fishing Act, licenses, permits, and authorizations shall be declared null and void when invalidating elements are found after they have been formally granted. The causes for annulment are:

- (1) Lack of a specific holder for the license, permit, or authorization, or the holder's legal incapacity;
- (2) The lack of authority of the administrative authority who granted the corresponding license, permit, or authorization;
- (3) Error, dolus, or violence, as enunciated by Mexico's Civil Code for the Federal District (*Código Civil para el Distrito Federal en Materia Común y para toda la República en Materia Federal*).⁵¹

50. Fishing Act, art. 17; *see also* Regulations, art. 140.

51. Regulations, arts. 141, 142. Article 1812 of Mexico's Federal Civil Code, applicable in the area of contracts, provides: "Consent is not valid if given by error, obtained by violence [or duress] or exacted by fraud." C.C.D.F. art. 1812 (1991) (translation by the author); *see also id.* arts. 1813-19.

In these cases, SEMARNAP must formally notify the holder of the specific ground for annulment, giving him/her fifteen working days to present any legal defense and to offer the corresponding evidence. The respective summary administrative proceedings are to be conducted directly at the SEMARNAP office (*Dirección General*) which issued the resolution, and all subsequent procedural questions are governed by Mexico's Federal Act of Administrative Procedure.⁵²

All the legal effects of a license, permit, or authorization cease automatically at the expiration of the valid period originally granted without SEMARNAP needing to formally notify the interested party.⁵³

INVESTMENT OPPORTUNITIES

- In Northern Mexico: bagre, lobina, and mojarra;
- In the Pacific: clams, oysters, shrimp, crab, frogs, and marine fish;
- In the Gulf of Mexico: oysters, shrimp, crab, mojarra, crocodile, and frogs;
- In the Caribbean: marine fish, oysters, crab, crocodile, and frogs;
- In Central Mexico: frogs, charales, white fish, bagre, langostino, and mojarra.

V. COMMERCIAL FISHING BY FOREIGN VESSELS IN MEXICO'S EEZ

A. Definition

Article 39 of the Regulations defines commercial fishing as fishing conducted to obtain economic benefits. Once the applicable requirements are duly complied with, SEMARNAP may grant Mexican nationals a license or permit for commercial fishing either by vessel or by fishing effort unit.⁵⁴

52. "Ley de la Administración Pública" [Federal Public Administration Act], D.O., 4 de agosto de 1994 (Mex.).

53. Regulations, art. 138.

54. This type of unit is unilaterally determined by SEMARNAP, and may be based on one or more vessels, jointly or separately of the fishing gear and/or the number of individuals involved in the fishing activity. Most licenses and permits tend to be granted based on the number of vessels involved.

Commercial fishing licenses are granted based on the technical evaluation results of the respective technical and economic studies and the amount of capital investment and amortization. A commercial permit is granted when the amount of the investment, at SEMARNAP's discretion, does not require technical or economic studies.

In order to determine the duration of a license or permit, SEMARNAP will consider the following factors:

(1) Licenses

The anticipated results contained in the technical and economic studies filed by the applicant; the nature of the fishing activities; the amount of capital investment and its amortization; and the manner in which the licensee proves the availability of assets destined to the commercial fishing operations in proportion to the type of license.⁵⁵

(2) Permits

The nature of the fishing activities, and the manner in which the licensee proves the availability of assets destined to the commercial fishing operations in proportion to the type of license.

B. Requirements to Obtain a Commercial Fishing License

The Fishing Act provides that SEMARNAP may grant licenses or permits for commercial fishing to individuals or legal entities (*personas morales*) of Mexican nationality, in compliance with the requirements established by the Fishing Act and its Regulations.⁵⁶

There are six requirements to obtain a commercial license:

- (1) File a written application containing the following information: (a) name of the species or group of species intended to be fished; (b) name, characteristics, and measurements of the vessel, equipment, and fishing gear to be used; (c) fishing zone, home port, and unloading places; (d) name and location of the fishing grounds to be exploited in case of moving or sedentary species; (e) delimit the outer boundaries of the zone intended to be covered by the license in the case of internal waters or moving and non-migratory species by means of geographical

55. Regulations, art. 41.

56. "Ley de Pesca" [Fishing Act] art. 9, D.O., 25 de junio de 1992 (Mex.).

- coordinates, using the Mexican official maps determined by SEMARNAP; and (d) state the time-period to be granted by the license;
- (2) Provide the vessel's Mexican Registration Certificate (or provisional authorization) or the vessel's building program;
 - (3) Provide a technical and economic study containing: (a) techniques and fishing methods; (b) the vessel's infrastructure for handling, conservation, and industrialization of the fishing catch; (c) the amount of capital investment and financial analysis of the project; and (d) jobs to be created;
 - (4) Provide the operation and production program;
 - (5) Provide information regarding: (a) description of the technical specifications, and equipment and installation capacity onboard the factory-ship for processing, conserving, and packing the fishing catch; and (b) description of the processing lines for the catch; and
 - (6) For floating plants, the applicant, in addition to the information referred to in the preceding paragraphs, must declare the place where the plant is to be located, and state the acquisition form and mechanisms, or the gathering and acquisition of fishing products to be utilized as raw materials for their industrial processing.

Pursuant to the Fishing Act, SEMARNAP will make a decision about any license application within forty five working days if no additional information is needed. SEMARNAP will contact the applicant within fifteen days to request further information if it is needed. No administrative application process will take place until the file is formally complete. The Fishing Act provides that an application is deemed denied if the applicant does not receive information from SEMARNAP regarding the submitted application.⁵⁷

C. License Extensions

Licenses may be extended in these cases:

- (1) If the current application is filed at least thirty days prior to its expiration date and includes information about: (a) additional investments to improve and conserve the facilities; and (b) the amount of new investments, including the amount of investment; the number of jobs to be created; vessels, equipment, and fishing methods and their characteristics; infrastructure to receive, conserve, and industrialize the landed catches; and processing level of the catch;
- (2) If resources are available allowing the intended extension;

57. *Id.* art. 43.

- (3) If the number and capacity of the fishing units are compatible with the current conditions of the resource; and
- (4) The amount and characteristics of the assets necessary to implement the license's objective are similar to those of the originally granted license.

D. Obligations of the Licensee

License holders are obligated to strictly comply with the following Regulations:

To extract or capture only authorized species, in those fishing zones specified by SEMARNAP; to cooperate in exploring projects undertaken by SEMARNAP; to submit within the first two months of each year, a report to SEMARNAP, describing the progress made in the technical and economic projects on which the license is based including a schedule of the expected catches and volumes captured at the end of each fishing cycle; submit a quarterly report to SEMARNAP containing the volume and type of fishing products obtained, processed, unloaded or transhipped, using the forms established by the agency in relation to the factory-ships and floating plants operation; to conduct the fishing activities with duly authorized vessels and fishing gear; to respect the technical and economic conditions associated with the exploitation of each species, group of species and fishing zones specified in the corresponding license; to assist in the preservation of natural environment and species, as well as the repopulation programs in natural areas pursuant to the terms and conditions determined by the Secretariat; to submit with the competent authorities a Notice of Arrival (*Aviso de Arribo*); within 72 hours following the unloading, to keep onboard fishing vessels, larger than ten tons, a Fishing Log and submit it to the competent authority, jointly with the Notice of arrival. In case of smaller vessels, the secretariat shall determine, through the respective rules, the manner in which these obligations must be complied with; to supply the competent authorities with information regarding the methods and techniques used for; findings, research, studies and new projects relative to the fishing activity, as well as any other required information pursuant to the applicable legal provisions, without prejudice to the intellectual rights which may have been established. SEMARNAP may not disseminate through any means the information referred to in the preceding paragraph regarding areas protected by industrial or commercial secrets, without the prior authorization of the holder of these rights; to allow and facilitate the competent authorities to conduct inspections by authorized personnel in accordance with the legal formalities to verify the compliance with their obligations; to admit in their vessels and facilities, observers designated by SEMARNAP to gather scientific and technological information pertinent to regulating the utilization of the fishing resources; to cooperate with

SEMARNAP in its fishing programs; and to depart on a fishing expedition (*Salir vía la pesca*) or to arrive to the home port or the unloading place determined by the Secretariat in the corresponding license and to maintain in the home port all the official documentation for the fishing activities.⁵⁸

E. Public Auctions of Commercial Fishing Licenses or Permits

The Fishing Act provides that SEMARNAP may subject the license or permit granting for commercial fishing to public auctions if this agency determines: (1) to open new fisheries; (2) that licenses or permits should be replaced when they expire or are annulled, terminated, or revoked; or (3) that the application was filed by more than two individuals with regards to a zone or catching area (*Area de captura*) which has not already been covered by a given license or permit.

To qualify for these public auctions, an ad hoc committee is to be established by means of a special resolution (*acuerdo*). At a minimum, the resolution in question must address four questions:

- (1) Manner in which the Committee is to be created, and its corresponding powers;
- (2) Minimum content of the bases governing the public auction;
- (3) Participation requirements; and
- (4) Evaluation requirements (including, among others, the investment amount, species repopulation strategies, land installations, job creation, technologies to be utilized, and research activities in progress).

VI. COMMERCIAL FISHING BY FOREIGN VESSELS IN MEXICO'S EEZ

A. Basic Law of the Sea Concepts

1. Mexico's Federal Oceans Act

The precise legal regime that Mexico applies to its surrounding marine spaces—whether those subject to its full sovereignty or those upon which that nation exercises only certain rights and jurisdictions—is articulated in its Federal Oceans Act (FOA).⁵⁹

Over the last four decades, Mexico has been consistent not only in proving its growing interest over the rational utilization of its marine resources, both renewable and non-renewable, having also embraced the Principle of Sustainable Development, but especially in taking a most active role in contributing to the

58. Regulations, art. 45.

59. "Ley Federal del Mar" [Federal Oceans Act], D.O., 8 de enero de 1986 (Mex.), translated in 25 I.L.M. 889, 900 (1986).

codification and progressive development of the law of the sea. The contributions of Mexico to the marine conferences UNCLOS I, UNCLOS II, and UNCLOS III, which formulated the 1982 United Convention on the Law of the Sea (1982 UN Convention),⁶⁰ are well documented.⁶¹

Mexico became a global pioneer when it established a 200-nautical mile EEZ in 1976 with the enactment of the FOA. Mexico is among the very first countries that has adjusted its domestic legislation to comply with the new international legal regime applicable to the oceans, as contained in the 1982 UN Convention.

The FOA was formulated to accomplish two fundamental objectives: first, to codify, update, and systematize Mexico's domestic legislation governing questions pertaining to natural resources and marine environments; and, second, having become a party to the 1982 UN Convention, by enacting the FOA, Mexico simply adapted its domestic legislation to the substance of that multilateral convention.

Under Mexican Constitutional law, Article 27 of the Federal Constitution provides to "the Nation the direct ownership of any natural resources" located in the continental mass, the continental shelf (including islands), and the surrounding marine spaces. Article 27 also asserts that, *inter alia*, "the waters of the territorial seas" and the "internal marine waters . . . are the property of the [Mexican] Nation."⁶² When referring to natural resources, special attention is paid to oil, natural gas and other hydrocarbons, living resources of oceans, and more recently to polymetallic nodules.

Article 42 of the Federal Constitution enumerates the physical parts that comprise Mexico's "national territory,"⁶³ and Article 48 of that Constitution provides that "islands, cays, reefs, the continental shelf, the territorial seas, the internal maritime waters and the air space over the national territory. . . depend directly upon the federal government."⁶⁴ These articles provided a constitutional

60. United Nations Convention on the Law of the Sea, Oct. 10, 1982, 21 I.L.M. 1261 (1982) [hereinafter 1982 Convention]; see also United Nations Convention on the Law of the Sea with Index and Final Act of the Third United Nations Conference on the Law of the Sea, U.N. Sales No. E.83.V.5 (1983). On December 10, 1982, Mexico was among the 117 states to sign the 1982 Convention. Pursuant to its constitutional procedures, the Mexican Senate approved the 1982 Convention on December 29, 1982. The decrees of approval and promulgation appeared in D.O., Feb. 18, 1983, and June 1, 1983, respectively. The instrument of ratification was deposited before the Secretary General of the United Nations on March 18, 1983.

