



# MALAYSIA'S NATIONAL PLAN OF ACTION to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Malaysia's NPOA-IUU)



First Printing, 2013

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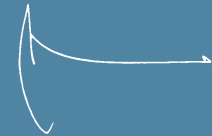
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# Foreword

The Hon. Minister of Agriculture and Agro-Based Industry Malaysia



**THE HON. DATO' SRI ISMAIL SABRI BIN YAAKOB**  
Minister of Agriculture and Agro-Based Industry Malaysia  
Putrajaya

Illegal, unreported and unregulated (IUU) fishing affects fisheries within national jurisdictions, within the area of responsibilities of regional fisheries bodies and on the high seas. This fishing activity has been identified by the United Nations General Assembly as one of the most severe problems affecting world fisheries; a main obstacle in achieving sustainable fisheries in areas under national jurisdictions and the high seas which has far reaching consequences for the long term sustainable management of fishery resources.

It is estimated that IUU fishing accounts for almost one third of the total catches in some important fisheries and may represent an overall cost of between USD 2-15 billion a year to developing countries. The Indian Ocean Tuna Commission (IOTC) reported that nearly 100,000 tonnes or 10% of reported landings from its management areas are derived from IUU fishing. It is also estimated that 25-30% of global catch is unreported. The International Plan of Action (IPOA) on IUU fishing is one of the existing international instruments being promulgated to promote long term sustainable fisheries, in addition to the 1982 United Nations Convention on the Law of the Sea, the FAO Code of Conduct for Responsible

Fisheries and a number of other FAO International Plans of Action. Malaysia views the issue of IUU fishing seriously and reiterates her support for global instruments for combating IUU fishing. Malaysia's commitment is also indicated by her participation as a member of the group of countries that formulated the Regional Plan of Action (RPOA) to Promote Responsible Fishing Practices including Combating IUU Fishing in the Region. Initiated in 2007, the RPOA is a common and collaborative approach to promote responsible fishing practices and to combat IUU fishing in the region, in particular, in the South China Sea, the Sulu-Sulawesi Seas and the Arafura-Timor Seas.

The year 2013 marks an important milestone in the Ministry of Agriculture and Agro-Based Industry and the Department of Fisheries Malaysia with the publication of Malaysia's National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (NPOA IUU). I would like to congratulate and thank the Department of Fisheries Malaysia for the efforts undertaken to publish this document.

Thank you



# Foreword

Secretary-General  
Ministry of Agriculture and Agro-Based Industry  
Malaysia



**DATO' MOHD. HASHIM BIN ABDULLAH**  
Secretary-General  
Ministry of Agriculture and Agro-Based Industry Malaysia

Illegal, Unreported and Unregulated (IUU) fishing has been a growing concern globally, within the Southeast Asian region and even nationally considering that such practices continue to threaten the sustainability of the fisheries resources.

This year marks the finalization and approval of the National Plan of Action to Prevent, Deter and Eliminate IUU Fishing (NPOA-IUU) which is in line with the FAO International Plan of Action on IUU Fishing (IPOA-IUU). Malaysia is committed to subscribe to the prominence of collective action to combat IUU fishing by cooperating with other countries and parties and discharging her responsibilities within her means and capacity at the regional level, such as cooperating with other member States of the Regional Plan of Action to Promote Responsible Fishing Practices including Combating IUU Fishing in the Region (RPOA-IUU). This includes denying requests to use her ports by fishing vessels reported to have engaged in IUU fishing.

I am proud that the development of Malaysia's National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (NPOA-IUU) is a step forward taken by the Department of Fisheries Malaysia to reflect Malaysia's commitment and support towards combating IUU fishing and promoting sustainable fishing practices

at the national, regional and global levels. The overarching goal of this NPOA-IUU is to ensure the sustainability of the fisheries resources and it is a compilation of existing measures within the national framework to combat IUU fishing. This NPOA is a living document and will be continuously reviewed to refine and improve existing measures as well as to include any new global measures that will be used to combat IUU fishing in the future.

In Malaysia, there are a number of government ministries, departments and agencies which are involved in the implementation of the NPOA-IUU. It is imperative that for the effective implementation of this plan, it requires the commitment, cooperation and collaboration from the various ministries, departments and agencies without which the plan will only remain as a plan. The cooperation from the various ministries, departments and agencies to implement this plan and to chart the way forward towards a sustainable future for the Malaysian fisheries sector is much appreciated.

I would like to thank and congratulate the Department of Fisheries Malaysia and all the members of the Technical Committee who were actively involved in the development and preparation of this NPOA-IUU document.

Thank you.





The Department of Fisheries Malaysia has implemented relevant fisheries management measures through the establishment of appropriate fisheries related laws, regulations and policies so as to prevent Malaysian fishermen from engaging in illegal, unreported and unregulated (IUU) fishing.

The efforts to combat IUU fishing in Malaysia are also provided for in the Strategic Plan of the Department of Fisheries Malaysia (2011-2020) with the target to reduce the number of IUU fishing cases by 10% annually from 2012-2020. The Department is also involved in the issuance of Catch Certificates in response to the European Union's regulation to deter illegal, unreported and unregulated fishing for wild caught fish and fish products.

Since the inception of the IPOA-IUU, the Department has been involved in organizing a series of regional and international workshops as well as seminars to promote and institute the NPOA and initiatives to prevent, deter and eliminate IUU fishing.

The Malaysian National Plan of Action to Prevent, Deter and Eliminate IUU Fishing (NPOA-IUU) has been developed in accordance with the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

and is used as the national blueprint to combat IUU fishing in Malaysia.

The successful implementation of this blueprint needs the close cooperation and strategic alliances with the various enforcement agencies in Malaysia. This is crucial to ensure continuous responsible and sustainable management of our marine resources for the benefit of future generations.

I am confident that this NPOA can set a common platform for implementation based on the existing national objectives and plans, and chart a new standard in marine resources management for the benefit of the nation.

Although this National Plan of Action to Prevent, Deter and Eliminate IUU Fishing (NPOA-IUU) took such a long time to develop, it was completed through the concerted efforts undertaken by the members of the Technical Committee who were appointed by the Department. Their dedication, efforts and technical inputs which led to the completion of this document is much appreciated. I must thank and congratulate all parties for their valuable contributions and involvement in the development of this NPOA IUU.

Thank you.

## MEMBERS OF THE TECHNICAL COMMITTEE

### Chairman:

Mr. Mohamad Shaupi bin Derahman

### Members:

Mr. Hj. Johari bin Ramli  
Mr. Ahmad Adnan bin Nuruddin  
Mr. Abu Talib bin Ahmad  
Mr. Abdul Razak bin Latun  
Mr. Abdul Khalil bin Abdul Karim  
Mrs. Tan Geik Hong  
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Mrs. Rohani bt. Mohd. Rose  
Mr. Abdul Rahman bin Abdul Wahab  
Mr. Halimi bin Abu Hanip  
Mrs. Haryati bt. Abd. Wahab



## ACKNOWLEDGEMENTS

The Technical Committee of the Malaysia National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (NPOA-IUU) would like to take this opportunity to thank the The Hon. Dato' Sri Ismail Sabri bin Yaakob, Minister of Agriculture and Agro-Based Industry Malaysia, Dato' Mohd. Hashim bin Abdullah, Secretary-General, Ministry of Agriculture and Agro-Based Industry Malaysia and Dato' Ahamad Sabki bin Mahmood, Director-General of Fisheries Malaysia for their guidance, support and encouragement in the preparation of this document.

We would also like to express our sincere gratitude to Mr. Hj Ismail bin Abu Hassan, Deputy Director-General of Fisheries (Development); Mr. Hj. Gulamsarwar bin Jan Mohammad, the former Director of Licensing and Resource Management Division; directors and senior officers of the Department of Fisheries Malaysia for their constructive comments and suggestions in the preparation of this plan.

We would also like to acknowledge the efforts of Mr. Hj Ahmad Saktian bin Langgang, Dr. Sukarno bin Wagiman, Mrs. Razidah bt. Budin, Mr. Ismaili bin Bujang Pit, Mr. Mohd. Ghazali bin Mohamad Taib, Mr. Ahmad Azahari bin Ahmad and Mr. Raja Bidin bin Raja Hassan who were also actively involved in the preparation of this document prior to their retirement and transfer.

Last but not least, we would like to thank all the departments, agencies and individuals who have provided valuable assistance and comments in the preparation of this document.

## EXECUTIVE SUMMARY

This document outlines Malaysia's National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (NPOA-IUU). It was developed in accordance with the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) adopted in 2001 by the Food and Agricultural Organization of the United Nations.

Malaysia is very concerned about the activities of illegal, unreported and unregulated fishing (IUU) that occurs within her national jurisdictions and on the high seas. IUU fishing results in widespread environmental, social and economic consequences. It adversely affects both the target and non-target species and the wider ecosystem. It can adversely impair the management efforts to achieve sustainable fisheries and can consequently lead to the collapse of a fishery. By distorting competition, IUU jeopardizes the economic survival of those who fish legitimately. Economically, IUU operation is at a lower cost and gains an unjust economic advantage over legitimate fishers. Thus, the impacts of IUU undermine international, regional and national efforts to effectively conserve and manage fish stocks and the impacts of fishing.

Malaysia's NPOA-IUU closely follows the provisions of the IPOA-IUU. It contains general measures targeted at all States, as well as measures targeted specifically at flag States, coastal States and port States. It also contains market-related measures, measures to support the special requirements of developing countries, and measures to be taken by States through regional fisheries management organizations.

Many of the provisions in this document reflect obligations that Malaysia has accepted as binding, either through global instruments or through regional fisheries management organizations. To a large extent the document is a record of actions already under way. Malaysia's National Plan of Action will be reviewed and revised periodically to ensure on-going effectiveness of Malaysia's efforts to address IUU.



# 1. INTRODUCTION

## 1.1 Purpose

This document outlines Malaysia's National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (NPOA-IUU).

Malaysia's NPOA-IUU has been developed in accordance with the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU). The IPOA-IUU was adopted by the Committee on Fisheries and endorsed by the Food and Agricultural Organization of the United Nations (FAO) Council in 2001.

## 1.2 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

The IPOA-IUU was developed as a voluntary instrument within the framework of the FAO Code of Conduct for Responsible Fisheries.

The objective of the IPOA is to prevent, deter and eliminate illegal and unreported unregulated fishing (IUU) by providing all States with comprehensive, effective and transparent measures by which to act, including through appropriate Regional Fisheries Management Organizations (RFMOs) established in accordance with international law.

The IPOA-IUU calls on States to develop and implement NPOAs by June 2004 to further achieve the objectives of the IPOA and give full effect to its provisions as an integral part of their fisheries management programmes and budgets.

The IPOA serves as a comprehensive "toolbox" that includes a full range of measures to prevent, deter and eliminate IUU fishing.

The IPOA-IUU contains general measures targeted at all States, as well as measures targeted specifically at flag States, coastal States and port States. It also contains market-related measures, measures to support the special requirements of developing countries in their achievement of the objectives of the IPOA-IUU, and measures to be taken by States through RFMOs. Some of the IPOA-IUU provisions reflect obligations that many States have accepted as binding, either through global instruments or through RFMOs.

The IPOA-IUU incorporates the following principles and strategies:

Participation and coordination: To be fully effective, the IPOA should be implemented by all States either directly, in cooperation with other States, or indirectly through relevant RFMOs or through FAO and other appropriate international organizations. The full participation of stakeholders in combating IUU fishing, including industry, fishing communities, and non-governmental organizations, should be encouraged.

Phased implementation: Measures to prevent, deter and eliminate IUU fishing should be based on the earliest possible phased implementation of the NPOA and regional and global action in accordance with the IPOA.

Comprehensive and integrated approach: Measures to prevent, deter and eliminate IUU fishing should address factors affecting all capture fisheries. In taking such an approach, States should embrace measures building on the primary responsibility of the flag State and using all available jurisdiction in accordance with international law, including port state measures, coastal State measures, market-related measures and measures to ensure that nationals do not support or engage in IUU fishing. States are encouraged to use all these measures, where appropriate, and to cooperate in order to ensure that measures are applied in an integrated manner. The action plan should address all economic, social and environmental impacts of IUU fishing.

Conservation: Measures to prevent, deter and eliminate IUU fishing should be consistent with the conservation and long-term sustainable use of fish stocks and the protection of the environment.

Transparency: The IPOA should be implemented in a transparent manner in accordance with Article 6.13 of the Code of Conduct for Responsible Fisheries.

Non-discrimination: The IPOA should be applied without discrimination in form or in fact against any State or its fishing vessels.



## 2. THE CONCEPT OF IUU FISHING

### 2.1 Definition of Illegal, Unreported and Unregulated Fishing

The IPOA-IUU defines IUU fishing according to the definitions below. Malaysia also uses these definitions in her NPOA-IUU.

#### **Illegal fishing refers to fishing activities:**

- conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its law and regulations;
- conducted by vessels flying the flag of States that are parties to a relevant RFMO but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or
- in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant RFMO.

#### **Unreported fishing refers to fishing activities:**

- which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or
- undertaken in the area of competence of a relevant RFMO which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.

#### **Unregulated fishing refers to fishing activities:**

- in the area of application of a relevant RFMO that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or
- in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

The IPOA notes that unregulated fishing may take place in a manner which is not in violation of applicable international law, and may not require the application of measures envisaged under the IPOA.

## 2.2 Why is IUU Fishing a Problem?

The growing incidence of IUU fishing globally is of significant concern to Malaysia and other members of the international community. It is a serious issue that is quickly moving to the forefront of the international fisheries policy agenda.

IUU fishing can occur in all capture fisheries both in national jurisdictions and on the high seas. While the magnitude of the problem is difficult to quantify, the FAO indicates that in some major fisheries, up to 30%<sup>1</sup> of the total catch is taken by IUU fishers. Examples of IUU fishing activities in Malaysian fisheries waters include encroachment by foreign and local fishing vessels and unlicensed fishing by local fishing vessels. However, up to now, there are no reliable corresponding estimates of IUU fishing in Malaysia.

IUU fishing results in negative and widespread environmental, social and economic consequences. Aside from its impact on sustainability of target species, IUU fishing adversely affects associated and dependent species and the wider ecosystem. IUU fishing undermines international, regional, and national efforts to effectively conserve and manage fish stocks, the impacts of fishing and biodiversity. Ultimately IUU fishing can lead to the collapse of a fishery.

The presence of illegal foreign fishing fleets undermines the security, safety and sovereignty of a State. Such presence will also intimidate the local fishers and jeopardize the harmonious fishing activities.

IUU fishing distorts competition and jeopardizes the economic survival of those who fish legitimately. Because of their lower operating costs, IUU fishers gain an unjust economic advantage over legitimate fishers. They act as “free riders”, benefiting unfairly from the costs to legitimate fishers of adhering to conservation and management measures, vessel safety laws and labour laws. Their disregard for rules and standards impacts on the economic opportunities of legitimate fisheries and can encourage legitimate fishers to also engage in IUU fishing.

Without a genuine commitment by States to fully and effectively implement the obligations of existing international agreements, the occurrences of IUU fishing are likely to continue. Fish and seafood products are among the world’s most widely traded commodities. The lower running costs of IUU vessels and the ability of IUU fishers to avoid the costs of insurance, meeting safety and maintenance standards, purchasing licences, meeting Vessel Monitoring System (VMS) requirements and paying for observers, make IUU fishing particularly economically viable. Inefficient domestic fisheries management may also work as a driver to IUU fishing activities as less economically efficient management results in lower income for fishers and therefore a greater incentive to engage in IUU fishing.

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<sup>1</sup>FAO Guidelines for the Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (2002)



IUU fishing is a dynamic, multi-faceted problem which cannot be effectively addressed by any single strategy. A multi-pronged approach is required at international, regional and national levels with the active and conscious involvement of all stakeholders.

There is an increasing momentum at international, regional, and national levels to address IUU fishing and its consequences. Binding and non-binding measures have been established through international and regional organizations and implemented to varying degrees of effectiveness by their member States. Considerable effort is being made by some RFMOs to diversify and strengthen their measures to combat IUU fishing. International cooperation outside the ambit of formal regional and international organizations is increasing. An example is the establishment of the International Network for the Cooperation and Coordination of Fisheries-Related Monitoring, Control and Surveillance Activities.

The IPOA-IUU contains a range of effective tools to address IUU fishing. Widespread implementation of the provisions contained in the IPOA-IUU presents an opportunity for States and RFMOs to reinforce existing measures and to implement new measures to address IUU fishing.

### **2.3 MALAYSIA'S COMMITMENT ON IUU FISHING**

Malaysia's commitment towards combating IUU fishing is evident from follow-up actions as a result of her participation in various national, regional and international fora such as:

- The 23rd Session of FAO Committee on Fisheries (COFI), February 1999.
- FAO Ministerial Meeting on Fisheries, March 1999.
- FAO Regional Workshop on the Elaboration of National Plans of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing in Southeast Asia Subregion, Pulau Pinang, Malaysia, 10-14 October 2004.
- FAO Fisheries Enforcement Workshop, Kuala Lumpur, 21-25 September 2004.
- Rome Declaration on IUU Fishing, March 2005.
- The 2nd APEC Ocean-Related Ministerial Meeting (AOMM2), The Bali Plan of Action "Towards Healthy Oceans and Coasts for the Sustainable Growth and Prosperity of the Asia Pacific Community", Bali, Indonesia, 16-17 September 2005.
- Ministerial Meeting on Regional Plan of Action (RPOA) to Promote Responsible Fishing Practices Including Combating IUU Fishing in the Region, Bali, Indonesia, 4 May 2007.
- The 1st Meeting for the Implementation of the Regional Plan of Action (RPOA) to Promote Responsible Fishing Practices including Combating Illegal, Unreported and Unregulated Fishing in the Region, Kuala Lumpur, Malaysia, 13 August 2007.

# INSPECTOR TRAINING WORKSHOP ON THE FAO PORT STATE MEASURES AGREEMENT

Officiated by  
The Honourable Dato' Ahmad Sabki bin Mahmood  
Director-General of Fisheries Malaysia



- Meeting of the Sub Regional Group of Southern and Eastern Areas of the South China Sea and Sulu-Sulawesi Seas under the Coordination Committee Meeting for the Regional Plan of Action (RPOA) To Promote Responsible Fishing Practices and Combating Illegal, Unreported and Unregulated (IUU) Fishing, Kuching, Sarawak, Malaysia, 26-28 August 2008.
- Ministerial/High Level Meeting at the World Ocean Conference, Manado Ocean Declaration, Manado, Indonesia, 11-14 May 2009.
- Regional Plan of Action on Port Monitoring Techniques Workshop, Pulau Pinang, Malaysia, 15-17 June 2009.
- Seminar on Monitoring, Control and Surveillance (MCS) Network and the Fishery Resource Management under the Sub-Regional Group of The Southern and Eastern Area of the South China Sea (SESCS) and the Sulu-Sulawesi Seas (SSS), Malacca, Malaysia, 8-10 October 2010.
- 3<sup>rd</sup> Meeting of the RPOA Coordination Committee, Da Nang, Vietnam, 1-2 December 2010.
- Regional Plan of Action Workshop on the Food and Agriculture Organization Port State Measures Agreement to Combat Illegal, Unreported and Unregulated Fishing, Johor Bahru, Johor, Malaysia, 7-10 June 2011.
- FAO/APFIC Regional Workshop to Support the Implementation of the 2009 FAO Port State Measures Agreement, Bangkok, Thailand, 23-27 April 2012.
- 2nd APEC Ministerial Meeting on Food Security, Kazan Declaration on APEC Food Security, Kazan, Russian Federation, 30-31 May 2012.
- The 1<sup>st</sup>-5<sup>th</sup> RPOA Coordination Committee Meetings.

## 3. PROFILE OF MALAYSIAN FISHERIES

### 3.1 Malaysian Fisheries Waters

Malaysian fisheries waters covers a long coastline of 4,492 km made up of the mainland of Peninsular Malaysia, Sabah and Sarawak with 453,186 square kilometres Exclusive Economic Zone (EEZ) waters in the Andaman Sea, the Straits of Malacca, the South China Sea and the Celebes Sea. With the declaration of the EEZ in 1980, the maritime waters available for exploitation and management increased significantly from 47,000 to 160,000 square nautical miles.