61. There is a proliferation of legal literature on this topic. See generally ALEJANDRO SOBRAZO, *REGIMEN JURIDICO DEL ALTA MAR* 359-413 (1985); Alfonso Garcia Robles, *Desarrollo y Codificación de las Normas Básicas del Derecho del Mar hasta 1960*, in *MEXICO Y EL REGIMEN DEL MAR* 15-36 (1974); Sergio Gonzalez Galvez, *Mexico en la Codificación y el Desarrollo Progresivo del Derecho Internacional a través de la ONU*, in *MEXICO EN LAS NACIONES UNIDAS* 37 (1986); Jorge Castaneda, *La Labor del Comité Preparatorio de la Tercera Conferencia de las Naciones Unidas sobre el Derecho del Mar*, in *MEXICO Y EL REGIMEN DEL MAR* 136 (1974); Manuel Tello, *Mexico y el Derecho del Mar*, in *MEXICO EN LAS NACIONES UNIDAS* 155 (1986).

62. CONST. art. 27 (Mex.).

63. According to Article 42 of the Federal Constitution, Mexico's "national territory" is comprised of: (1) 31 States and the Federal District, (2) islands in general, (3) specifically the islands Guadalupe and Revillagigedo in the Pacific Ocean, (4) the continental shelf appurtenant to the land mass and to the islands, (5) a 12 nautical mile territorial sea, and (6) the superjacent space. *Id.* art. 42.

64. *Id.* art. 48.

foundation to derive federal statutes which regulate not only fishing and aquiculture, but also oil and natural gas, maritime transportation, ports, forests, mineral resources, tourism, and environmental protection.

Pursuant to Article 133 of the Federal Constitution, treaties in conformity with the Constitution, entered into by the President of the Republic, and approved by the Senate become "the Supreme law throughout the Union." Therefore, FOA's enactment was a logical consequence of Mexico's becoming a party to the 1982 UN Convention.

2. Mexico's Marine Zones

The FOA's Article 3 establishes these five "Mexican marine zones": (1) the Territorial Sea, (2) the Internal Marine Waters, (3) the Contiguous Zone, (4) the Exclusive Economic Zone, and (5) the Continental Shelf and the Insular Shelves. It may be useful to point out that the legal nature, scope, mode of demarcation, and dimensions of each of these oceanic spaces were taken virtually verbatim from the corresponding articles of the 1982 UN Convention.⁶⁵

a. The Territorial Sea

The FOA's Article 25 established the width of the territorial sea at 12 nautical miles (22,224 meters). Any vessel in the Mexican territorial sea is to strictly comply with the pertinent Mexican statutory provisions and regulations, as these apply to fishing and aquiculture, protection of the marine environment, and maritime transportation. Aircraft are to abide by the applicable provisions of Mexican domestic law.

b. Internal Marine Waters

The FOA enumerates the following as Internal marine waters (*aguas marinas interiores*): (1) the northern part of the Gulf of California; (2) those of internal bays; (3) those in ports; (4) those inland of reefs; and (5) those in the mouths or deltas of rivers, lagoons, and estuaries permanently or intermittently communicated with the sea.

For the purpose of delimiting this marine space, the low-water tide along the coast is defined as "the line of the largest flood tide where the marine waters reach at a given moment along the continental and insular coasts of the Nation."⁶⁶

65. *Marine Spaces*, *supra* note 4, at 194.

66. "Ley Federal del Mar" [Federal Oceans Act] art. 36-38, D.O., 8 de enero de 1986 (Mex.), *translated in* 25 I.L.M. 889, 900 (1986). Technically detailed questions pertaining to the delimitation of internal waters, or any other "Mexican marine zone," are contained in FOA's Regulations.

c. *The Contiguous Zone*

Mexico has a 12 nautical mile Contiguous Zone (*Zona Contigua*) immediately adjacent to its territorial sea, as allowed by the 1982 UN Convention. Thus, the outer boundary of the contiguous zone is located 24 nautical miles (44,448 meters) from the corresponding baselines.

In parallel with the substance of the 1982 UN Convention, the purpose of the contiguous zone is "to prevent infringement within its territory of the applicable norms of the Act, its Regulations and the customs, fiscal, immigration and sanitary laws and regulations, in the Mexican marine internal waters or in its territorial sea . . . and to punish these infringements."⁶⁷

d. *The Exclusive Economic Zone*

Mexico possesses the largest (200 nautical mile) EEZ in Latin America. In fact, Mexico's EEZ area is larger than its own land mass. Given its strategic geographical location and the abundance and variety of its valuable marine resources, it has the potential to play a critical role in Mexico's economic development.

Mexico's EEZ was established in June 1976 by an amendment to the Federal Constitution which added a seventh paragraph to Article 27 as a result of a presidential decree signed by the then President of Mexico, Lic. Luis Echeverría Alvarez. The new seventh paragraph reads:

The Nation exercises the sovereign rights and the jurisdictions specified by the laws of [the Federal] Congress in an exclusive economic zone situated outside the territorial sea and adjacent to it. The exclusive economic zone shall extend 200 nautical miles, measured from the baseline from which the territorial sea is measured. In the event that this extension overlaps on the exclusive economic zones of other States, the delimitation of the respective zones shall be made as this becomes necessary by means of an [international] agreement with those States.

A presidential decree establishing the outer boundary of Mexico's EEZ in the Caribbean Sea, the Gulf of Mexico, and the Pacific Ocean was promulgated in June 1976, with a corresponding nautical official chart.⁶⁸

67. *Id.* art. 43-45.

68. "Decreto que fija el Limite Exterior de la Zona Economica Exclusiva de Mexico" [Decree Establishing the Outer Boundary of Mexico's EEZ], D.O., 7 de junio de 1976 (Mex.) (entered into force July 31, 1976).

As a result of establishing the EEZ, Mexico entered into two international maritime delimitation agreements: with Cuba in 1976⁶⁹ and with the United States in 1978. The agreement with Cuba, which was the first one Mexico negotiated after having established EEZ, was promptly signed and entered into force by means of an Exchange of Notes on July 26, 1976. Mexico's agreement with the United States was more complicated. First, the maritime boundary was "provisionally established" by means of an Exchange of Notes on November 24, 1976. Later on, Mexico decided to "elevate" the Exchange of Notes to the formal category of a treaty, which was then signed in Mexico City on May 4, 1978 by Cyrus Vance, then Secretary of State. Interestingly, the Mexican Senate quickly approved the treaty in question in early 1979. However, it took the U.S. Senate almost twenty years to finally give its advice and consent. The U.S.-Mexico Maritime Delimitation Treaty⁷⁰ is currently in force.⁷¹

e. The Continental Shelf and Insular Shelves

FOA Article 57 provides that, over the submarine spaces, the Mexican nation exercises "sovereign rights for the purposes of exploring and exploiting their natural resources."⁷²

In those places where the outer limit of the continental margin, the continental shelf, or island shelves does not extend to 200 nautical miles, FOA Article 65, in consonance with Article 76, paragraph I of the 1982 UN Convention, stipulates that the outer boundary of the shelves shall coincide exactly with the outer boundary "of the subsoil" of Mexico's 200 nautical mile EEZ, as depicted in the Mexican official charts. In other words, the outer boundary of the EEZ and the continental shelf of Mexico's land mass and its geomorphological prolongation coincide at 200 nautical miles.

B. The Principle of Optimum Utilization of the Living Resources in the EEZ

The Principle of Optimum Utilization of the Living Resources in the EEZ was one of the most original principles created and introduced by technologically-advanced countries at the Third United Nations Conference of the Law of the Sea.

69. Canje de Notas que Delimito la Zona Economica Exclusiva entre Mexico y Cuba [Exchange of Notes that Delimited the Exclusive Economic Zone between Mexico and Cuba], July 26, 1976, *translated in* LA ZONA ECONOMICA EXCLUSIVA DE MEXICO app. 7 at 75-76 (1980).

70. Treaty on Maritime Boundaries, May 4, 1978, U.S.-Mex., 17 I.L.M. 1073 (entered into force Nov. 13, 1997).

71. For an analysis of the legal and technical complications associated with the 1978 Maritime Delimitation Treaty with Mexico, and the reasons which delayed receiving the advice and consent of the U.S. Senate, see *Marine Spaces*, *supra* note 4, at 219-36; see also J.A. Vargas, *The Gulf of Mexico: A Binational Lake Shared by the United States and Mexico*, A Proposal, 9 TRANSNAT'L LAW. 459, 463 (1996).

72. FOA, art. 57.

This Principle is now contained in Article 62, paragraph 2 of the 1982 UN Convention, which reads:

1. The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. *Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch, having particular regard to the provisions of Articles 69 [Right of land-locked States] and 70 [Right of geographically disadvantaged States], especially in relation to the developing States mentioned therein. . . .*
2. Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention.⁷³

As in Article 61 of the 1982 UN Convention, Mexico has the right to determine “the allowable catch of living resources” within its EEZ. At the same time, taking into account the best scientific evidence available, that country shall ensure through proper conservation and management measures that “the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation.” Such measures shall be designed:

to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of the fishing communities and the special requirements of the developing countries, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.

Since Mexico is a party to the 1982 UN Convention on the Law of the Sea, it is obligated to comply with the Principle of Optimum Utilization of the Living Resources which applies to its EEZ. Accordingly, every time Mexico “does not have the capacity to harvest the entire allowable catch” of a given species found within its 200 nautical mile EEZ, for example, sardines, mackerel, red snapper, or tuna, then Mexico is to give other states “access to the surplus of the allowable catch,” as mandated by Article 62, paragraph 2 of the 1982 UN Convention.

73. 1982 Convention, *supra* note 30, art. 62, para. 2.

The rationale behind this principle is that if the coastal State (Mexico) does not have the capacity to harvest the entire allowable catch, for any given reason, then that portion of the allowable catch that Mexico is unable to catch will simply go to waste. To avoid this, in a world where protein from living marine resources is needed for food consumption purposes, Mexico is expected to open its EEZ to foreign fishing vessels having the necessary capacity to catch that surplus. To secure access to Mexico's fishing surplus in its EEZ, interested nations must first enter into the corresponding international fisheries agreements with Mexico, and then their respective nationals must fully comply with "the terms, conditions, laws and regulations" established under Mexican law.

C. Incorporation of the Principle of Optimum Utilization into Mexico's Fishing Act

Under Mexican law, the Principle of Optimum Utilization of Living Resources in the EEZ is subject to three specific conditions. These conditions may be deduced from Article 14 of the Fishing Act:

- (1) *It is an exceptional principle.* In other words, the basic assumption is that Mexico has the necessary capacity to harvest the entire allowable catch of specific species within its EEZ. As an exception, however, Mexico is to declare "whether there are surpluses by species."
- (2) On exceptional cases when SEMARNAP declares there are surpluses of species, and that foreign vessels are allowed to share a portion of such surpluses in Mexico's EEZ, these cases must be in accordance with the applicable treaties and international agreements since they are subject to Mexico's "national interest." Therefore, the interested countries must first enter into the pertinent international fisheries agreement with Mexico in order that the foreign vessels may share a portion of the announced surpluses.
- (3) The corresponding permits to share a portion of such surpluses are not transferable, must comply with all the requirements and conditions established by SEMARNAP in accordance with the applicable laws and regulations, and shall always be subject to the strictest reciprocity.⁷⁴

This type of fishing is legally known as "commercial fishing by exception" (*pesca comercial de excepción*). SEMARNAP will declare the existence of surpluses of species which will be published in Mexico's Federal Official Gazette (*Diario Oficial de la Federación*).

74. "Ley de Pesca" [Fishing Act] art. 14, D.O., 25 de junio de 1992 (Mex.).