### 3.2 Status of Malaysian Fisheries

The fisheries sector has for decades played an important role as a major supplier of animal protein to the Malaysian population. In 2011, the fisheries landings for the country were 1,665,857 tonnes with an estimated value of RM 9.38 billion. Its contribution to the Gross Domestic Product (GDP) amounted to 1.1%. The fishery is generally considered to consist of two major components, namely, the marine capture fisheries and the aquaculture industry. The greater bulk of the fish landings has always been from capture fisheries, constituting 82.43% of the total production for the year 2011, with the rest coming from aquaculture. Capture fisheries landings recorded a production of 1,373,105 tonnes (RM 6.94 billion) of which 1,085,965 tonnes (RM 5.70 billion) were from inshore fisheries and 287,140 tonnes (RM 1.23 billion) were from deep-sea fisheries. Generally, production from the inland fisheries sub-sector is so small, that it is usually not taken into consideration in such calculations.

There are two categories of fishing activities, namely traditional fishing and commercial fishing. In Malaysia, traditional fishing refers to vessels of less than 40GRT operating traditional fishing gears. Commercial fishing refers to vessels of 40GRT and above using commercial gears such as trawl nets, purse seines (fish and anchovies), longlines and traps. In 2011, the workforce in the fisheries sector consisted of 134,110 fishers working onboard 53,002 licensed fishing vessels. Out of this workforce, a total of 80,546 (60.06%) fishers worked on board fishing vessels operating traditional fishing gears while 53,564 (39.94%) fishers worked on board commercial fishing vessels using trawl, fish purse seine and anchovies purse seine nets.

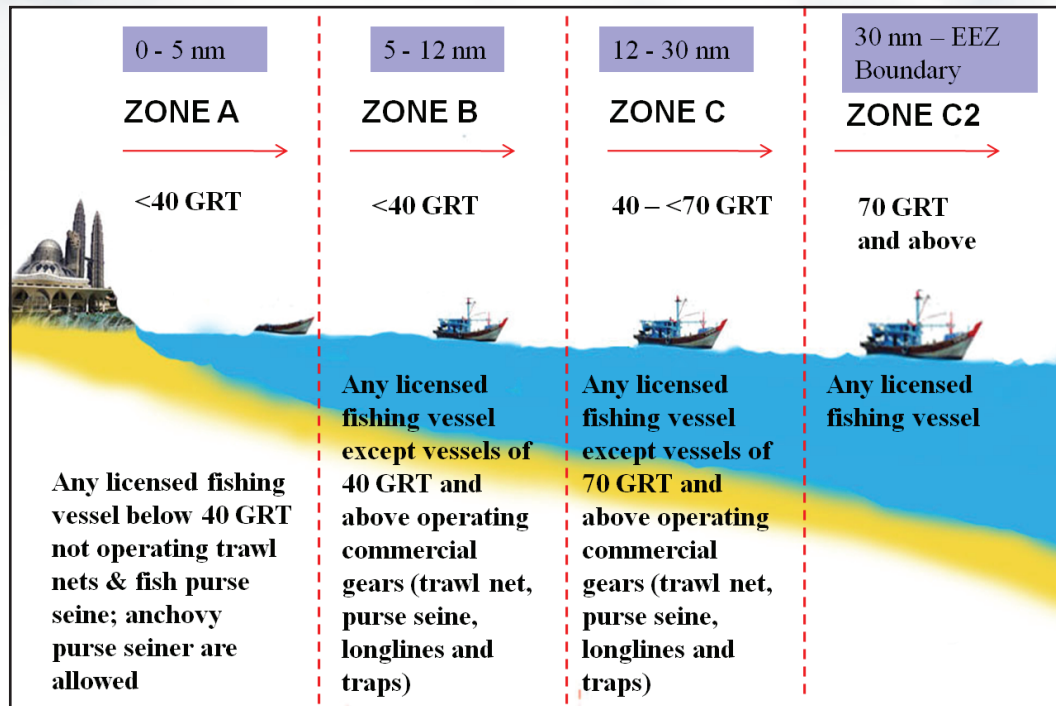
### 3.3 Fisheries Management in Malaysia

Malaysia manages her fisheries resources through an area zoning system. The system divides the areas into four fishing zones based on the distance from the shoreline namely; Zone A (0-5 nautical miles), Zone B (5-12 nautical miles), Zone C (12-30 nautical miles) and Zone C2 (30 nautical miles up to the EEZ). Fishing vessels of 40 GRT<sup>2</sup> and below

<sup>2</sup> GRT (gross registered tonnage) of a fishing vessel in Malaysia is calculated by the formula :

$$[ L (\text{Length overall}) \times B (\text{breadth}) \times D (\text{depth}) ] \text{ metres} \times 0.02827$$

operating traditional fishing gears are allowed to fish in any fishing zone. Vessels operating commercial fishing gears are allowed to fish in Zone B onwards depending on the tonnage of the vessels. The management zones are aimed for equitable allocation of resources and to reduce conflict between the traditional and commercial fishers as follows:



The fishing zones in Malaysia

All fishing activities are governed by the Fisheries Act 1985 and its regulations and fisheries management policies. A valid fishing gear licence and a valid fishing vessel licence are required for any vessel to conduct any fishing activity. Licences are issued based on the status of fish stocks available which is mainly based on research findings and fish landing data. Due to the maximum exploitation of fish stocks in the coastal waters, a moratorium on new fishing licences was imposed since 1982 except for licences for fishing vessels of 70 GRT and above to operate in Zone C2 or deep-sea waters.

Management of fishery resources is complemented through the establishment of Marine Protected Areas (MPAs) such as marine parks and fisheries prohibited areas, installation of artificial reefs and prohibiting the use of destructive fishing methods and practices.

### 3.4 Institutional Arrangements for MCS in Malaysia

Monitoring, Control and Surveillance or MCS, in the context of fisheries, is defined by the FAO as a broadening of the traditional enforcement of national rules over fishing to the support of the broader problems of fisheries management. MCS can be defined as follows:

- a. **Monitoring** as the collection, measurement and analysis of fishing activity including, but not limited to: catch, species composition, fishing effort, by-catch, discards, area of operations, etc.
- b. **Control** involves the specification of the terms and conditions under which resources can be harvested.
- c. **Surveillance** involves the regulation and supervision of fishing activity to ensure that national legislation and terms, conditions of access and management measures are observed.



There are a number of agencies in Malaysia which are involved in the MCS activities as listed in the table below:

No.	Department	Laws	Functions
1.	Department of Fisheries Malaysia (DOFM)	<ul style="list-style-type: none"> <li>• Fisheries Act 1985</li> <li>• International Trade in Endangered Species Act 2008</li> <li>• Exclusive Economic Zone (EEZ) Act 1984</li> </ul>	DOFM is responsible for the overall management of fisheries related matters. It administers and enforces the Fisheries Act 1985, EEZ Act 1984 and the International Trade in Endangered Species Act 2008. It also undertakes research and provides technical support for the marine, aquaculture and freshwater fisheries industries.
2.	Department of Fisheries Sabah (DOFS)	<ul style="list-style-type: none"> <li>• Fisheries Act 1985</li> <li>• Sabah Fisheries Ordinance 1964</li> <li>• International Trade in Endangered Species Act 2008</li> </ul>	DOFS is responsible for the management of fisheries related matters in the state of Sabah only. It also administers and enforces the Fisheries Act 1985 and the International Trade in Endangered Species Act 2008. It also provides technical support for the marine, aquaculture and freshwater fisheries industry.
3.	Fisheries Development Authority of Malaysia (LKIM)	<ul style="list-style-type: none"> <li>• Lembaga Kemajuan Ikan Malaysia Act 1971</li> <li>• Fishermen's Associations Act 1971</li> </ul>	The functions of the LKIM are to promote and develop efficient and effective management of fishery enterprises and fish marketing; to promote, facilitate and undertake economic and social development of the Fishermen's Associations; to register, control and supervise Fishermen's Associations and Fisheries Co-operatives and to make provisions for matters related thereto; and to control and co-ordinate the implementation of the aforesaid activities.

No.	Department	Laws	Functions
4.	Department of Marine Parks Malaysia	<ul style="list-style-type: none"> <li>Fisheries Act 1985</li> </ul>	The Department of Marine Parks Malaysia is entrusted with the function to afford special protection to aquatic flora and fauna, and protect, preserve and to manage the natural breeding grounds and habitat of aquatic life with particular regard to species that are rare or endangered within the Marine Parks.
5.	Malaysia Maritime Enforcement Agency (MMEA)	<ul style="list-style-type: none"> <li>Malaysian Maritime Enforcement Agency Act 2004</li> </ul>	MMEA was established to perform enforcement functions for ensuring the safety and security of the Malaysian Maritime Zone with a view to the protection of maritime and other national interests in such zone. The MMEA is entrusted to enforce law and order under any federal law; perform maritime search and rescue; prevent and suppress the commission of an offence; lend assistance in any criminal matters on a request by a foreign State as provided under the Mutual Assistance in Criminal Matters Act 2002 (Act 621); carry out air and coastal surveillance; establish and manage maritime institutions for training; ensure maritime security and safety; as well as maritime search and rescue .
6.	Marine Police	<ul style="list-style-type: none"> <li>Police Act 1967</li> </ul>	The Marine Police has the responsibility to control, plan and implement operations involving public order. It is also involved in planning and coordinating joint maritime patrols and joint border patrols with the Malaysian Armed Forces and the army/navy and coast guards of neighbouring countries. It is also involved in planning, controlling and coordinating search and rescue operations.



No.	Department	Laws	Functions
7.	Marine Department	<ul style="list-style-type: none"> <li>• Merchant Shipping Ordinance 1952</li> <li>• Merchant Shipping Ordinance (Amended) 1998.</li> </ul>	The Marine Department has the responsibility to register fishing vessels above 500 GT and register fishing vessels of 15 NRT and above operating in Sabah waters.
8.	Royal Malaysian Customs Department	<ul style="list-style-type: none"> <li>• Customs Act 1967</li> </ul>	The Royal Malaysian Customs Department is involved in the collection of direct taxes such as sales tax, petroleum sales tax, service tax, excise duty and windfall profit levy for national revenue. It is also involved in trade and industry facilitation as well as enforcement and in ensuring compliance with legislations.
9.	Malaysian Quarantine and Inspection Services (MAQIS)	<ul style="list-style-type: none"> <li>• Malaysian Quarantine and Inspection Services Act 2011</li> </ul>	MAQIS is involved in the enforcement of all relevant written laws at the entry points, quarantine stations and quarantine premises to ensure that plants, animals, carcasses, fish, agricultural produce, soils, microorganisms and food which are imported into and exported out of Malaysia comply with the health aspect of humans, animals, plants and fish and food safety.
10.	Sarawak Forestry Department and Sarawak Forestry Corporation	<ul style="list-style-type: none"> <li>• National Parks and Nature Reserves Ordinance 1988 (Sarawak)</li> </ul>	These agencies are entrusted with the functions to protect, preserve and manage natural resources including aquatic fauna and flora within protected areas in Sarawak including marine or freshwater endangered or rare species.

No.	Department	Laws	Functions
11.	Sabah Ports and Harbours Authority	<ul style="list-style-type: none"> <li>Ports and Harbours Enactment 2002</li> </ul>	The Sabah Ports and Harbours Authority is responsible in the licensing of small vessels below 15 NRT in Sabah.
12.	Sabah Wildlife Department	<ul style="list-style-type: none"> <li>Sabah Wildlife Conservation Enactment 1997</li> <li>International</li> </ul>	The Sabah Wildlife Department is responsible to manage and conserve the flora, fauna and nature of Sabah so as to ensure the perpetuation of all species within their natural habitats.
13.	Sabah Parks	<ul style="list-style-type: none"> <li>Sabah Parks Enactments 1984</li> <li>National Park Enactment 1977</li> </ul>	The Sabah Parks is responsible to protect, conserve and preserve natural areas which have been gazetted as a park, especially areas which contain unique features with high esthethical values as a natural heritage

### 3.5 The Impact of IUU Fishing on Malaysia

The main threats of IUU fishing in Malaysia are, among others, violation of licence conditions, encroachment by local and foreign fishing vessels, unauthorized fishing, misreporting of catch and the use of destructive fishing gears and methods. Consequently, fisheries sustainability is affected. This has affected the economic and social livelihood of the fishers as well as the Malaysian fishing industry.

Illegal fishing by foreign fishing vessels in Malaysian fisheries waters poses a security threat to the country and a strong and an unhealthy competition with the local fishers. Illegal fishing by the locals also contributes to social conflicts between licensed fishing operators and unlicensed fishing operators and between encroaching commercial fishing vessels (trawlers and purse seiners) and traditional fishers. If IUU fishing is not stopped or prevented, it will lead to negative impacts on the Malaysian fishing industry, such as the loss of valuable wild broodstocks, degradation of the marine ecosystem and over exploitation of fishery resources.

### 3.6 Scope of Malaysia's National Plan of Action

Malaysia's NPOA-IUU closely follows the structure of the IPOA-IUU. Like the IPOA-IUU, Malaysia's NPOA-IUU addresses general measures targeted at all States, as well as measures targeted specifically at flag States, coastal States and port States. It also contains market-related measures, measures to support the special requirements of developing countries and measures to be taken by States through regional fisheries management

organizations. Most measures contained in the IPOA-IUU are addressed in Malaysia's NPOA-IUU.

Malaysia's NPOA-IUU is more focused on IUU fishing in Malaysian fisheries waters. However, fishing on the high seas is also taken into account and is addressed in this NPOA-IUU. The recent FAO Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing has been referred to in the preparation of this document.

Malaysia's NPOA-IUU will be reviewed and revised after five years to ensure on-going effectiveness of Malaysia's efforts to address IUU fishing.

## **4. NATIONAL PLAN OF ACTION TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING**

### **4.1 Relevant International Instruments and Arrangement**

Malaysia is either a party or member to a number of instruments or arrangements. To this end, Malaysia subscribes, adapts and adopts certain principles and standards promoted under these arrangements such as:

- 1982 United Nations Convention on the Law of the Sea (UNCLOS)
- Indian Ocean Tuna Commission (IOTC)
- Asia-Pacific Fishery Commission (APFIC)
- Southeast Asian Fisheries Development Center (SEAFDEC)
- Association of Southeast Asian Nations (ASEAN)
- ASEAN-SEAFDEC MOU on Sea Turtle Conservation and Management
- IOSEA Marine Turtle Memorandum of Understanding
- Turtle Island Heritage Protected Area (TIHPA) - a bilateral agreement between the Government of Malaysia and the Government of the Philippines
- Intergovernmental Organization for Marketing Information and Technical Advisory Services for Fishery Products in the Asia and Pacific Region (INFOFISH)
- Asia-Pacific Economic Cooperation (APEC)
- Bay of Bengal Large Marine Ecosystem Project (BOBLME)
- Coral Triangle Initiative (CTI)
- 1978 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
- Convention on Biological Diversity 1992
- FAO Code of Conduct for Responsible Fisheries (CCRF)

Although Malaysia is not a party to some treaties/arrangements, Malaysia, however adheres to some of their provisions on conservation and management measures to ensure long term utilization of marine living resources. In this respect, Malaysia has developed a National Plan of Action (NPOA) on the Conservation and Management of Fishing Capacity, NPOA Sharks, NPOA Dugong, NPOA Sea Turtle and NPOA Sea Cucumber.

Malaysia has also implemented the standards and principles of the FAO Code of Conduct for Responsible Fisheries (CCRF) and has actively contributed towards the formulation of the Regional CCRF (RCCRF). Both the CCRF and RCCRF have been translated to the national language.

## **4.2 Policy and Legal Framework**

Sustainable development of the capture fisheries industry is important to ensure that fisheries resources are conserved and able to support future needs. For this purpose, efforts are focused on the initiative to stress upon compliance towards international fisheries management instruments such as the FAO Code of Conduct for Responsible Fisheries, Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IUU Fishing) and the EC Regulation 1005/2008. This practice of sustainable development is also embedded in the National Agro-Food Policy (2011-2020) and the Strategic Plan of the Department of Fisheries Malaysia (2011-2020).

The Fisheries Act 1985 and its regulations provide the legislative framework for the conservation, management and development of maritime and estuarine fishing and fisheries in Malaysian fisheries waters. This Act also includes matters regarding turtles and riverine fishing. It sets out provisions on fisheries management regimes which among others, include access to fisheries, record keeping, reporting, monitoring, control and surveillance.

Through the Fisheries Act 1985 and other provisions of relevant Acts, stringent controls are imposed on fishing activities in Malaysian fisheries waters. All fishing vessels and fishing appliances must be licensed. The employment of foreign nationals in fishing activities is strictly controlled in accordance with the Fisheries Act 1985 and other provisions of relevant Acts.

The Exclusive Economic Zone Act 1984 pertains to the exclusive economic zone and certain aspects of the continental shelf of Malaysia and provides for the regulation of activities in the zone and on the continental shelf and for matters connected therewith. Section 2 of the Exclusive Economic Zone Act 1984 stipulates that “Malaysian fisheries waters” means all waters comprising the internal waters, the territorial sea and the exclusive economic zone of Malaysia in which Malaysia exercises sovereign and exclusive rights over fisheries.

### **4.2.1 State Control over Nationals**

Malaysia has rules and regulations that impose control on the activities of nationals fishing in Malaysian fisheries waters (see Annex 1 and 2). Malaysia is considering the inclusion of provisions in the Fisheries Act 1985 to impose control on the activities of Malaysian fishing vessels in the national jurisdiction of other States and on the high seas.



#### **4.2.2 Restriction on Foreign Fishing Vessels**

Malaysia imposes a requirement for prior notification by all foreign fishing vessels entering Malaysian fisheries waters as provided for under section 16 of the Fisheries Act 1985. This Act also provides that no foreign fishing vessels shall fish or conduct any techno-economic research or survey of any fishery in Malaysian fisheries waters unless authorized to do so under an international fishery agreement in force between the Government of Malaysia and the government of the other country, or between the Government of Malaysia and the international organization to which such a vessel belongs to or to which such vessel is registered, as the case may be, and under a permit issued by the Director-General of Fisheries.

#### **4.2.3 Vessels without Nationality**

Malaysia will take measures consistent with international and her domestic laws in relation to vessels without nationality. Malaysia will also cooperate with relevant RFMOs and regional arrangements in handling vessels without nationality.

#### **4.2.4 Sanctions**

Malaysia undertakes to deter fisheries-related offences by foreign and local fishing vessels through compounds or court prosecution with deterrent penalties or a term of imprisonment in default of payment of fines, as provided for under section 25, 31,33 and 52 of the Fisheries Act 1985.

#### **4.2.5 Non-Cooperating States**

Malaysia will cooperate with relevant RFMOs and regional arrangements to which she is a party, in order to prevent, deter and eliminate IUU fishing. This includes implementing trade and other sanctions that may be recommended by RFMOs or regional arrangements and consistent with existing domestic laws.

#### **4.2.6 Economic Incentives**

Malaysia does not give any form of economic incentives to any companies, vessels or persons that are involved in IUU fishing.

#### **4.2.7 Monitoring, Control and Surveillance (MCS)**

Malaysia implements a number of MCS measures to control the fishing activities within the Malaysian fisheries waters. These include:

##### **Monitoring**

- Monitoring of fish landings
- Vessel Monitoring System (VMS)

- Reporting (including catch and effort reporting) requirements
- Vessel inspections
- Fishing gear inspections
- Record keeping requirements
- Analysis of catch and effort reporting and comparison with VMS, observer reports, landing and trade data to confirm accuracy

#### **Control**

- Control of fishing efforts through licensing
- Registration of fishing vessels
- Vessel marking requirements
- Control of landing (e.g. requirement to land only at authorized landing sites)
- Control and prohibition of fishing gear and methods
- Control of transshipment
- Fishers registration programme and the issuance of Fishers Identification Card
- Establishment of fishing zones and Marine Protected Areas (MPAs)

#### **Surveillance**

- Surveillance, boarding and inspection by fishery officers and various enforcement authorities at sea
- Aerial and surface surveillance

Some of these tools are further elaborated in the following sections.