In addition to an international, bilateral fishing agreement with an interested foreign country, granting the corresponding permits to foreign nationals is subject to filing the pertinent application (*permiso de pesca de excepción*), containing:

Proof of ownership or legal availability of the fishing vessels and fishing gear necessary for the commercial exploitation of a specific type of species; a copy of the respective commercial fishing exploitation program (*Programa de explotación*); information regarding: a) Characteristic of the fishing vessels and fishing gear to be used in the related operations; b) the species or groups of species to be commercially exploited; c) volume and final destination of the catches.⁷⁵

Permits may be granted: (1) per individual vessel, (2) per fishing season, or (3) for a specific period of time as determined by SEMARNAP. Each of these permits shall contain information regarding its validity, fishing zone(s), fishing gear and equipment, authorized species (or group of species), and operating conditions.⁷⁶

SEMARNAP is to complete the corresponding file on each individual application within ten working days, contacting the applicant in case more information is needed. Once the file is duly completed, then SEMARNAP will resolve within twenty working days whether to grant or deny the permit. If after twenty days have elapsed without SEMARNAP rendering a decision, the application is deemed denied. It may be important to note that this administrative procedure goes contrary to the federal policy of "approval by default" (*aprobación ficta*). The official departure from this federal policy may underline the exceptional nature of this type of fishing, as well as SEMARNAP's broad discretion in deciding these delicate international matters.⁷⁷

Interestingly, since Mexico became a party to the 1982 UN Convention on the Law of the Sea, it has not declared the existence of a surplus of any species in its EEZ. Accordingly, as of today, Mexico has not entered into an international fishing agreement with any country pursuant to Article 62, paragraph 2 of the 1982 UN Convention.

75. "Reglamento de la Ley de Pesca" [Regulation of the Fishing Act] art. 49, D.O., 29 de septiembre de 1999 (Mex.).

76. *Id.* art. 50.

77. *Id.*

VII. AUTHORIZATIONS FOR COMMERCIAL FISHING IN HIGH SEAS
AND IN WATERS UNDER FOREIGN JURISDICTION TO BE
CONDUCTED BY REGISTERED MEXICAN FISHING VESSELS.

A. *Authorizations Granted Exclusively to Mexican Vessels*

Authorizations for commercial fishing in the high seas and in waters under foreign jurisdiction is one of the special, non-transferrable authorizations issued by SEMARNAP exclusively to Mexican nationals or to legal entities (*i.e.*, companies) of Mexican nationality, pursuant to Article 15 of the Fishing Act. The Mexican vessels in question must be registered in the Listing of Mexican Vessels (*Padrón de Abanderamiento Mexicano*) in accordance with the Development of the Mexican Merchant Marine Act, fly the Mexican flag, and comply with the following requirements and obligations:

Provide proof to SEMARNAP of the ownership or legal availability of vessels, fishing gear, technical and economic capacity, and of the trained personnel to be involved in the fishing operations; to use exclusively those vessels flying the Mexican flag or registered within a specific Flag Program (*Programa de Abanderamiento*), in the terms provided by the Navigation Act (*Ley de Navegación*); to respect and strictly comply with the international provisions applicable to navigation and fishing, particularly those established by foreign governments in waters under their jurisdiction.⁷⁸

The corresponding authorizations shall be granted by SEMARNAP only to Mexican nationals. The quotas granted to Mexico by foreign governments to use and exploit fishing resources shall be managed by SEMARNAP.

In the event that foreign government allows individuals—including Mexican nationals—to directly obtain licenses or permits for commercial fishing, the interested Mexican parties, at the request of SEMARNAP, shall prove that the fishing catches took place in compliance and under the scope of such foreign licenses and permits. Those authorized to conduct fishing activities in high seas or in waters under foreign jurisdiction with registered Mexican vessels flying the Mexican flag are also obligated to submit a corresponding Notice of Arrival (*Aviso de arribo*) in accordance with Mexican law.

SEMARNAP will resolve within twenty one working days (the first seven for the completion of the file and the remaining fourteen for evaluation and decision) the applications filed for this kind of commercial fishing. If twenty one working

78. *Id.* art. 52.

days have elapsed without SEMARNAP acting administratively, the application is deemed to be granted (*aprobación ficta*).

VIII. INSTALLATION AND OPERATION OF FIXED FISHING GEAR
IN WATERS UNDER FEDERAL JURISDICTION

A. *For Mexican Nationals Only and Subject to an Environmental Impact Statement*

Authorization for the installation and operation of fixed fishing gear in water under federal jurisdiction shall only be granted to Mexican nationals or Mexican legal entities, pursuant to Article 15 of the Fishing Act. The applicants must provide SEMARNAP with detailed technical information regarding the placement, dimensions, type of fishing gear, and other specifications involved in the fishing operation. In these cases, the interested party must also comply with the applicable provisions regarding the formulation of an environmental impact statement (*impact ambiental*), pursuant to the General Act of Ecological Balance and Environmental Protection (*Ley General del Equilibrio Ecológico y la Protección del Ambiente*), involving SEMARNAP, as well as any other competent authorities. No placement of fixed fishing gear in federal waters may take place unless expressly authorized by SEMARNAP.

IX. AUTHORIZATIONS TO UNLOAD IN FOREIGN PORTS AND TRANSHIP
SPECIES CAUGHT BY MEXICAN VESSELS

A. *Requirements*

SEMARNAP may grant authorizations to unload in foreign ports and tranship species caught by Mexican vessels when the applicants provide the following information:

Number and date of the license, permit, or authorization under which the fishing catches took place; species and their volume to be unloaded or transhipped; date and place of unloading or transshipment; identification information of the vessel which is to receive the fishing products; port of final destination.⁷⁹

79. *Id.* art. 64.

MEXICAN PORTS

Mexico has 58 ports:

- 27 in the Pacific (Guaymas, Mazatlán, Ensenada, Topolobampo, and Manzanillo)
- 31 in the Gulf of Mexico (Ciudad del Carmen, Progreso, Tampico, Campeche, and Alvarado)

For a total of 30,324 meters of landing pier

Those interested in obtaining an authorization for foreign fishing vessels to unload their fishing cargo in Mexican ports, whether fresh, iced, or frozen must file the required application with SEMARNAP, in accordance with the Fishing Act and its Regulations.

X. SPORT-RECREATIONAL FISHING

A. Definition, Requirements, and Other Matters

1. Definition and Promotion

Sport-recreational fishing (*pesca deportivo-recreativa*) is practiced for non-commercial, recreational purposes, and should not be engaged in without the fishing gear and characteristics expressly authorized by SEMARNAP. The specific species included in this category are marlin, sail fish, sword fish, saber, “pez gallo,” and dorado, located within 50 nautical miles of a maritime belt measured from the baselines used to delimit Mexico’s territorial sea.

Pursuant to the Fishing Regulations, SEMARNAP promotes and fosters sport-recreational fishing. To this end, SEMARNAP is authorized to: (1) promote the construction of the necessary infrastructure, (2) establish the necessary measures for conservation and protection, (3) promote and authorize both national and international tournaments, (4) foster agreements with adequate organizations and service providers to protect and conserve the species from people involved in this activity, (5) promote the catching and freeing policy (*capturar y liberar*), and (6) promote fee payment agreements with individuals to simplify obtaining the required permits.

2. *Ways to Engage in Sport-Recreational Fishing*

Sport-recreational fishing may be conducted: (1) from the land, (2) onboard a vessel, or (3) underwater. Those practicing from the land are not required to have a permit. They are only required to use the fishing gear authorized by the Regulations and to be respectful of the minimum size and catch limits established by SEMARNAP. The permits granted for sport-recreational fishing are individual and cannot be transferred to any other person. Permits shall be issued with payment of the corresponding fee.

3. *Statutory Prohibitions*

Sport-recreational fishing may not be conducted:

In repopulation or forbidden zones within natural protected areas; less than 250 meters from vessels engaged in commercial fishing operations, as well as from fixed or floating fishing gear; less than 250 meters from coastlines or beaches frequented by swimmers.⁸⁰

The use of artificial lights or artificial illumination is also prohibited. The use of contaminated bait is strictly prohibited. In any event, unless expressly authorized by SEMARNAP, the use of bait in fishing zones favoring fishing tournaments may not take place. SEMARNAP will detail the specific types of bait to be used for that purpose, in accordance with the applicable Mexican law regulations.

4. *Obligations of Service Providers*

Service providers must comply with these obligations (independently of those imposed by other laws or regulations) enunciated by the Regulations:

- (1) To carry onboard the corresponding Fishing Log, to be delivered to the competent Mexican authority within 72 hours following the end of the trip, counted from the moment of arrival. These providers must make sure that the individuals to whom they render their services duly comply with the pertinent legal provisions, instructing them how to conduct the sport-recreational fishing;
- (2) To support and participate in repopulation and developing programs in the areas where they conduct their activities;
- (3) To contribute to maintaining and conserving the species and their habitat; and

80. *Id.* art. 88.

- (4) To submit to the competent Mexican authority a six-month report regarding the number of services rendered; the type of species, the number captured, and their final disposal; the fishing gear used, the name and nationality of the individuals who hired them to provide services; and the official number of the corresponding permits.

5. Fishing Gear

The individual engaged in sport-recreational fishing may only use a fishing rod or a line with a hook, and bait or a decoy. They may also use a number of replacements duly authorized by SEMARNAP. Underwater fishing may only take place by swimming underwater without any peripheral equipment (*buceo a pulmón*) excluding a rubber or string spear. Any other type of fishing gear requires express authorization from SEMARNAP.

With the intervention of the National Fishing Institute (*Instituto Nacional de Pesca*), SEMARNAP will publish the rules establishing the seasons, zones, and minimum sizes, as well as the maximum number of individual fishes that individuals may capture per day in sport-recreational fishing, considering the conditions of the resource as well as the particular characteristics of the place where this type of fishing is to be conducted.⁸¹

XI. ADMINISTRATION OF THE FISHING ACT

A. Inspection and Surveillance

Pursuant to Article 22 of the Fishing Act, SEMARNAP is authorized to implement a regime of strict compliance with the Fishing Act and its Regulations. To this end, SEMARNAP conducts activities for inspection and surveillance, attachment proceedings enforcement and determination, and imposition of administrative violations.

1. Definition and Requirements

a. Inspection

Inspection entails all those activities undertaken by SEMARNAP, the Secretariat of the Navy, and other duly authorized personnel directed at verifying compliance with the pertinent legal fishing provisions regarding vessels, facilities for processing, storing, conserving and commercializing fishing products,

81. *Id.* arts. 83-97.

equipments, vehicles, and fishing gear and fishing products, including any document referring to the legal origin of fishing products.

b. Surveillance

Surveillance is defined as any activity undertaken by SEMARNAP's authorized personnel, or that of the Secretariat of the Navy, directed at preventing illegal fishing operations.

2. Inspection and Surveillance Activities

Article 23 of the Federal Fishing Act provides that inspections should only be conducted by duly authorized personnel who possess the necessary accrediting official documents or identification to prove they are federal employees of SEMARNAP. These personnel must also possess the pertinent written order legally based and explained (*orden escrita debidamente fundada y motivada*), issued by SEMARNAP or by any other competent authority.

During inspections, SEMARNAP's inspectors are required to write detailed and specific minutes (*acta*) in the presence of two witnesses designated by the interested party. In case of refusal, inspectors are empowered to designate the witnesses in question. In the event that SEMARNAP's inspectors determine that a violation has been committed, it is to provisionally retain the fishing products or assets directly involved in the commission of such infraction or violation. Eventually, these products or assets may be confiscated in compliance with the applicable Mexican law provisions. In the event of flagrant crimes, the Fishing Act provides that the corresponding minute (*acta de inspección, acta de visita domiciliaria, or acta de decomiso*) be written immediately in the same place where the inspection was conducted.

Specifically, inspection and surveillance activities are conducted by duly authorized personnel through the request of information and data; domiciliary visits; inspection of vessels, processing facilities, storage, and conservation of fishing products, vehicles, fishing gear, and fishing products; and filing charges when appropriate. The information or data requested by SEMARNAP is to be produced in a period no longer than ten working days. Domiciliary visits must be conducted observing all the constitutional formalities enunciated in Articles 14 and 16 of Mexico's Federal Constitution, as well as the Federal Administrative Procedure Act.

B. Violations

Article 24 of the Fishing Act enumerates twenty-five violations (*infracciones*). They include:

- (1) Conducting commercial fishing or collecting from the natural environment reproducers, larvae, postlarvae, eggs, seeds, or alevines of fishing species, without having the corresponding license, permit, or authorization;
- (2) Operating factory-ships (*barcos-fábrica*) or floating plants without the respective license or permit;
- (3) License or permit holders exploiting a species or group of species in larger volumes or outside the technical and economic standards (*normas*) established in the respective Title [of this Act];
- (4) Issuing invoices (*facturar*) or protecting fishing products which were not captured under the conditions established in the license, permit, or authorization by the corresponding holders (*titulares*);
- (5) Practicing developmental, didactic, or sport-fishing activities without having the respective license or authorization;
- (6) To simulate domestic consumption fishing activities, developmental fishing, or sport-recreational fishing with the purpose of earning a profit from the products obtained by the fishing acts;
- (7) To transfer rights derived from licenses or permits, without authorization from the Secretariat of Fishing;
- (8) To omit carrying onboard the vessel the documentation issued by the Secretariat of Fishing to prove the license, permit, or authorization;
- (9) To conduct fishing operations with foreign vessels without the corresponding permit;
- (10) To unload, send abroad, or tranship (*transbordarlos*) fishing products without having authorization from the Secretariat of Fishing, except in *force majeure* cases (*casos de siniestro*);
- (11) To unload in Mexican ports commercial fishing products originating from foreign vessels without authorization from the Secretariat of Fishing, except in *force majeure* cases;
- (12) Not reporting the arrival, harvesting, or collection to the fishing authority in accordance with the Regulations;
- (13) To practice fishing in high seas or in waters under foreign jurisdiction with vessels registered and flying a Mexican flag, without the proper authorization, except in sport-recreational fishing;
- (14) Noncompliance with the conditions and requirements established in authorizations granted by a foreign government to the Mexican government to capture species;

- (15) Improper use or application of the Secretariat of Fishing's technical and scientific information (*uso indebido*);
- (16) Transporting explosive instruments and contaminating substances in fishing vessels without authorization from the Secretariat of Fishing;
- (17) The use of instruments, gear, or fishing methods which are prohibited or not authorized;
- (18) To practice fishing with vessels different than those duly authorized and registered by the Secretariat of Fishing;
- (19) To extract, capture, possess, transport, or trade species declared to be in closed season (*veda*) or having less than the minimum weight specified by the Secretariat of Fishing; or to obtain [said species] from zones or refuge places (*zonas o sitios de refugio*) or repopulation places;
- (20) To deliberately capture or capture without adjusting to the established technical standards (*normas técnicas establecidas*) turtles, marine mammals, or species in risk of extinction (*especies en peligro de extinción*) without authorization from the Secretariat of Fishing;
- (21) To omit the use of the fishing log (*Bitácora de pesca*), to alter or make false notations of technical data in the log, or neglect to deliver the log to the authority within the terms provided by the Regulations;
- (22) Negligence in providing the information within the terms and forms requested by the Secretariat of Fishing or to incur in falsehood while filing it;
- (23) To install fixed fishing gear without the corresponding authorization;
- (24) Introducing or handling biological material species in any manner in waters under federal jurisdiction which cause damage, alterations, or endanger the conservation fishing resources; and
- (25) Inability to prove the legal origin (*procedencia legal*) of aquatic flora and fauna products to the Secretariat of Fishing with the proper documentation from those who possess, store, transport, or trade with them.⁸²

Under Mexican law, a recidivist (*reincidente*) is a violator who incurs more than one violation, established by Article 24 of the Fishing Act, within a two year period, beginning from the date the first administrative resolution was determined by the commission as final and definite (*firme*). Alternatively, a warning (*amonestación*) shall be given to violators expressly indicating to them that, should they incur a second violation, they shall be considered recidivists subject to the application of the most serious sanctions (*sanciones agravadas*) established by law.

82. Fishing Act, art. 24.

C. Sanctions

Violation of the Fishing Act are sanctioned by SEMARNAP. Legally, these sanctions are considered “administrative infractions” (*infracciones administrativas*), except when the violation in question is characterized (*tipificada*) as a criminal act (*delito*). In these cases, formal criminal charges are filed by a federal prosecutor (*agente federal del ministerio público*), thus triggering the initiation of criminal proceedings.

1. Five Categories of Sanctions

Article 25 of the Fishing Act divides sanctions into five categories:

- (1) Revocation of the license, permit, or authorization; confiscation of products and/or fishing gear and/or imposition of a fine; and in accordance with the seriousness of the fault, temporary closure of the facility or facilities and/or confiscation of the vessel or vehicle;
- (2) Revocation of the license, permit, or authorization, definite closure of the facilities, and/or imposition of a fine;
- (3) Temporary suspension of the license, permit, or authorization rights, temporary closure of the installations, and/or imposition of a fine;
- (4) Confiscation of aquatic flora and fauna products obtained, vessels and vehicles, and/or fishing gear; and/or imposition of a fine; and
- (5) Warning (*Amonestación*).⁸³

The confiscation of vessels or vehicles, as well as the temporary or definite closure of the facilities provided for in this Article can only be applied in an especially egregious case (*en caso de especial gravedad*). In the event that SEMARNAP minutes indicate multiple violations, all of these violations shall be sanctioned provided that the total amount of the imposed fine does not exceed the limit established in paragraph D of Article 26 of the Fishing Act.

In the event a foreign vessels is detained on account of illegal fishing in waters under federal jurisdiction, the international obligations contracted by Mexico must be observed, based upon the strictest reciprocity.

2. Guidelines for the Imposition of Sanctions

As mandated by the Fishing Act, SEMARNAP is to impose fines considering both the seriousness of the violation and the economic conditions of the violator, in

83. *Id.* art. 25.

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accordance with the Table contained in Article 27 of the Fishing Act and in conformance with these guidelines:

- (1) From 20 to 100 times the minimum salary;
- (2) From 101 to 1000 times the minimum salary;
- (3) From 1001 to 2000 times the minimum salary;
- (4) From 2001 to 20,000 times the minimum salary.

The general minimum daily salary for the Federal District (*Mexico City*) in force at the time the violation was committed shall serve as a basis for imposing the fines.

3. Table of Sanctions Established by the Fishing Act

The sanctions and fines established by the Fishing Act shall apply in accordance with the following Table:

<i>For violations to Article 24, paragraph:</i>	<i>Sanction to be applied according to Article 25</i>	<i>Fine to be applied according to Table of Article 26</i>
I	1	C
II	1	C
III	1	C
IV	3	C
V	4	C
VI	1	A
VII	4	B
VIII	2	C
IX	3	A
X	4	D
XI	4	D
XII	4	C
XIII	3	B
XIV	4	C
XV	5	D
XVI	5	B
XVII	1	C
XVIII	4	D
XIX	3	B
XX	1	C
XXI	1	D
XXII	3	B
XXIII	4	B
XXIV	4	D
XV	1	C

4. Other Matters

A fine shall be applied to recidivists in the immediate higher category to the corresponding violation committed the first time or up to twice as much in the case of the highest category, as established in the Table of Article 27 of the Fishing Act.

Confiscated products and assets shall be disposed of as provided by SEMARNAP, in accordance with these alternatives: (1) public auction, (2) direct sale of fishing products, (3) donation to social assistance or rehabilitation establishments in regards to those products captured during a closed season or in smaller sizes to those authorized, and (4) destruction of contaminated products or products in the process of deterioration (*descomposición*) and those resulting from the use of prohibited fishing gear.

Every time a confiscation sanction is imposed, the Regulations provide that the competent authority shall provisionally retain (*Retener*) the vessels, vehicles, fishing gear, and fishing products and sub-products. Fishing products donated for social assistance or to rehabilitation establishments for human consumption must only be consumed by the interns in those establishments. Any other confiscated assets may not be the object of donations. In cases where the fishing products are destroyed by the deterioration process or because they resulted from the use of prohibited fishing gear, SEMARNAP shall report this in the contents of the corresponding minute.

Fines imposed for violations of the Fishing Act account for 50% of the Federation's income, and 70% of these proceeds are the result of public auctions and direct sales of confiscated products and assets. This income is used to raise funds for promotion and awards programs associated with compliance with SEMARNAP, productivity of its personnel, and as a benefit for persons who inform the authorities of any violations. Further distribution of these funds is conducted in compliance with the respective Regulations.⁸⁴

The provisional detention (*detención temporal*) of foreign vessels for having engaged in fishing activities, scientific research, or exploratory fishing without the required permit, or for not complying with the requirements or conditions imposed in such permit, shall take place "observing the [international] obligations entered into by Mexico, as well as in the strictest reciprocity." Once the fine is paid or duly guaranteed, and SEMARNAP writes the required minutes and puts together all other official documents, the foreign vessels must be released.⁸⁵

D. Administrative Appeal

Pursuant to the Fishing Act, an administrative appeal (*recurso de revisión*) may be filed to change the resolutions issued by SEMARNAP within the following

84. Regulations, art. 156.

85. *Id.* art. 157.

fifteen calendar days after the resolution was announced. The appeal may also be filed in cases where the authorities have not answered within the term provided by the Regulations regarding applications for licenses, permits, or authorizations.

An appeal's object is to revoke, modify, or confirm the resolution or decision rendered (*fallos que se dicten*). An appeal must include a description of the challenged administrative act, the legal bases that support it, and the resolving points (*puntos de resolución*). The Fishing Act Regulations establish in detail the terms and other requirements needed to file and process an appeal.⁸⁶ For example, the appeal must be filed in writing and addressed to the head of SEMARNAP. It shall contain the name and address of the challenging party (*recurrente*) and a description of the offending act (*agravios*), enclosing all the necessary supporting evidence (*elementos de prueba*), as well as the documents (*i.e.*, a pertinent Power of Attorney) ascertaining the personality of the filing party (*promovente*).

Filing an administrative appeal suspends the enforcement of the challenged resolution relative to the payment of fines or regarding confiscations, provided that their value is guaranteed accordingly to the value established by the Fiscal Code of the Federation (*Código Fiscal de la Federación*).

The entire procedure for this administrative appeal (*Recurso*) is detailed and governed by the Federal Act of Administrative Procedure.⁸⁷

XII. THE INTERNATIONAL CONTEXT

A. International Principles, Organizations, and Conservation Efforts

1. International Principles

Mexico's legal regime governing fishing activities was recently modified in symmetry with the 1982 UN Convention. This symmetry is reflected in the Fishing Act and its Regulations.

For decades, Mexico has been an active, constructive participant in bilateral, regional and international fora addressing questions pertaining to the rational utilization, sustainability, protection, and conservation of the ocean's living resources. In these fora, Mexico adheres to these clearly formulated principles:

- (1) Defending and exercising sovereign rights over marine living resources located within its EEZ, as well as in all the other Mexican marine zones;

86. *Id.* arts. 158-60.

87. "Ley de la Administración Pública" [Federal Public Administration Act], D.O., 4 de agosto de 1994 (Mex.).

- (2) Strengthening, constructively participating, and progressively developing the legal regime governing fishing matters taking place at regional fora and international conferences; and
- (3) Encouraging the establishment of fair and equitable legal regimes applicable to the ocean's living resources, including those formulated to protect and preserve such resources.

2. International Fishing and Oceanographic Organizations

At the regional level, Mexico is a party to the Inter American Tropical Tuna Commission (IATTC), the Latin American Organization for Fishing Development (OLDEPESCA), the International Commission for the Conservation of the Atlantic Tuna (ICCAT), and the Center for Information and Advisory Services on the Commercialization of Fishing Products in Latin America and the Caribbean (INFOPESCA).

At the international level, Mexico belongs to the International Whaling Commission (IWC), the Fishing Committee of Food and Agricultural Organization (FAO), the Intergovernmental Oceanographic Commission (IOC) of UNESCO, and to IOC's regional structure in the Gulf of Mexico and the Caribbean Sea (IOCARIBE).