#### **4.2.7.1 Schemes for Access to Waters and Resources**

All Malaysian fishing vessels are allowed to fish within their permitted operating zones as stipulated in the licence and in accordance with the scheme and condition as described under the Part IV: General Licensing Provision of the Fisheries Act 1985 and Fisheries (Maritime) (Licensing of Local Fishing Vessel) Regulations 1985.

As a member of the IOTC, Malaysian fishing vessels can fish in the Indian Ocean within the provisions provided for. These fishing vessels are required to be licensed by the Department of Fisheries Malaysia and those exceeding 500 GT<sup>3</sup> are required to be registered under the Merchant Shipping Ordinance 1952.

#### **4.2.7.2 Registers**

The Department of Fisheries Malaysia keeps and maintains the records of all licensed fishing vessels and their current owners and authorized operators.

<sup>3</sup> GT = gross tonnage





#### **4.2.7.3 Vessel Monitoring System (VMS)**

Malaysia has implemented the system since 1999 using satellite technology to monitor the activities of fishing vessels of 70 GRT and above. The use of Mobile Transceiver Unit (MTU) on board fishing vessels is enforced through its imposition as a condition in the fishing licence. A regulation has been drafted under the Fisheries Act 1985 to regulate the installation and application of MTUs. The use of VMS will be extended to other categories of fishing vessels in the near future.

#### **4.2.7.4 Surveillance**

Aerial and surface surveillance of fishing activities are conducted by the various maritime enforcement agencies. Aerial surveillance is conducted by the Royal Malaysian Air Force, Royal Malaysian Police Air Wing Unit, Department of Fisheries Malaysia and Malaysian Maritime Enforcement Agency. Surface surveillance is conducted by the Department of Fisheries Malaysia, Malaysian Maritime Enforcement Agency, Royal Malaysian Navy and Royal Malaysian Police (Marine Operation Force).

#### **4.2.7.5 MCS Training and Education**

All technical staff recruited by the Department of Fisheries Malaysia undergo a comprehensive induction course which includes topics on MCS such as licensing procedures, enforcement standard operating procedures and surveillance activities. Those staff who are involved in MCS will be given training in enforcement, investigation, prosecution, species identification, quantifying and recording of catch.

#### **4.2.7.6 Planning, Funding and Undertaking MCS Operations**

Malaysian MCS operations are planned and funded in a manner that maximizes the ability to address IUU fishing through cooperation among all maritime enforcement agencies.

#### **4.2.7.7 Information on Fishing Industry and Cooperation**

Information on the fishing industry and cooperation in MCS activities are disseminated in Malaysia through various means. The Department of Fisheries Malaysia has established the 'Industrial Consultative Council' which consists of members of relevant stakeholders and government officials. Annual consultations are held to consider the views of the stakeholders on issues prior to decision making. The Department of Fisheries Malaysia is also implementing the community-based fisheries management (CBFM) system which includes capacity building and promoting awareness programmes among the fishing communities on the needs to combat IUU fishing. Malaysian fishing industry stakeholders are encouraged to attend conferences, dialogues, workshops

and meetings where MCS issues may be raised. The information on the fishing industry covering IUU fishing and MCS issues are also disseminated through the mass media. The stakeholders and the public cooperate closely with the Department of Fisheries Malaysia and the maritime enforcement agencies by reporting the sightings of IUU fishing. A 24-hour communication facility is provided by the Department of Fisheries Malaysia to enable the stakeholders and the public to report sightings on IUU fishing.

#### **4.2.7.8 Knowledge and Understanding within the Judicial System**

The Court must take into account the specific purposes of the Fisheries Act 1985, the prosecution evidence in prosecuting fisheries offences and the need for deterrent sentences.

#### **4.2.7.9 MCS Data**

The Department of Fisheries Malaysia has established a comprehensive system for the acquisition, storage and dissemination of MCS data. Malaysia's MCS databases kept at the Department of Fisheries Malaysia which include Licensing, Offences, Resource Surveys, Fisheries Statistical Information and VMS databases. Malaysia is continuously developing analytical capabilities to enhance the use of this information for sustainable and responsible fishing.

#### **4.2.7.10 Boarding, Inspection and Investigation**

Procedures for boarding and inspection of fishing vessels are outlined in the departmental Standard Operating Procedure (SOP). Within Malaysian fisheries waters, authorised officers have the right to board, inspect and investigate any vessel as provided for under sections 46, 47 and 47A of the Fisheries Act 1985.

### **4.3 Cooperation between States**

Malaysia has regular joint patrol operations with neighbouring countries particularly Indonesia, Thailand, Brunei and The Philippines to prevent, deter and eliminate IUU fishing and other criminal activities at sea.

#### **4.3.1 Data and Information**

The Southeast Asian Fisheries Development Center (SEAFDEC) has developed a Regional Fisheries Management Database and is in the process to develop Regional Fishing Vessel Record Database.

### **4.3.2 Investigation of and Response to IUU Fishing**

In Malaysia, the Department of Fisheries Malaysia collects and maintains data and information on local fishing vessels and foreign flagged vessels conducting IUU fishing within Malaysian fisheries waters as well as foreign fishing vessels conducting IUU fishing on the high seas and which enter Malaysian ports. Malaysia is willing to cooperate with other States in the investigation of IUU fishing activities.

Under section 15(2) of the Fisheries Act 1985, Malaysia has the authority to deny loading or unloading of any fish, fuel or supply or transshipping of any fish in Malaysian fisheries waters without the approval of the Department of Fisheries Malaysia. This applies to foreign flagged vessels that have engaged in IUU fishing. Information received on foreign fishing vessels conducting IUU fishing will be handled according to the Standard Operating Procedure to Handle Foreign Fishing Vessel That Have Engaged in IUU Fishing when Entering Malaysian Ports (Annex 3).

Another Standard Operating Procedure has also been implemented to focus on local and foreign fishing vessels that have engaged in IUU fishing in Malaysian Fisheries Waters (Annex 4).

### **4.3.3 Capacity Building in Response to IUU Fishing**

Malaysia is committed to continuously build up her capacity in combating IUU fishing through the implementation of measures such as MCS, Port States Measures, catch documentation scheme, etc. Malaysia is active within SEAFDEC, RPOA (South China Sea, Sulu-Sulawesi Seas and Arafura-Timor Seas) and the Coral Triangle Initiative (CTI) by participating in seminars, workshops and training to address IUU fishing.

### **4.3.4 Compatibility of Policies and Measures**

Malaysia's overall policy with regards to IUU fishing is guided by regional and national policies among others, the ASEAN-SEAFDEC Resolution and Plan of Action on Sustainable Fisheries for Food Security for the ASEAN Region Towards 2020, the National Agro-Food Policy (2011-2020) and the Strategic Plan of Department of Fisheries Malaysia (2011-2020). Malaysia endeavors to ensure that the current MCS measures and policies are consistent with international obligations, including the measures adopted by RFMO (IOTC) to which she is a member.

### **4.3.5 Rapid Responses to IUU Fishing**

Malaysia has developed a 'Standard Operating Procedure to Handle Foreign Fishing Vessel that have Engaged in IUU Fishing when Entering Malaysian Ports' for a rapid response to IUU fishing incidence in support of RPOA (South China Sea, Sulu Sulawesi Sea and Arafura-Timor Seas) arrangement.



## Resolution and Plan of Action

on Sustainable Fisheries for Food Security  
for the ASEAN Region Towards 2020

 Southeast Asian Fisheries Development Center (SEAFDEC)

MESYUARAT PENYELARASAN PENGGUNAAN  
GARIS PANDUAN PENGENDALIAN VESEL  
PENANGKAPAN IKAN ASING YANG DILAPOR  
MENJALANKAN AKTIVITI PENANGKAPAN  
IKAN SECARA IUU

#### **4.3.6 FAO Information**

Although Malaysia is not a party to the 1993 FAO Compliance Agreement, Malaysia cooperates in implementing relevant provisions of the Agreement.

#### **4.4 Public Awareness**

Publicity on IUU fishing is ongoing through various means to increase public awareness. The media is used to publicize widely details of IUU fishing incidents and resulting convictions in order to deter IUU fishing and to support compliance with domestic laws and international agreements.

Malaysian authorities endeavor to increase awareness among fishers, those engaged in fisheries related business, importers, consumers and the public, on the detrimental effects of IUU fishing, particularly within the Malaysian fisheries waters. Malaysia has published a number of guide books and posters on the identification of fish species found in Malaysian fisheries waters, in an effort to increase public awareness on commercial fish species, endangered species, sharks and rays and other fish species.

## **5. FLAG STATE RESPONSIBILITIES**

Malaysia as a flag state has an obligation under international law to effectively exercise its jurisdiction and control over the operation of its vessels, including in relation to their fishing activities. The means through which Malaysia exerts control over the operation of her fishing vessels have been outlined in the Section 4.

#### **5.1 Fishing Vessel Registration**

All fishing vessels must be licensed/registered with the relevant authorities before engaging in any fishing activities. Malaysia has 3 registration processes under the:

- Fisheries Act 1985 by the Department of Fisheries Malaysia
- Malaysian Shipping Ordinance 1952 by the Marine Department for vessels of 15 NRT and above for Sabah waters
- Ports and Harbours Enactment 2002 by the Sabah Port and Harbour Authority for vessels less than 15 NRT for Sabah waters.

#### **5.2 Exercise of Flag State Responsibility**

Malaysia employs various means to control the fishing activities of her fishing vessels. The provisions under the Fisheries Act 1985 and its associated regulations enable enforcement activities to be conducted in order to ensure harmonized and responsible fishing in Malaysian fisheries waters. Offenders will be penalized for contravening the Act.

### **5.3 Vessels with a History of Non-Compliance**

Any history of non-compliance is taken into consideration in the application for the transfer of ownership or licensing of fishing vessels.