3. Conservation Efforts to Protect Marine Species

It should be emphasized that, since early this century, Mexico has adhered to a firm policy that favors the protection of any endangered or threatened species, whether marine or land-based. Special recognition is to be given to the sustained efforts Mexico has displayed since the 1930s to, for example, protect the California gray whale from hunting activities and, more recently, from environmental threats to its habitat in the San Ignacio Lagoon in the Baja California peninsula.

Today, Mexico continues to be a vigorous advocate defending dolphins, marine turtles, Totoaba, Vaquita, and in general all marine mammals. Therefore, it is not surprising that Mexico excels as a country in an unprecedented number of areas—whether Biosphere Reserves (considered by UNESCO as World Patrimony), Special Reserve Zones, or National Parks—where living species of all types are sheltered and protected in their natural habitat.

For example, among the numerous "Reserve Zones for Protection of Marine Turtles," these may be cited: (1) Playa de Puerto Arista (Campeche), (2) Playa de Ceuta ((Sinaloa), (3) Playa de Cuitzamala (Jalisco), (4) Playa de El Verde Camacho (Sinaloa), (5) Playa de Escobiulla (Oaxaca), (6) Playas de Marauta y Colola (Michoacán), (7) Playa de Mexiquillo (Michoacán), (8) Playa de Mismaloyan (Jalisco), (9) Playa de Piedra de Tlacoyunque (Guerrero), and (10) Playa El Tecuán (Jalisco).

Mexico became a signatory to the Agreement on the International Program for the Conservation of Dolphins,⁸⁸ adopted in Washington, D.C., on May 21, 1998. The objectives of this international agreement are three: (1) to progressively reduce dolphin's incidental mortality in the tuna purse-seine fishing in the area covered by such Agreement in the Eastern Tropical Pacific to the closest levels to zero mortality through the establishment of annual limits, (2) to eliminate dolphins mortality in this fishery and find environmentally apt methods to catch Yellowfin tuna not associated with dolphins, and (3) to assure in the long range the sustainability of tuna populations within the Agreement's area.

B. Code of Conduct for Responsible Fishing

Mexico was key organizer of an international conference prepared under the aegis of the FAO's Fishing Committee that took place in Can Cún in 1992. The document resulting from this conference, known as the "Declaration of Can Cún," requested the FAO "to prepare an international Code of Conduct" addressing issues related to responsible fishing.

On October 31, 1995, the General Conference of FAO by unanimous vote adopted the International Code for Responsible Fishing.⁸⁹ This code, operating on a voluntary basis, established principles in accordance with international law so that fishing and other associated activities are conducted in a responsible manner, considering all the pertinent biological, technological, social, environmental, and commercial aspects. In addition, the Code establishes principles and criteria to formulate and implement national fishing policies to conduct responsible fishing activities and to reflect these policies in the applicable legal and institutional regimes. Mexico adheres to and implements the principles and policies contained in this Code.

C. Relations with the United States

1. Official Meetings

Cooperative fishing relations between these two countries take place within the context of the Annual Meetings of the Binational Commission of Fishing Authorities, which have been held consecutively for the last twenty-three years. Another bilateral forum for these affairs are the Programs on Technical and Scientific cooperation, Mexus-Gulf of Mexico, and Mexus-Pacific.

88. Agreement on the International Dolphin Conservation Program, May 21, 1998, State Dept. No. 99-42, available at 1999 WL 230818 (entered into force Feb. 15, 1999).

89. U.N. FAO Code of Conduct for Responsible Fisheries, Oct. 31, 1995, available at <http://www.fao.org/fi/agreem/codecond/ficonde.asp> (last visited Apr. 14, 2001).

These fora have recently addressed issues pertaining to these fisheries: abalone, coastal sharks, sardines, anchovette, red snapper, mero, protection of marine mammals, dolphins, and marine turtles.

2. Academic Interactions

For a long time, U.S. academic and oceanographic institutions have been conducting marine scientific research activities offshore Mexico, including those directed at certain marine resources, such as fish and other living organisms.⁹⁰

Although most of these activities are conducted by the U.S. National Marine Fisheries Service (NMFS), a number of academic and oceanographic institutions conduct research activities in that country, among them are the University of Arizona, the University of California at San Diego, the University of Hawaii, the University of Oregon, Rutgers University, and Stanford University. Private institutions include Hubbs Sea World Research Institute, Moss Landing Marine Laboratory, Scripps Oceanographic Institution, and Stephen Birch Aquarium.

Mexican academic and scientific institutions involved in these cooperative efforts include the Universidad Nacional Autónoma de México (UNAM), the Universidad Autónoma de Baja California (UABC), the Universidad Autónoma de Baja California Sur (UABC), and the Centro de Investigaciones Científicas y Estudios Superiores de Ensenada (CICESE).

D. The Tuna Embargo

The 1995 Declaration of Panama⁹¹ established a series of obligations between several countries in Latin America, including Mexico, and the United States, directed at lifting the tuna embargo. These obligations included the adoption of the La Jolla Agreement⁹² as a legally binding instrument, Mexico's return as a full member of the Inter-American Tropical Tuna Commission (IATTC), and the modification of the U.S. Marine Mammal Protection Act (MMPA).⁹³

On June 4, 1999, Mexico became a member of the IATTC. In February 1999, Mexico also approved the Agreement establishing an International Program for the Conservation of Dolphins. The United States approved the amendments to the MMPA in August 15, 1997. On January 3, 2000, the corresponding regulations were published, and on February 2, 2000, they were entered into force. In order for Mexico to export tuna to the United States, it has to issue a "positive finding"

90. Jorge A. Vargas, *U.S. Marine Scientific Research Activities Offshore Mexico, An Evaluation of Mexico's Recent Regulatory Legal Framework*, 24 DEN. J. INT'L L. & POL'Y 1, 18-20 (Fall 1995).

91. Declaration of Panama, Oct. 4, 1995, reprinted in 143 CONG. REC. S379-01 (1997).

92. Agreement for the Reduction of Dolphin Mortality in the Eastern Pacific Ocean, June 1992, 33 I.L.M. 936 (1994).

93. Marine Mammal Protection Act, 16 U.S.C. §§ 1361-421(h) (1994 & Supp. 1997).

pursuant to the Panama Declaration. This finding is expected to occur in the near future.

It should also be mentioned that on April 29, 1999, the U.S. Department of Commerce issued an "Initial Finding" on tuna/dolphin interactions, thus adopting "a new Dolphin-Safe Label Standard."

The new dolphin-safe standard, under the International Dolphin Conservation Program Act will allow the use of "dolphin-safe" label if tuna are caught in the presence of dolphins, provided that no dolphins are killed or seriously injured. Previously, products imported into the United States only qualified for the dolphin-safe label if the product used tuna caught when no dolphins were present. A number of environmental organizations, including the Center for Marine Conservation and the World Wildlife Fund, supported the legislation's enactment.

Through 2001, Fisheries Service will continue the comprehensive study of dolphin populations in the Eastern Tropical Pacific. Scientists will continue to collect data on the dolphin population and biology to ascertain whether there are adverse impacts, prior to completing the Agency's final finding by the end of 2002.

The United States will allow imports of tuna harvested under the International Dolphin Conservation Program bearing a dolphin-safe tuna label only if no dolphin were killed or seriously injured during a set in which tuna were caught.⁹⁴

XIII. INVESTMENT OPPORTUNITIES

Mexico's Fishing and Aquiculture Program for 1995-2000 suggests four areas where foreign investors may find rewarding opportunities in the fishing sector. Under Mexico's Foreign Investment Act of 1993 (as amended in 1996), foreign investors may invest up to 49% in "sweet water fishing, coastal and EEZ fishing, excluding aquiculture." These opportunities include:

- (1) *Fish production.* To promote investments in any commercial fishery to increase fish productivity to parallel the volumes reached in 1981 and 1989. These activities must be done based on the technical and scientific studies produced by the appropriate Mexican and foreign institutions.
- (2) *Aquiculture.* Investments should be directed to high commercial value species such as shrimp, abalone, clams, oysters, totoaba, and other species.
- (3) *Increase in the Industrial and Commercial output.* Processing and commercialization activities are to play a pivotal role in the Mexican economy. It is indispensable to optimize the use of the industry's

94. *Commerce Department Issues Initial Finding on Tuna/Dolphin Interactions; will Adopt New Dolphin-Safe Label Standard*, U.S. DEPARTMENT OF COMMERCE NEWS, April 29, 1999.

installed capacity and the diversification of commercial fisheries, and to minimize costs increasing the quality of all fishing products.

- (4) *To Expand and Diversify Domestic and Foreign Markets.* A set of strategies must be devised to penetrate a series of high value niches. Domestically, Mexico is ready to expand its internal market, with both domestic and foreign products. Foreign markets should be expanded and diversified.⁹⁵

FOREIGN INVESTMENT RULES

Foreign investment is permitted:

- Up to 49% in Mexican fishing companies;
- Up to 100% in aquiculture activities;
- Up to 100% in the industrialization, commercialization and distribution of fishing products.

XIV. CONCLUSION

Geographically endowed with abundant living marine resources in the Gulf of Mexico, the Pacific Ocean, the Gulf of California, and the Caribbean Sea, Mexico's potential for a substantial increase in the volume and scope of its commercial fishing activities is no longer in doubt. Jointly, with the expansion of sport fishing activities, fueled by its contiguity to the United States, and an increase in its commercial fishing activities, Mexico's fishing sector is in a position to play a critical role in allowing Mexico to reach the economic-takeoff stage.

In 1992, Mexico placed sixteenth on the global scale because of its large contribution of fish, such as sardines and anchovettes, to fisheries just below Chile and Peru in Latin America. Mexico also contributed 5% to global shark production, with a total of 700,000 MT in 1993, competing with Japan, Pakistan, and Brazil. Mexico contributes 2.3% of harvested shrimp to the global market, becoming the twelfth largest producer of this highly valuable marine resource. In lake and river fishing and harvesting, Mexico contributes 8.2% of tilapia to the world market. In 1994, Mexico produced 119,000 MT of tuna. Today, Mexico is one of the twenty

95. Decreto por el que se Aprueba el Programa Sectorial de Mediano Plazo denominado, "Programa de Pesca y Acuicultura 1995-2000" [Fishing and Aquiculture Program 1995-2000], at 32-33, D.O., 13 de marzo de 1996 (Mex.).

largest producers of fish and other marine resources on a global scale, with a total of 1,260 million MT in 1994.⁹⁶

The substantial increase in the volume of fish production in Mexico is expected to have considerable impact on development in a large number of associated industries, including: ports, port equipment, and containers; cargo transports and fishing vessels; ship construction and architectural design; electronic equipment for fishing vessels; freezers and marine engines; scientific and technical equipment for marine research; aquiculture techniques and other productive technologies.

The North American Free Trade Agreement⁹⁷ will continue to facilitate international trade with the United States and Canada, expediting in the process the flow of goods and services and the establishment adequate technical, sanitary, and environmental standards. Recently, Mexico entered into an unprecedented Free Trade Agreement with the European Union, which will no doubt attract European investors and European technologies to the fishing sector and associated marine industries.

Mexico's recent enactment of the Fishing Act and the Regulations created a modern and flexible federal legal regime which governs the utilization and conservation of its living oceanic, coastal, and fluvial resources. These legislative enactments represent an important step in the right direction.

Yet, for Mexico to sustain and vigorously promote the long-awaited and much needed modernization of its fishing sector and associated industries, more profound legislative changes are needed. Changes in the foreign investment sector are immediately required to motivate foreign investors into introducing substantial amounts of fresh capital and leading technologies into Mexico to help create a new, efficient, and sustainable fishing sector. Mexico's fishing sector must be primed because it possesses the potential to act as catalyst in generating economic, scientific, and industrial development in the rest of the country.

96. *Id.* at 41.

97. North American Free Trade Agreement (NAFTA), Dec.17, 1992, U.S.-Can.-Mex., 19 U.S.C. §3301 (1994), 32 I.L.M. 296 (1993), 32 I.L.M. 605 (1993). According to Article 2203 of NAFTA, the trilateral treaty entered into force in January 1994. *Id.*, 32 I.L.M. at 702.

XV. APPENDIX

A. Glossary

Administrative Appeal (*Recurso de Revisión*): Appeals may be filed to revoke, modify, or confirm a challenged resolution or decision. The appeal must include a description of the challenged act, legal bases supporting it, and the resolution points. The appeal must be filed within fifteen calendar days after the resolution was announced.

Annulment (*Anulación*): Licenses, permits, and authorizations declared null and void in the following cases: (1) lack of a specific license, permit, or authorization holder or holder's legal incapacity; (2) Lack of authority of the administrative authority granting the license, permit, or authorization; (3) error or violence according to the Mexican Civil Code for the Federal District. (*Article 141 and 142, FR*).

Authorizations (*Autorizaciones*): Permission given by the Secretariat of Fishing to Mexican Nationals or Mexican Nationality legal entities for certain activities that include fishing on high seas, installing fishing gear, introducing species for research purposes, and didactic fishing for teaching purposes. (*Article 15, FA*).

Commercial Fishing (*Pesca Comercial*): Commercial fishing is conducted to obtain economic benefits. SEMARNAP may grant a license or permit for commercial fishing in favor of Mexican Nationals either by vessel or by fishing effort units. (*Article 39, FA*).

Contiguous Zone (*Zona Contigua*): One of the five "Mexican Marine Zones" established by the Federal Oceans Act (FOA). Mexico has a 12 nautical mile Contiguous Zone immediately adjacent to its territory. This area is protected against any infringement of the Fishing Act and designated to prevent infringements of any customs, fiscal, immigration, or sanitary law.

Continental Shelf and Insular Shelves (*Banco Continental y Bancos Insulares*): One of the five "Mexican Marine Zones" established by the FOA. This zone was established for the Mexican nation to exercise the sovereign rights for exploration and exploitation of national resource purposes.

Exclusive Economic Zone (EEZ) (*Zona Económica Exclusiva*): One of the five "Mexican Marine Zones" established by FOA. The EEZ was established in June 1976 by means of an amendment to the Federal Constitution. The EEZ is the largest in Latin American, comprising 200 nautical lines, and has an abundant variety of valuable marine resources.

Federal Oceans Act (*Ley Federal del Mar*): Enacted in 1986, the FOA articulates the precise legal regime that Mexico applies to its surrounding marine spaces, including those subject to its full sovereignty and those upon which the nation exercises only certain rights and jurisdictions.

Fines (*Multas*): The Secretariat shall impose fines in accordance with the seriousness of the violation to the Fishing Act. Article 26 provides the guidelines and Article 27 provides a Table to apply fines in accordance with the violation.

Fishing Activities (*Actividades Pesqueras*): These activities are divided into two categories: (1) *Capturing or Extracting Activities*, which includes commercial fishing, developmental fishing, educational fishing, sport-recreational fishing, and domestic consumption fishing; and (2) *Harvesting or aquiculture Activities*, which includes commercial, developmental, and educational fishing.

Fishing Log (*Bitácora de Pesca*): A book containing the fishing activity conducted by a vessel. The log must contain a detailed record of the fishing information and all related information. Every fishing vessel is responsible for keeping a log to ensure compliance with the license or permit granted.

Inspections (*Inspecciones*): The Secretariat of Fishing shall be empowered to enforce compliance with the Fishing Act by having authorized personnel conduct inspections and reporting its findings in Minutes which will be signed by two witnesses. If any assets are confiscated, the Secretariat will designate a holder for such assets. If the assets or products are prohibited instruments of fishing gear, they will be disposed off as mandated by law. (*Article 22 and 23, FA*).

Internal Marine Waters (*Agua Marinas Internas*): One of the five "Mexican Marine Zones." Internal marine waters are comprised of the following: (1) the northern part of the Gulf of California; (2) those of internal bays; (3) those in ports; (4) those inland of reefs; and (5) those in river deltas or in river mouths, lagoons, and estuaries permanently or intermittently connected with the sea.

License (*Concesión*): A document necessary for catching, extracting, and harvesting resources regulated by the Fishing Act, unless it is considered for self-consumption or sport-recreational fishing. Licenses are for five to ten years and may be extended for the same length they were original given. All license holders will report the methods and techniques to the Secretariat. A license may be granted subject to a public auction determined by the Secretariat. (*Article 4-7, FA*).

Mexico's Marine Spaces (*Espacios Marinos Mexicanos*): These are five marine zones established by the FOA: (1) the Territorial Sea, (2) the Internal Marine Waters, (3) the Contiguous Zone, (4) the EEZ, and (5) the Continental Shelf and Insular Shelves.

Mexico's National Development Plan (*Plan Nacional de Desarrollo*): This Plan contains a critical section on fishing development, especially the diversification and development of new fisheries and of underutilized resources. The policy also encourages the development of foodstuffs and improvements to the quality of water and aquiculture sanitation.

Mexican Vessels (*Barcos Mexicanos*): These vessels are granted special authorizations issued by SEMERNAP exclusively to Mexican nationals or Mexican legal entities. The Mexican vessel must be registered in the Listing of Mexican Vessels in compliance with the Act for the Development of the Mexican Merchant Marine and must fly the Mexican Flag. The vessel must also prove before

SEMARNAP the ownership or the legal availability of gear, economic capacity, and well-trained personnel. The vessel must abide, respect, and comply with the international provisions applicable to navigation and fishing. (*Article 15, FA*).

National Fishing Chart (*Carta Nacional Pesquera*): An updated index containing the fishing resources under federal jurisdiction.

National Fishing Registry (*Registro Nacional de Pesca*): Is the public registry of all individuals and legal entities having a license, permit, or authorization who are engaged in fishing activities. This registry is kept by the Secretariat of Fishing and does not include individuals engaged in sport-recreational fishing.

Optimum Utilization (*Optima utilización*): Mexico allows other states to harvest any excess of the total allowable catch if Mexico does not harvest it. This includes all species within the EEZ such as sardines, mackerel, red snapper, tuna, etc. Mexico, as a party to the 1982 UN Convention of the Law of the Sea, must comply with the Principle of Optimum Utilization of the Living Resources.

Permits (*Permisos*): Permits are granted by the Secretariat in the following cases: (1) commercial fishing, (2) operation of factory-shops or floating plants, (3) developmental fishing, (4) sport-recreational fishing, (5) fishing activities needed to support license applications, (6) fishing by foreigners when EEZ surplus is available, and (7) developmental aquiculture. (*Article 31, FR*).

Protected Areas (*Areas de Refugio*): Areas designated to shelter and repopulate certain species. (*Article 3, FA*).

Public Auction (*Subasta Pública*): This is an auction held by SEMARNAP to grant a license or permit in the following cases: (1) Commercial fishing, (2) for the operation of factory-ships or floating plants, (3) Developmental fishing, (4) sport-recreational fishing, (5) fishing activities supporting license applications, (6) fishing by foreigners when an EZZ surplus is available, and (7) developmental aquiculture. (*Article 3, FA*).

Revocation (*Revocación*): Is the cancellation of licenses, permits, or authorizations if: (1) the holder adversely affects the environment or places it under imminent risk, or (2) the holder fails to provide the Secretariat with the information complying with the Act or presenting false information.

Sanctions (*Sanciones*): Violations to the Fishing Act are sanctioned by the Secretariat of Fishing in accordance to their seriousness. The following categories were established: (1) revocation of the license, permit, or authorizations, confiscation of products and/or fishing gear, imposition of a fine, and/or a possible temporary closure of the facility; (2) revocation of the license, permit, or authorization, definite closure of the facilities; (3) temporary suspension of the license, permit, or authorization rights; temporary closure of the installations; and/or imposition of a fine; (4) confiscation of the aquatic flora and fauna products obtained, vessels and vehicles, and/or fishing gear; and/or imposition of a fine; and (5) a warning. (*Article 25, FA*).

Sanitary Technical Norms (*Normas Técnicas Sanitarias*): Water sanitation matters to guarantee the healthy development of aquatic species.

Secretariat of Environment, Natural Resources and Fishing (SEMARNAP): This Secretariat is statutorily empowered to apply the Fishing Act and its Regulations and is responsible for: (1) publishing the National Fishing Chart; (2) promoting the improvement of fishing vessel equipment; (3) encouraging domestic aquatic flora and fauna consumption; (4) promoting aquaculture in coordination with other agencies; (5) protecting endangered turtles and other marine mammals; (6) establishing methods to preserve fishing resources and repopulate fishing grounds; (7) determining fishing, harvesting, and protected zones; (8) regulating the introduction of aquatic and fauna in waters under federal jurisdiction; (9) establishing allowable catch volumes; (10) monitoring compliance with the Fishing Act; (11) providing fishing production cooperative associations with advisory and training services; and (12) requesting legal origin of fishing products and sub-products. This Secretariat became part of SEMARNAP in 1989 and exercises direct control over fishing in Mexico. (*Article 3, FA*).

Sport Fishing (*Pesca Deportiva/Recreativa*): This recreational fishing is practiced with the approved fishing gear. Species included in this category are: marlin, sail fish, sword fish, sabe, "pez gallo," and dorado, all located within a maritime belt of 50 nautical miles measured from the baselines used to delimit Mexico's territorial sea.

Surplus of Species (*Excedentes por Especie*): This surplus is determined by the Secretariat, who also authorizes foreign vessels to have a portion of such surplus.

Termination (*Caducidad*): Licenses and permits terminate when their holders fail to exploit within the time limit of the license or permit, and can be suspended if, without a reasonable cause, it is not used for more than thirty consecutive days or if the holder does not comply with the authorized investment plan. (*Article 16, FA*).

Territorial Sea (*Mar Territorial*): One of the FOA "Mexican Marine zones" establishing an area with a width of 12 nautical miles, within which all vessels must comply with the Mexican statutory provisions.

Violations (*Violaciones*): Article 24 of the Fishing Act enumerates twenty-five violations, some of which include: (1) conducting commercial fishing without a license; (2) exploiting species in greater volumes than permitted; (3) transferring right without being authorized by the Secretariat; (4) non-compliance with the requirement that the documents issued by the Secretariat be on board the vessel; (5) unloading commercial fishing products originating from foreign vessels in Mexican ports; (6) using prohibited or unauthorized instruments, gears, or fishing methods; (7) non-compliance with the requirement that all boats maintain a Fishing Log; (8) unauthorized installation of fishing gear; and (9) endangering the preservation of fishing resources. For a complete list of violations, see Article 24 of the Fishing Act.

Volumes of Allowable Catches (*Volúmenes de Captura permisibles*): Regulations stating the season, size, and minimum widths of specimen allowed to be captured and their handling, preservation, and transportation.

B. Resolutions Dictated by SEMARNAP on Fishing Matters

1. Establishing a general system for the issuance of commercial fishing permits by specific fisheries. (*D.O.* of October 1, 1990).
2. Regulating the utilization of tuna by Mexican fishing vessels in waters of the United Mexican States, including its EEZ and the Eastern Pacific. (*D.O.* of June 18, 1990).
3. Regulating the operation of the Mexican purse seine tuna fishing fleet in waters of the territorial sea, and the EEZ in the Pacific Ocean, international waters, and the EEZs of other countries located in the Eastern Pacific Ocean. (*D.O.* of May 20, 1991).
4. Regulating the catching of tuna by the Mexican purse seine tuna fishing fleet operating in the waters of the territorial sea and the EEZ of the United Mexican States in the Pacific Ocean, international waters, and the EEZs of other countries located in the Eastern Pacific Ocean. (*D.O.* of September 27, 1991).
5. Regulating the utilization of high seas species of shrimp in waters under federal jurisdiction in the Gulf of Mexico and the Caribbean Sea, as well as those in the Pacific Ocean. (*D.O.* of May 17, 1991, as amended by *D.O.* of September 26, 1991).
6. Regulating the utilization of species of shrimp in the lagoon-estuaries systems and bays along the Pacific Ocean, including the Gulf of California. (*D.O.* of September 26, 1991).
7. Establishing measures for the identification and control of fishermen belonging to cooperatives and vessels smaller than ten tons that are authorized for commercial fishing of shrimp in the lagoon-estuaries systems and bays along the littorals of the Pacific Ocean, Gulf of California, and Gulf of Mexico. (*D.O.* of May 17, 1991).
8. Regulating the utilization of aquatic resources of flora and fauna and the ordering of the coastal fisheries taking place in the lagoon-estuaries systems, bays, and marine waters under federal jurisdiction in the Pacific Ocean, the Gulf of Mexico, and the Caribbean Sea. (*D.O.* of May 17, 1991, as amended by *D.O.* of September 26, 1991).
9. Establishing regulatory measurements for abalone fishing. (*D.O.* of September 22, 1981).
10. Establishing a regulatory system for sport-recreational fishing. (*D.O.* of March 7, 1991, as amended by *D.O.* of June 19, 1991).