### **5.4 Chartering Arrangements**

At present, Malaysia does not allow any form of chartering foreign fishing vessels.

### **5.5 Reflagging and Flag Hopping**

Under section 15 of the Fisheries Act 1985, foreign flagged fishing vessels are prohibited from fishing within the Malaysian fisheries waters. All vessels reported to be practising reflagging and flag hopping will be denied access into Malaysian ports and will be handled accordingly.

### **5.6 Coordination of Processes**

Registration of fishing vessels of less than 500 GT is carried out by the Department of Fisheries Malaysia while for those 500 GT and above will have to be registered with the Marine Department. In the state of Sabah, the fishing vessel licence is issued by the Sabah Marine Department and Sabah Ports and Harbour Authority. While the authorization to fish is issued by the Department of Fisheries Sabah, the function of fishing vessel registration and licences as well as the issuance of fishing licences are closely coordinated by these departments.

### **5.7 Record of Fishing Vessels**

The Fishing Vessel Register is maintained by the Department of Fisheries Malaysia. Among the information available are:

- Registration number
- Name, address and Malaysian identification card number of owner or owners/company
- Date of vessel completion
- Location of construction
- Type of vessel
- Length, breadth, depth
- Name and address of operator (manager) or operators (managers) (if any)
- Type of fishing gear or methods
- Gross registered tonnage
- Engine horsepower
- Nationality and the number of crews employed
- Port of register
- Marking and identification of fishing vessels



## 5.8 Information and Conditions on Authorization to Fish

As mentioned in the previous section, the authorization to fish that is issued by the Department of Fisheries Malaysia and Department of Fisheries Sabah contains the following information:

- Gear type
- Area of fishing
- Fish species (for tuna)
- Tonnage (GRT/NRT)
- Engine horsepower
- Fishing time
- Vessel inspection
- Vessel markings
- Catch and effort reporting
- Other relevant conservation and management measures

## 5.9 Transshipment and Replenishment between Vessels

Transshipment of catches from a foreign fishing vessel to any vessel and vice versa in Malaysian fisheries water is not allowed unless it is authorized to do so by the Director-General of Department of Fisheries Malaysia as stipulated under section 15(2) and 20 of the Fisheries Act 1985.

# 6. COASTAL STATE RESPONSIBILITIES

The Fisheries Act 1985 and its regulations support the fisheries management policies which cover measures to prevent, deter and eliminate IUU fishing in Malaysian fisheries waters. Participation and cooperation among Malaysian maritime enforcement agencies ensure effective MCS.

# 7. PORT STATE MEASURES

Malaysia controls the entry of foreign-flagged vessels into her ports through measures which include prior approval requirements, notification requirements, supervised landings and transshipments and vessel inspection. Malaysia's exercise of port state measures is consistent with international laws and where applicable, Malaysia implements specific port state measures adopted by RFMOs to which she is a party. Malaysia works actively through both international and regional organizations to strengthen port state measures. Malaysia's approach to combating IUU fishing under port state measures is as outlined in the SOP in Annex 3. The importance of adopting the 'FAO Model on Port State Measures to Combat IUU Fishing' is highlighted in the National Agro-Food Policy (2011-2020) and the Strategic Plan of the Department of Fisheries Malaysia (2011-2020).



Consistent with international laws, Malaysia provides port access to foreign flagged vessels for reasons of force majeure or distress or for rendering assistance to person, ships or aircraft in danger or distress. Malaysia cooperates with other States, and through RFMOs, to develop practical and appropriate measures for port state control of fishing vessels including information sharing.

## **8. INTERNATIONALLY-AGREED MARKET RELATED MEASURES**

### **8.1 Trade-Related Measures**

Malaysia considers the use of trade-related measures to be an effective tool in combating IUU fishing and which when implemented is consistent with the principles, rights and obligations established by the World Trade Organization (WTO), in a fair, transparent and non-discriminatory manner. Trade-related measures are best used only in exceptional circumstances to support fisheries management tools when fisheries management tools alone fail to effectively address IUU fishing. In addition, the most effective trade-related measures to combat IUU fishing are likely to be those developed and implemented within an international or regional framework through multilateral arrangement. Unilateral trade-related measures have not been applied by Malaysia to address IUU fishing.

Malaysia seeks to ensure that trade-related measures adopted by RFMOs or other regional organizations, to which she is a member, are fair, transparent and non-discriminatory; are in accordance with international laws and complement fisheries management tools.

#### **8.1.1 Standardization of Certification Schemes**

Malaysia supports the development of standardized certification and documentation schemes that not only track fish products through trade, but also ensure that only legally caught fish (or fish products) can be landed and enter the market. Malaysia also supports the application of electronic certification and documentation schemes.

#### **8.1.2 The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)**

Malaysia has enforced the International Trade in Endangered Species Act 2008 for the purpose of implementing CITES and providing for other matters connected therewith.

#### **8.1.3 Traceability of Fish and Fish Products**

Malaysia supports efforts to ensure that all fish in international trade are identified in normal trade documentation and on the packaging with their correct names and identification of the country of origin. Such a system is important to ensure the sustainable harvest of resources and support the long term effort to combat IUU

fishing. In response to the requirement of the Catch Certification Scheme of EU, Malaysia has amended the Fisheries (Maritime) (Licensing of Local Fishing Vessel) Regulations 1985 which requires mandatory reporting of information related to fish landings.

## **8.2 Deterring Trade of IUU Products**

Malaysian authorities welcome opportunities to cooperate with other countries through bilateral and multilateral agreements on trade related measures to prevent IUU products from entering international trade. This includes cooperation to strengthen other countries' port state measures.

## **9. RESEARCH**

Malaysia has published a number of field guide books and posters on commercial fish species, endangered species, sharks and rays and other fish species caught in Malaysian fisheries waters. Furthermore, Malaysia is developing the technical capacity to identify fish species from samples of processed products through DNA analysis which may be used as a tool to identify fish caught by IUU fishing.

## **10. REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS**

As a member of IOTC, Malaysia implements the resolutions related to conservation and management measures. Malaysia views these obligations seriously and is taking steps to ensure that Malaysian fishing vessels comply with such resolutions.

Malaysia will cooperate and act consistently with the conservation and management measures agreed by other RFMOs even if she is not a member of those RFMOs. Malaysia will consider working with other RFMOs to develop effective measures and mechanisms to prevent, deter, and eliminate IUU fishing. She will continue to pursue new initiatives and strengthen existing measures within any RFMO to which she is a member to combat IUU fishing more effectively. Malaysia endeavors to ensure that decisions are made in a cooperative manner and that those decisions maintain or enhance fisheries sustainability.

## **11. SPECIAL REQUIREMENTS OF DEVELOPING COUNTRIES**

The Department of Fisheries Malaysia is actively providing training and capacity building through the Fisheries Resources Management Course under the Malaysian Technical Cooperation Programme to other developing and underdeveloped countries. Besides this, Malaysia hopes developed countries will support her capacity building program in relation with IUU fishing and MCS activities such as port inspection, onboard observation programmes, etc.



## ANNEX 1: MALAYSIAN LEGISLATIONS RELATING TO IUU FISHING

1	Fisheries Act 1985
2	Exclusive Economic Zone Act 1984
3	Merchant Shipping Ordinance 1952
4	Customs Act 1967
5	Malaysian Maritime Enforcement Agency Act 2004
6	Continental Shelf Act 1966
7	Emergency (Essential Powers) Ordinance 1969
8	International Trade In Endangered Species Act 2008
9	Malaysian Quarantine and Inspection Services Act 2011
10	Lembaga Kemajuan Ikan Act 1971

## **ANNEX 2: RELEVANT SECTIONS CITED IN THE FISHERIES ACT 1985**

### **Section 8. Offence for fishing without licence or in contravention of condition or direction.**

Any person who undertakes any fishing activity operates, or allows to be operated, in Malaysian fisheries waters any local fishing vessel for the purpose of fishing –

- (a) without a valid licence issued under this Part;
- (b) in contravention of any condition in the licence issued in respect of such vessel; or
- (c) in contravention of any direction in writing issued by the Director-General under this Act. shall be guilty of an offence.

### **Section 9. Application for licence or permit in respect of new fishing vessel.**

- (1) An application for a licence under this Part or for a permit under Part V in respect of any new fishing vessel shall be made to the Director-General before construction of the vessel is commenced, and shall be accompanied by such plans, specifications or other information as the Director-General may require or as may be prescribed in regulations made under this Act.
- (2) The applicant may proceed with the construction of the new fishing vessel upon receiving written approval so to do from the Director-General subject to such conditions, including conditions in respect of the horsepower, size and tonnage of the vessel, or disposal of any existing fishing vessel, as may be specified in the approval.
- (3) The Director-General may refuse to issue a licence in respect of any new fishing vessel which was not constructed with approval, and in accordance with the conditions specified, under subsection (2).
- (4) Where under a fisheries plan it is provided that no licence under this part on permit under or permit under Part V shall be issued in respect of a new fishing vessel for a specified type of fisheries unless such new fishing vessel is in replacement of a fishing vessel already issued with such licence or permit for such type of fisheries, the Director-General shall not issue a licence or permit in respect of the new fishing vessel until the existing fishing vessel is disposed of in accordance with his directions.

### **Section 10. Conditions in licence and directions.**

- (1) The Director-General shall in issuing a licence under this Part impose such conditions as he thinks fit which shall include conditions relating to the following matters:

- (a) the permanent marking of the fishing vessel with such letters and numbers or other means of identification as may be assigned to it by the Director-General in such manner as may be prescribed in regulations made under this Act;
  - (b) the nationality and number of persons to be employed or carried on the fishing vessel; and
  - (c) in addition to complying with the requirement of any other written law that may be applicable, the requirement that a person who is not a Malaysian citizen shall not engage in any fishing activity related to the fishing vessel without the written approval of the Director-General.
- (2) Where he is satisfied that it is necessary or expedient for the proper management of fisheries so to do, the Director-General may from time to time vary the conditions of a licence issued under this Part but due notice of such intended variation shall be given to the licensee who shall, if he so desires, have the right to be heard within such period as the Director-General may allow.
- (3) A certificate by the Director-General stating that any condition in a licence was imposed or any variation thereof was made for the proper management of fisheries shall be conclusive proof thereof in any legal proceedings.
- (4) (a) The Director-General may from time to time by notice in the Gazette issue directions in relation to the proper management of fisheries to be complied with by every person to whom they are applicable.
- (b) Such directions shall also be displayed in such public places and for such period of time as the Director-General may determine.