C. *The Fishing Act*

(“Ley de Pesca,” D.O., 25 de junio de 1992)

Translated by Professor Jorge A. Vargas,
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Chapter I

General Provisions

ARTICLE 1. The current Act is of public interest, Regulatory of Article 27 of the Political Constitution of the United Mexican States regarding the natural resources which are part of the flora and fauna whose total, partial, or temporal habitat is the water. The object of this Act is to guarantee the conservation, preservation and rational utilization of fishing resources and to establish the bases for their development and management.

ARTICLE 2. The provisions of this Act shall apply to the waters under federal jurisdiction referred to in the fifth and eighth paragraphs of Article 27 of the Constitution as well as to vessels flying the Mexican flag who conduct fishing activities in the high seas or in waters under foreign jurisdiction pursuant to licenses (*concesiones*), permits, authorizations, or any other similar legal act granted to Mexico or its nationals by a foreign government.

ARTICLE 3. The application of this Act is conferred upon the Secretariat of Fishing (*Secretaría de Pesca*), without affecting the powers of other entities of the Federal Public Administration who should establish the necessary coordination with said Secretariat, who is empowered to:

1. Formulate, publish, and keep up-to-date the National Fishing Chart (*Carta Nacional Pesquera*) which is to contain an inventory of the fishing resources in waters under federal jurisdiction, apt to be utilized;
2. Promote the construction, improvement, and equipment of vessels and fishing gear, as well as infrastructure works in waters under federal jurisdiction, ports, and industries necessary to foster the utilization, transformation, distribution, and commercialization of the aquatic flora and fauna; propose the establishment of fishing port zones (*zonas portuarias pesqueras*) and participating in their management;
3. Promote the domestic consumption of a larger variety of products and sub-products from the aquatic flora and fauna, as well as the diversification of their uses and forms of presentation, their

industrialization, their quality, and their internal and external commercialization to attain a larger competitiveness;

4. Promote the development of aquiculture in coordination with other agencies at the Federal, State, and Municipal levels;
5. To issue measures directed at protecting turtles (*quelonios*), marine mammals, and aquatic species subject to special protection or threatened to become extinct, in coordination with the competent agencies;
6. Establish the methods and measures for the conservation of the fishing resources and the repopulation of fishing grounds; regulate the establishment of protected areas (*areas de refugio*) to shelter certain species and to establish the periods and zones when no fishing is allowed (*epocas y zonas de veda*);
7. Determine, in consonance with the technical and natural conditions, the zones of fishing and harvesting; protected zones (*zonas de reserva*) in internal waters and beach fronts for the collection of post-larvae, alevines, seeds, and other biological phases; as well as the seasons and volumes to which the collection should be subject to;
8. Regulate the introduction of species of aquatic flora and fauna in bodies of water under the federal jurisdiction; define the sanitary technical norms (*normas técnicas sanitarias*) to guarantee the healthy development of aquatic species; and test preventive and control measures in water sanitation, either directly or through duly certified laboratories, in coordination with the competent agencies of the Federal Public Administration;
9. Establish the volumes of allowable catches (*volúmenes de captura permisible*); regulate the body of fishing instruments, gear, equipment, personnel, and techniques; regulate the number of vessels and their features, destined to catch certain species or a group of them; establish the season, size, and minimum weight of specimens to be captured and propose rules (*normas*) for their handling, conservation, and transport;
10. Monitor, in coordination with the competent authorities, compliance of technical standards in the transshipment, and the unloading and change of crews in the fishing vessels flying the Mexican flag or registered in the Listing of Mexican Vessels (*Padrón de Abanderamiento Mexicano*) in the exclusive economic zone and in the high seas;

11. Provide advisory and training services to cooperative societies of fishing production (*sociedades cooperativas de producción pesquera*), including those from *ejidos* and communities (*ejidales y comunales*), when they so request; and
12. Request the legal origin of fishing products and sub-products.

Provisions of a general character issued in relation with this Article shall be based upon scientific and/or technical opinions, and when appropriate will be published in the Official Gazette of the Federation (*Diario Oficial de la Federación*).

Chapter II

Of Licenses, Permits, and Authorizations

ARTICLE 4. To engage in the activities of catching, extraction, and harvesting of those resources regulated by this Act, a license (*concesión*), permit, or authorization is required, as needed, except for self-consumption fishing (*pesca de consumo doméstico*) undertaken by residents of riverbanks and coastlines, sport-recreational fishing (*pesca deportivo-recreativa*) conducted from the coastline, and aquiculture in water deposits not subject to federal jurisdiction.

ARTICLE 5. Applicants of licenses, permits, and authorizations must prove the legal possession of the necessary assets and equipment to accomplish the objective stated in the application or in the acquisition, leasing, or construction program, and the other requirements established by the Regulations.

Licenses and Permits

ARTICLE 6. Licenses referred to by this Act shall have a minimum length of five years and a maximum of twenty; in aquiculture cases, licenses may be up to fifty years. At the end of the period granted, licenses may be extended up to the same periods originally granted.

License and permit holders shall report to the Secretariat of Fishing on the methods and techniques used as well as the findings resulting from discoveries, research, studies, and new projects relating to fishing activities. Furthermore, those fishing vessels named in the Regulations must have a recording book known as the Fishing Log (*Bitácora de pesca*) which shall contain the information determined by the Secretariat of Fishing.

Any other obligations of the license and permit holders shall be established in the corresponding Title of the Regulations.

ARTICLE 7. The granting of a license or a permit shall be subject to the modalities dictated by the public interest, always conditioned upon to the availability and conservation of the resource in question.

The Secretariat of Fishing, in the terms established by the Regulations, may subject to public auction the granting of licenses and permits for commercial fishing by area, species, or group of species.

ARTICLE 8. The license and permit holders may be substituted when this has been previously authorized by the Secretariat of Fishing, provided all the requirements established by the Regulations are duly complied with, except in the cases expressly prohibited by the Act.

ARTICLE 9. The Secretariat of Fishing may grant licenses or permits for commercial fishing to individuals or legal entities (*personas morales*) of Mexican nationality, in compliance with the requirements established by this Act and its Regulations.

The licenses shall be granted based on the evaluation of the results produced by technical and economic studies and the amount and amortization of the investment.

The permits shall be granted when the amount of investment does not require of technical or economic studies.

The operation of vessel-factories or floating plants shall be subject to the issuance of licenses and permits.

ARTICLE 10. The licenses and permits issued by the Secretariat of Fishing shall be granted for each individual vessel or fishing effort unit (*unidad de esfuerzo pesquero*) as is to be defined for each species, group of species, or zones, as provided by the applicable Regulations.

The license or permit holders must always have aboard the documents which prove that the vessel is authorized to operate, and which vessel must have a Mexican registration and fly the Mexican flag or be registered in the Listing of Mexican Vessels in accordance with the Act for the Development of the Mexican Merchant Marine (*Ley para el Desarrollo de la Marina Mercante Mexicana*).

ARTICLE 11. The permits granted by the Secretariat of Fishing shall be valid for a period not exceeding four years and may be transferred as provided by Article 8 of this Act, except those granted for the conduct of development fishing (*pesca de fomento*), sport-recreational fishing, and those relative to fishing works necessary to provide the basis for commercial fishing license applications.

ARTICLE 12. The Secretariat of Fishing may grant permits for the conduct of development fishing to those who prove a technical and scientific capability for that activity.

ARTICLE 13. The permits for sport-recreational fishing shall be issued to Mexican or foreign individuals.

Only those species determined by the Regulations shall be exclusively destined for the sport-recreational fishing within a belt of fifty nautical miles, measured from the baseline from which the territorial sea is measured.

No other fishing activities different than the research activities may be conducted upon species destined for sport-recreational fishing within the protected areas that the Secretariat of Fishing may establish for this purpose, as provided in paragraph six of Article 3 of this Act.

ARTICLE 14. The Secretariat of Fishing, in accordance with the national interest and the treaties and international agreements to which Mexico is a party, shall determine, and when appropriate shall declare, whether there are surpluses by species (*Excedentes por especie*). In this case, [the Secretariat] shall allow, as an exception, that foreign vessels have a portion of said surpluses in the Exclusive Economic Zone by complying with the requirements and conditions which are to be established by the Secretariat for each case. In any event, it shall always be subject to the strictest reciprocity.

The corresponding permit shall not be transferable and be subject to the signing of agreements with the countries which request it, and in the case of individuals or legal entities of a foreign nationality, to the filing of a prior application and compliance with the requirements established by the Regulations.

Authorizations

ARTICLE 15. The Secretariat of Fishing may authorize as non-transferable, issued exclusively to Mexican nationals or legal entities of a Mexican nationality, the conduct of the following activities:

1. To fish in the high seas or in waters under foreign jurisdiction to Mexican vessels flying the Mexican flag;
2. To install fixed fishing gear (*artes de pesca fijas*) in waters under federal jurisdiction;
3. To collect larvae, post-larvae, eggs, seeds, or alevins from the natural environment for aquiculture or research purposes. The authorizations to conduct these activities shall be conditioned upon the availability and conservation of the species in question;
4. The introduction of live species in bodies of water under federal jurisdiction; and
5. Didactic fishing determined by the teaching programs of fishing education institutions of the country.

Termination of Licenses, Permits, and Authorizations

ARTICLE 16. Licenses or permits are terminated (*se extinguen por caducidad*) when their holders do not initiate the exploitation within the established period, or they suspend it without reasonable cause for more than thirty consecutive days; and, in addition, in the case of aquiculture in water under federal jurisdiction, when [their holders] do not comply with the authorized investment plan (*plan de inversiones previsto*).

ARTICLE 17. The licenses, permits, and authorizations may be revoked when their respective holders:

1. Adversely affect the environment or place it under an imminent risk;
2. Do not provide information in the terms and periods determined by the Secretariat of Fishing or engage in falsehood when they file it;
3. Do not comply with, without a reasonable cause, the general conditions of a technical nature prescribed by the Secretariat of Fishing within the deadline established for that purpose;
4. Transfer the authorizations or, without the consent of the Secretariat of Fishing, assign to a third party the rights (*transfieran los derechos*) derived from the license, permit, or authorization; and
5. Incur in bankruptcy, liquidation, termination (*disolución*), or involuntary bankruptcy (*concurso necesario*).

ARTICLE 18. The licenses, permits, and authorizations shall be declared null and void (*se anularán*) when invalidating elements are found after they have been granted.

ARTICLE 19. The holders of licenses, permits, and authorizations who incur in termination or revocation grounds may not be holders of licenses, permits, and authorizations until four years have elapsed, counted from the date when a formal and definite declaration of termination or revocation took place. The same treatment is to be given to holders in null and void cases attributable to them.

The termination, revocation, or annulment are to be declared in accordance with the procedures established in the Regulations, which must provide the affected holders with the right to a public hearing (*garantía de audiencia*).

ARTICLE 20. The Secretariat of Fishing shall keep a National Fishing Registry (*Registro Nacional de Pesca*) to be public and free regarding the entries to be registered therein, in which individuals and legal entities engaged in fishing activities under a license, permit, or authorization must be registered, except the individuals engaged in sport-recreational fishing.

Also, vessels engaged in fishing activities must be registered in the National Maritime Public Registry (*Registro Público Marítimo Nacional*), as well as the exploitation units engaged in water activities (*Unidades de explotación acuícola*), fishing schools, and centers devoted to research or teaching water flora and fauna subjects (*flora y fauna acuáticas*).

The Secretariat of Fishing shall issue the corresponding certificate of registration (*certificado de registro*).

Chapter III

Research and Training

ARTICLE 21. Scientific and technological research, as well as the training undertaken by the Secretariat of Fishing, should be linked to production, in particular when this is directed to human consumption. [Said research and training] shall have as their major purpose to increase the capacity to identify, quantify, utilize, manage, transform, conserve, and increase the aquatic flora and fauna.

The Secretariat of Fishing, in coordination with the corresponding agencies of the Federal Public administration, with research institutions, and with individuals, shall establish research, genetics, nutrition, sanitation, and popular outreach (*extensionismo*) services.

For the development of the scientific and technological research activities, the Secretariat of Fishing shall have the support of the National Fishing Institute (*Instituto Nacional de Pesca*), who will conduct scientific and technological research of the aquatic flora and fauna; shall give advice for the preservation, repopulation, promotion, growing, and development (*cultivo y desarrollo*) of fishing species; and shall render technical and scientific opinions to the fishing authority when this authority so requests, which contribute to the management and conservation of the resources; and any other activity established by the Internal Regulations (*Reglamento Interior*) of this Institute.

Chapter IV

Inspection, Violations, and Sanctions

Inspection

ARTICLE 22. The Secretariat of Fishing shall be empowered to implement the strict compliance of this Act and its Regulations. To this end, it shall conduct inspecting and surveillance activities, and enforce attachment proceedings (*medidas de aseguramiento*) and the determination of administrative violations.

The agencies of the Federal Executive, within their jurisdiction, shall contribute to the enforcement of this Act. In specific cases, the Secretariat of Fishing may request the assistance of some of them.

ARTICLE 23. The Secretariat of Fishing may conduct, through the personnel duly authorized, inspection visits. To this end, the personnel in question shall be in possession of the accrediting official document, as well as the written order, legally based and explained (*orden escrita debidamente fundada y motivada*) and issued by the competent authority.

In the same [inspection], the authority shall proceed, when appropriate, to write the corresponding minute (*acta*) in the presence of two witnesses designated by the interested party, but whom may be designated by the authority in case this party refuses to do so. [The Secretariat] shall provisionally retain the products or assets likely to be definitely confiscated (*susceptibles de decomiso definitivo*). Further, [the Secretariat] shall designate the holder (*depositario*) of the products and assets retained, which in no case may said holder be the Secretariat of Fishing, save when this involves prohibited instruments or fishing gear. In this case, these instruments and gear shall be disposed of as mandated by the law.

In the event of flagrant crimes (*casos de flagrancia*), the corresponding minute (*acta*) shall be written in the same place where the [inspection is conducted] (*en el lugar de los hechos*), expressly stating this circumstance in its text.

Violations

ARTICLE 24. Infractions to what is provided by this Act are:

1. To conduct commercial fishing or to collect from the natural environment reproducers, larvae, postlarvae, eggs, seeds, or alevines of fishing species, without having the corresponding license, permit, or authorization.
2. To operate factory-ships (*barcos-fábrica*) or floating plants without the respective license or permit;
3. To exploit, being a holder of a license or permit, a species or group of species in larger volumes or outside the technical and economic standards (*normas*) established in the respective Title [of this Act];
4. To issue invoices (*facturar*) or to protect fishing products which were not captured under the conditions established in the license, permit, or authorization by the corresponding holders (*titulares*);
5. To practice developmental, didactic, or sport-fishing activities without having the respective license or authorization;

6. To simulate domestic consumption fishing activities, developmental fishing, or sport-recreational fishing with the purpose of profiting with the products obtained from the fishing acts;
7. To transfer, without authorization of the Secretariat of Fishing, rights derived from the licenses or permits;
8. To not carry onboard of the vessel the documentation issued by the Secretariat of Fishing to prove the license, permit, or authorization;
9. To conduct fishing operations with foreign vessels without the corresponding permit;
10. To unload fishing products abroad or tranship (*transbordarlos*) them without having authorization from the Secretariat of Fishing, except in *force majeure* cases (*casos de siniestro*);
11. To unload in Mexican ports commercial fishing products originating from foreign vessels without authorization from the Secretariat of Fishing, except in *force majeure* cases;
12. To not report the arrival, harvesting, or collection to the fishing authority in accordance with the Regulations;
13. To practice fishing in high seas or in water under foreign jurisdiction with vessels registered and flying a Mexican flag, without the proper authorization, except in sport-recreational fishing;
14. To not comply with the conditions and requirements established in the authorizations granted by foreign government to the government of Mexico for the capturing of species;
15. To apply the Secretariat of Fishing's technical and scientific information to an improper use (*uso indebido*);
16. To transport in fishing vessels explosive instruments and contaminating substances not authorized by the Secretariat of Fishing;
17. To use instruments, gear, or fishing methods which are prohibited or not authorized;
18. To practice fishing with vessels different than those duly authorized and registered by the Secretariat of Fishing;

19. To extract, capture, possess, transport, or trade species declared to be in closed season (*veda*) or weighing less than the minimum specified by the Secretariat of Fishing, or to obtain [said species] from zones or refuge places (*zonas o sitios de refugio*) or repopulation places;
20. To capture in a deliberate manner or without adjusting to the established technical standards (*normas técnicas establecidas*) turtles, marine mammals, or species in risk of extinction (*especies en peligro de extinción*) without authorization from the Secretariat of Fishing;
21. To omit the use of the Fishing Log (*Bitácora de pesca*), alter or make false notations of technical data in said log, or not deliver it to the authority within the terms provided by the Regulations;
22. To not provide the information within the terms and forms requested by the Secretariat of Fishing or to incur in falsehoods while filing it;
23. To install fixed fishing gear without the corresponding authorization;
24. To introduce or handle in any manner species of biological material in waters under federal jurisdiction which cause damage, alterations, or place in danger the conservation of the fishing resources; and
25. To not prove with the proper documentation to the Secretariat of Fishing the legal origin (*procedencia legal*) of aquatic flora and fauna products from those who possess them, store them, transport them, or trade with them.

Sanctions

ARTICLE 25. Violations to what is provided by this Act shall be sanctioned by the Secretariat of Fishing in accordance with the seriousness of the violator's fault and without prejudice of the applicable criminal sanctions.

To this end, five categories of sanctions are established as follows:

1. Revocation of the license, permit, or authorization; confiscation of products and/or fishing gear and/or imposition of a fine; and, in accordance with the seriousness of the fault, temporary closure of the facility or facilities and/or confiscation of the vessel or vehicle;
2. Revocation of the license, permit, or authorization; definite closure of the facilities; and/or imposition of a fine;

3. Temporary suspension of the rights of the license, permit, or authorization; temporary closure of the installations; and/or imposition of a fine;
4. Confiscation of the aquatic flora and fauna products obtained, of the vessels and vehicles, and/or of the fishing gear; and/or imposition of a fine; and
5. Warning (*Amonestación*).

The confiscation of vessels or vehicles, as well as the temporary or definite closure of the facilities provided in this Article can only be applied in an especially egregious case (*en caso de especial gravedad*).

In the event that it may be deduced from the language of a single minute that several violations were committed, all of these violations shall be sanctioned provided that the total amount of the imposed fine may not exceed the limit established in paragraph D of Article 26 of this Act.

In the event of foreign vessels detained for fishing illegally in waters under federal jurisdiction, the international obligations contracted by Mexico must be observed, based upon the strictest reciprocity.

A warning shall be given to the violators and shall be used as a basis to increase the economic sanction in the case of recidivists (*reincidentes*).

ARTICLE 26. The Secretariat of Fishing shall impose the fines, taking into account the seriousness of the violation and the economic conditions of the violator, in accordance with the Table of Article 27 and in conformity with the following guidelines:

1. From 20 to 100 times the minimum salary;
2. From 101 to 1000 times the minimum salary;
3. From 1001 to 2000 times the minimum salary;
4. From 2001 to 20,000 times the minimum salary.

The general minimum daily salary in force in the Federal District (*Mexico City*) at the time when the violation was committed shall serve as the basis for the imposition of fines.

ARTICLE 27. The sanctions and fines established in this Act shall apply in accordance with the following Table:

<i>For violations to Article 24, paragraph:</i>	<i>Sanction to be applied according to Article 25</i>	<i>Fine to be applied according to Table of Article 26</i>
I	1	C
II	1	C
III	1	C
IV	3	C
V	4	C
VI	1	A
VII	4	B
VIII	2	C
IX	3	A
X	4	D
XI	4	D
XII	4	C
XIII	3	B
XIV	4	C
XV	5	D
XVI	5	B
XVII	1	C
XVIII	4	D
XIX	3	B
XX	1	C
XXI	1	D
XXII	3	B
XXIII	4	B
XXIV	4	D
XV	1	C

A fine shall be applied to recidivists in the immediately higher category to the corresponding violation committed the first time or up to twice as much in the case of the highest category, as established in the Table of Article 26 of this Act.

ARTICLE 28. Confiscated products and assets shall be disposed of as provided by the Secretariat of Fishing, in accordance with these alternatives: public auction; direct sale of fishing products; donation to establishments of social assistance or rehabilitation regarding products captured during a closed season or in smaller sizes to those authorized; and destruction of contaminated products or products in the process of deterioration (*descomposición*) and regarding prohibited fishing gear, when appropriate.

ARTICLE 29. Fifty percent of the income of the Federation effectively resulting from fines for violations to this Act, and the seventy percent of the proceeds resulting from a public auction or in direct sales of confiscated products and assets shall be destined to the development of funds for programs associated with the granting of promotions and awards for productivity and compliance by personnel of the Secretariat of Fishing and for those who denounce violations. The corresponding distribution shall be done in the terms specified by the respective Regulations.

Chapter V

Administrative Appeal

ARTICLE 30. Against the resolutions issued by the Secretariat of Fishing, pursuant to this Act, an administrative appeal (*recurso de revisión*) may be filed within the following fifteen calendar days after said resolution was announced.

Said appeal may be filed when the authority has not given an answer within the term provided by the Regulations regarding the applications for licenses, permits, and authorizations.

The object of the appeal is to revoke, modify, or confirm the challenged resolution, and the decisions rendered (*fallos que se dicten*) must include the description of the challenged act, the legal bases that support it, and the resolving points (*puntos de resolución*). The Regulations of this Act shall establish the terms and other requirements needed for the filing and processing of the appeal.

The filing of the appeal shall be done in writing addressed to the head of the Secretariat of Fishing. It shall contain the name and address of the challenging party (*recurrente*) and [a description of] the offending act (*agravios*), enclosing all the necessary supporting evidence (*elementos de prueba*), as well as the documents ascertaining the personality of the filing party (*promovente*).

The filing of this appeal shall suspend the enforcement of the challenged resolution regarding the payment of fines or confiscations, provided that their value is guaranteed in the manner established by the Fiscal Code of the Federation (*Código Fiscal de la Federación*).

Transitory Articles:

First Article. This Act shall enter into force thirty days after its publication in the Federal Official Gazette (*Diario Oficial de la Federación*).

Second Article. The Federal Fishing Act (*Ley Federal de Pesca*), published in the Federal Official Gazette of December 26, 1986, is hereby repealed.

(The Third and Fourth Articles are omitted)

- LEY DE PESCA COMENTADA (Coordinada por Manuel González Oropeza), Secretaría de Pesca-UNAM, México, D. F. (1993).
- OPORTUNIDADES DE INVERSIÓN, SEMARNAP, Subsecretaría de Pesca, Dirección General de Política y Fomento Pesquero, México, D. F. (1998).

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