**Section 11. Licence in respect of local fishing vessel, fishing stakes, fishing appliance, fish-aggregation device or marine culture system.**

- (1) The Director-General may, upon application and upon payment of the prescribed fee and payment of any prescribed deposit, issue a licence in respect of any local fishing vessel, fishing stakes, fishing appliance, fish-aggregation device or marine culture system, subject to such conditions as he thinks fit to impose or which may be prescribed in regulations made under this Act.
- (2) No licence shall be issued in respect of any fishing stakes, fishing appliance, fish aggregation device or marine system which causes or is likely to cause any obstruction to navigation or any impediment to the natural flow of water in Malaysian fisheries waters.
- (3) Any person who, in Malaysian fisheries waters –
- (a) operates, or allows to be operated, any fishing stakes, fishing appliance, fish-aggregation device or marine culture system without a licence in respect thereof;
  - (b) has under his control or in possession any fishing appliance without a licence in respect thereof;

- (c) sets up, or causes to be set up, any fishing stakes, fishing appliance or fish-aggregation device without written permission from the Director-General prior to the issue of a licence in respect thereof; or
  - (d) constructs or establishes any marine culture system without written permission from the Director-General prior to the issue of a licence in respect thereof, shall be guilty of an offence.
- (4) For the purpose of subsection (3), any part of a fishing appliance shall be construed as a complete fishing appliance unless proven otherwise.

#### **Section 14. Period of validity of licence and non-transferability**

- (1) Any licence issued under this Act shall, unless suspended or cancelled or unless otherwise specified in such licence, be valid for a period of not more than twelve calendar months from the date of issuance of such licence.
- (1A) Subsection (1) shall not apply to any licence issued before the date of coming into force of that subsection, and any licence in force on such date shall continue to be in force for the remaining period of its validity.
- (2) (a) Any person who modifies or changes, or permits to be modified or changed, the horsepower, size or tonnage of a licensed fishing vessel or the fishing appliance which it is licensed to operate without the written permission of the Director-General shall be guilty of an offence.
- (b) The Director-General shall refuse permission for a licensed fishing vessel or fishing appliance to be modified or changed unless he is satisfied that it is necessary so to do for the proper management of any particular fishery.
- (3) (a) Any licence issued under this Act in respect of a fishing vessel, fishing stakes, a fishing appliance, fish-aggregation device or marine culture system shall be valid for that or those particular fishing vessel, fishing stakes, fishing appliance, fish-aggregation device or marine culture system and shall not be used for any other fishing vessel, fishing stakes, fishing appliance, fish aggregation device or marine culture system, and such licence shall at all times be visibly displayed on or visibly attached to the fishing vessel, fishing stakes, fishing appliance, fish-aggregation device or marine culture system.
- (b) Where any fishing vessel uses the letters, numbers or other means of identification of another fishing vessel, the owner, master and every member of the crew of the fishing vessel using such letters, numbers or other means of identification shall each be guilty of an offence.
- (4) (a) Subject to paragraph (aa), any licence or permit in respect of a fishing vessel, fishing stakes, a fishing appliance, fish-aggregation device or marine culture system shall be issued under this Act in the name of the applicant for such licence or permit and shall not be transferable.

- (aa) Notwithstanding paragraph (a), the Director-General may, upon an application, allow the transfer of any licence or permit referred to under that paragraph where he is satisfied that the applicant is a person who would otherwise qualify to hold such licence or permit under this Act.
  - (b) Any person who uses any licence or permit issued in the name of any other person under this Act shall be guilty of an offence.
- (5) Where a fishing vessel which has been licensed as a local fishing vessel ceases to be a local fishing vessel, its licence shall lapse forthwith and shall be deemed to be cancelled.

Section 14A. Presumption in respect of person found on board any local fishing vessel.

For the purpose of this Part, where any person not being a Malaysian citizen is found on board any local fishing vessel in Malaysian fisheries waters, such person shall be presumed, unless the contrary is proven, to be a crew member of such fishing vessel.

**Section 15. Fishing, etc., by foreign fishing vessel in Malaysian fisheries waters.**

- (1) Subject to subsection (2), no foreign fishing vessel shall do any of the following in Malaysian fisheries waters:
- (a) fish or attempt to fish; or
  - (b) subject to subsection (1A), conduct any techno-economic research or survey of any fishery,

unless authorized so to do under an international fishery agreement in force between the Government of Malaysia and the government of the country, or between the Government of Malaysia and the international organization, to which such vessel belongs or in which such vessel is registered, as the case may be, and under a permit issued under section 19.

- (1A) Notwithstanding paragraph (b) of subsection (1), a foreign fishing vessel may conduct any techno-economic research or survey of any fishery in the Malaysian fisheries waters subject to the general directions of the Director-General and the following conditions, that is-
- (a) there is in respect of the conduct of such research or survey an agreement between a Malaysian citizen and such person to whom such foreign fishing vessel belongs;
  - (b) the conduct of such research or survey shall be under the general directive of the Director-General; and
  - (c) any data and findings of such research or survey shall be made available to the Director-General in such manner and at such frequency as he may prescribe.



- (2) No foreign fishing vessel shall load or unload any fish, fuel or supplies or tranship any fish in Malaysian fisheries waters without the written approval of the Director-General.

**Section 16. Passage of foreign fishing vessel through Malaysian fisheries waters.**

- (1) Subject to subsections (2) and (3) a foreign fishing vessel may enter Malaysian fisheries waters, for the purpose of passage through such waters in the course of a voyage to a destination outside such waters.
- (2) Such passage, which shall be exercised in accordance with rules of international law of the sea relating to the relevant maritime regime applicable to such Malaysian fisheries waters, includes stopping and anchoring only –
- (a) if the vessel is in distress;
  - (b) for the purpose of obtaining emergency medical assistance for a member of its crew; or
  - (c) to render assistance to persons, ships or aircraft in danger or distress.
- (3) The master of a foreign fishing vessel entering Malaysian fisheries waters for the purpose mentioned in subsection (1) shall notify by radio, telex or facsimile in the English or Malay Language an authorized officer of the name, the flag State, location, route and destination of the vessel, the types and amount of fish it is carrying and of the circumstances under which it is entering Malaysian fisheries waters.
- (4) Every foreign fishing vessel entering Malaysian fisheries waters for the purpose mentioned in subsection (1) shall –
- (a) without prejudice to the requirement to observe any other law of Malaysia which may be applicable, observe such regulations as may be made under section 61, including regulations regarding the stowage of fishing appliances; and
  - (b) return to a position outside such waters as soon as the purpose for which it entered such waters has been fulfilled.

**Section 20. Bringing into or having in Malaysian fisheries waters fish taken or received from foreign fishing vessel.**

Any person who brings into or has in his possession, custody or control in Malaysian fisheries waters fish taken or received from a foreign fishing vessel shall, unless he is authorized in writing so to do by the Director-General, be guilty of an offence.

**Section 25. Offences under Act.**

Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence and where no special penalty is provided in relation thereto, such person shall be liable –

- (a) where the vessel concerned is a foreign fishing vessel or the person concerned is a foreign national, to a fine not exceeding one million ringgit each in the case of the owner or master, and one hundred thousand ringgit in the case of every member of the crew;
- (b) in all other cases, to a fine not exceeding twenty thousand ringgit or a term of imprisonment not exceeding two years or both.

### **Section 31. Compounding of offences**

- (1) Subject to the following subsections, any fisheries officer may compound any offence under this Act for a sum not below five hundred ringgit and not exceeding the maximum fine for that offence, provided that it is a first, second or third offence only:

Provided further that for any offence under subsection (1) of section 43 the compound shall not be less than one hundred ringgit.

- (2) Any offence committed in contravention of section 8(a), 11(3), 15(1) or 16 read with section 25 or 26 is not compoundable.
- (3) Notwithstanding subsections (1) and (2), any fisheries officer may compound any offence under subsection (3) of section 11 where the fishing appliance in relation to which such offence is committed is a traditional fishing appliance, for a sum not below five hundred ringgit and not exceeding the maximum fine for that offence.
- (4) Where a fishing appliance is the subject matter of any offence compounded under subsection (1), such fishing appliance may be confiscated and disposed of as directed by the Director-General.
- (5) Where any offence committed under this Act has been compounded in accordance with this section, the Director-General shall direct that any article of a perishable nature which is the subject matter of any offence be sold and the proceeds of the sale forfeited.

### **Section 33. Power of court to order cancellation of licence or permit**

- (1) Where any person is charged with and found guilty of an offence under this Act the court shall, in addition to any other penalty that may be imposed, order that any licence or permit issued under this Act in relation to which the offence has been committed be cancelled.
- (2) Where any person to whom a licence or permit has been issued under this Act is charged with and found guilty of a second or subsequent offence under this Act, the court shall, in addition to any other penalty that may be imposed, direct that such person be disqualified from holding a licence or permit under this Act for a period not exceeding five years, and such person shall be guilty of an offence if he obtains or attempts to obtain any licence or permit under this Act while he is so disqualified.

#### **Section 46. Powers of authorized officer.**

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

- (a) stop, board and search any vessel within Malaysian fisheries waters and make any enquiry, examination and inspection concerning the voyage and seaworthiness of that vessel, its crew, equipment or fishing appliance, or fish carried on board that vessel;
- (b) stop, board and search, and inspect any vessel or vehicle transporting fish, whether within Malaysian fisheries waters or on land;
- (c) require to be produced and examine any fishing appliance whether within Malaysian fisheries waters or on land;
- (d) examine any fishing stakes, fish-aggregation device or marine culture system within Malaysian fisheries waters;
- (e) inspect any licence, permit, record, certificate or any other document required under this Act or under any generally accepted international rules and standards, and make copies of the same.

#### **Section 47. Powers of entry, seizure and arrest, etc.**

- (1) Any authorized officer may, where he has reason to believe that an offence has been committed under this Act, without a warrant—
  - (a) enter and search any place in which he has reason to believe that an offence under this Act is about to be or has been committed;
  - (b) take samples of any fish found in any vessel or vehicle inspected under section 46 or any place searched under paragraph (a);
  - (c) arrest any person who he has reason to believe has committed an offence under this Act;
  - (d) seize any vessel, including its equipment, gear, furniture, appurtenances, stores and cargo, or any vehicle which he has reason to believe has been used in the commission of any offence or in relation to which any offence has been committed under this Act;
  - (e) seize any fish which he has reason to believe has been caught in the commission of an offence under this Act;
  - (f) seize any explosive, poison, pollutant, apparatus or prohibited gear which he has reason to believe has been used, or was in the possession of someone, in contravention of section 26; or
  - (g) seize any unlicensed fishing stakes, fishing appliance, fish aggregation device or marine culture system.
- (2) In effecting any seizure under subsection (1), an authorized officer may use such force as may be reasonably necessary.

(3) A written acknowledgement shall be given in respect of anything seized under subsection (1).

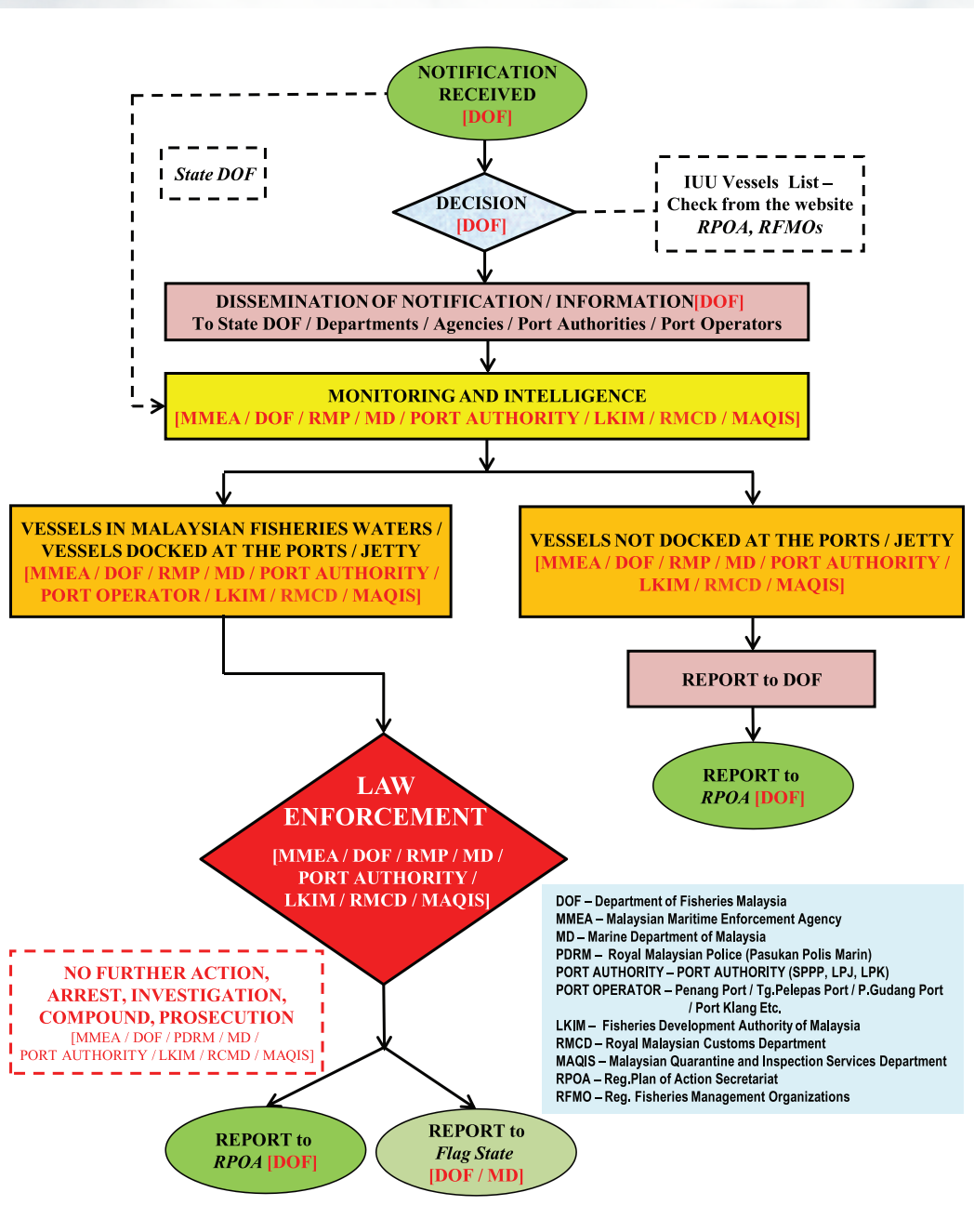
#### **Section 47A. Fisheries officer's power of investigation**

- (1) Any fisheries officer shall have the power to investigate the commission of any offence under this Act.
- (2) Every person required by a fisheries officer to give information or produce any document or other article relating to the commission of such offence which is in the person's power to give shall be legally bound to give the information or to produce the document or other article.

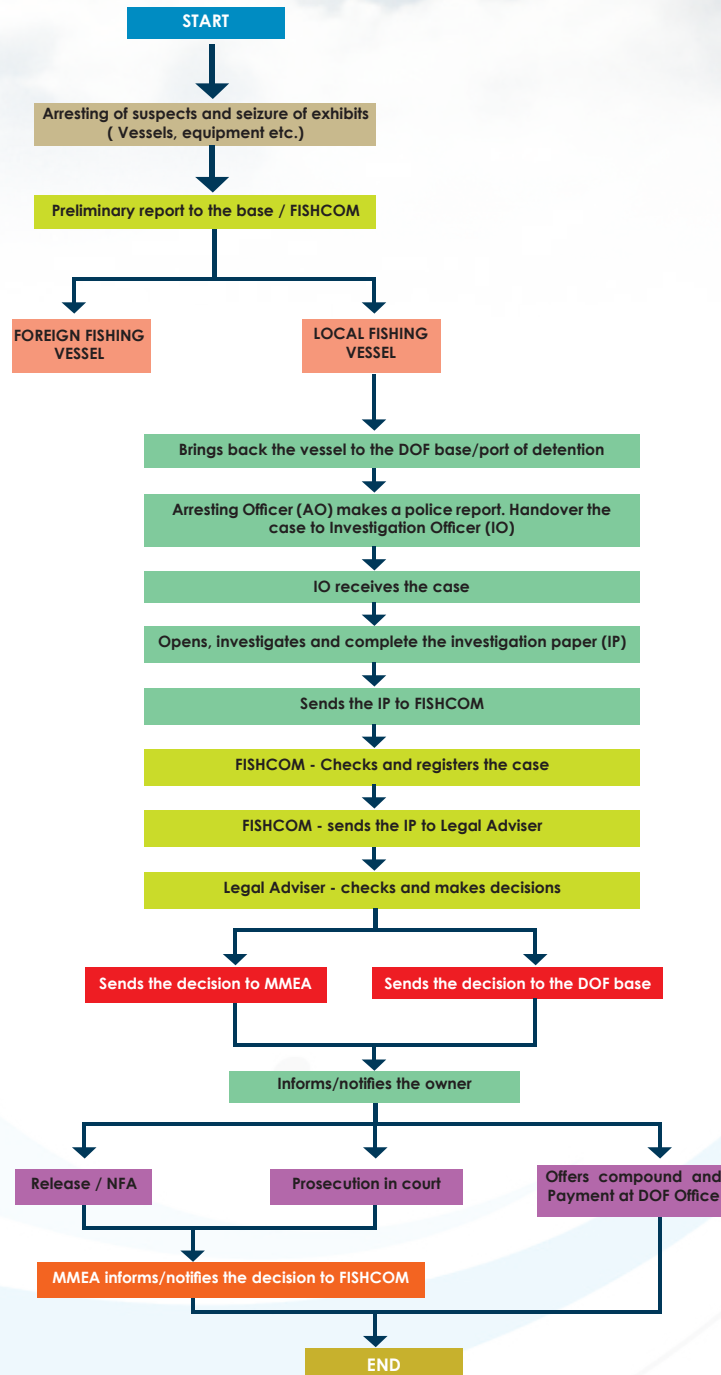
#### **Section 52. Forfeiture and disposal of vessel, etc.**

- (1) Where any person is found guilty of any offence—
  - (a) under section 8(a), 11(3), 15(1) or 26; and
  - (b) for the contravention of any condition of licence relating to permitted fishing areas under the licence, the court shall, in addition to any other penalty that may be imposed—
    - (i) order that the vessel (including its equipment, furniture, appurtenances, stores, cargo and fishing appliance), vehicle, article or thing used in the commission of such offence or in relation to which such offence has been committed be forfeited; and
    - (ii) order that any fish caught in the commission of such offence or the proceeds of the sale of any fish or other article of a perishable nature referred to in section 48, and any explosive, poison, pollutant, apparatus or prohibited gear used or intended to be used in the commission of such offence be forfeited.
- (2) Any vessel (including its equipment, furniture, appurtenances, stores, cargo and fishing appliance), vehicle, article, thing, explosive, poison, pollutant, apparatus, prohibited gear or fish ordered to be forfeited under subsection (1) or deemed or ordered to be forfeited under section 49 shall be disposed of in such manner as the Director-General may think fit and consistent with any scheme for the limitation of fishing effort.


## ANNEX 3: STANDARD OPERATING PROCEDURE TO HANDLE FOREIGN FISHING VESSEL THAT HAVE ENGAGED IN IUU FISHING WHEN ENTERING MALYSIAN PORTS



## ANNEX 4: STANDARD OPERATING PROCEDURE TO HANDLE LOCAL AND FOREIGN FISHING VESSELS THAT HAVE ENGAGED IN IUU FISHING IN MALAYSIAN FISHERIES WATERS



### Indicator

 The work process is the same but made by their respective agencies



