

A BILL

in title

An Act to amend the Fisheries Act 1985.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Fisheries (Amendment) Act 2019.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of long title

2. The Fisheries Act 1985 [Act 317], which is referred to as the “principal Act” in this Act, is amended in the long title—

(a) by inserting after the words “Malaysian fisheries waters,” the words “and the monitoring, control and surveillance of local fishing vessels on the high seas;”; and

(b) by inserting after the word “Malaysia” a semicolon.

Amendment of preamble

3. The principal Act is amended in the preamble by inserting after the words “Malaysian fisheries waters” the words “and the monitoring, control and surveillance of local fishing vessels on the high seas;”.

Amendment of section 1

4. Subsection 1(1) of the principal Act is amended by inserting after the words “Malaysian fisheries waters” the words “, and on the high seas in respect of any local fishing vessel”.

Amendment of section 3

5. Subsection 3(1) of the principal Act is amended by inserting after the words “Malaysian fisheries water,” the words “and the monitoring, control and surveillance of local fishing vessels on the high seas.”.

Amendment of section 8

6. Section 8 of the principal Act is amended by inserting after the words “Malaysian fisheries waters” the words “or on the high seas.”.

Amendment of section 11

7. Section 11 of the principal Act is amended—

(a) in subsection (2), by inserting after the words “Malaysian fisheries waters” the words “or on the high seas”;

(b) by inserting after subsection (3) the following subsection:

“(3A) Any person who, on the high seas—

(a) operates, or allows to be operated, any fishing appliance or fish-aggregation device without a licence in respect thereof;

- (b) has under his control or in his possession any fishing appliance without a licence in respect thereof; or
- (c) sets up, or causes to be set up, any fishing appliance or fish-aggregation device without written permission from the Director General prior to the issue of a licence in respect thereof,
- shall be guilty of an offence.”; and
- (c) in subsection (4), by substituting for the words “subsection (3)” the words “subsections (3) and (3A)”.

Amendment of section 14A

8. Section 14A of the principal Act is amended by inserting after the words “Malaysian fisheries waters” the words “or on the high seas”.

Amendment of section 25

9. Section 25 of the principal Act is amended—

- (a) in paragraph (a)—
- (i) by substituting for the words “one million ringgit” the words “six million ringgit”; and
- (ii) by substituting for the words “one hundred thousand ringgit” the words “six hundred thousand ringgit”; and
- (b) by inserting after paragraph (a) the following paragraph:
- “(aa) where the vessel concerned is a local fishing vessel and the offence is committed on the high seas, to a fine not exceeding four million ringgit;”.

Amendment of section 31

10. Section 31 of the principal Act is amended—

(a) in subsection (1), by substituting for the words “any fisheries officer may” the words “the Director General may, with the consent in writing of the Public Prosecutor, offer to”;

(b) by inserting after subsection (1) the following subsections:

“(1A) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer or within such extended period as the Director General may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(1B) Where an offence has been compounded under subsection (1), no prosecution shall be instituted in respect of such offence against the person to whom the offer to compound was made.”;

(c) in subsection (2), by inserting after the words “subsections 11(3),” the words “11(3A),”; and

(d) in subsection (3)—

(i) by substituting for the words “any fisheries officer” the words “the Director General”; and

(ii) by inserting after the words “subsection 11(3)” the words “or 11(3A)”.

Amendment of section 52

11. Paragraph 52(1)(a) of the principal Act is amended by inserting after the words “subsections 11(3),” the words “11(3A),”.

Amendment of section 61

12. Section 61 of the principal Act is amended—

- (a) by inserting after the words “in respect of related industries,” the words “for the monitoring, control and surveillance of local fishing vessels on the high seas,”; and
 - (b) in paragraph (m), by inserting after the word “licensing” the words “, monitoring, control and surveillance”.
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EXPLANATORY STATEMENT

This Bill seeks to amend the Fisheries Act 1985 (“Act 317”). The main purpose of the amendment is to provide for the licensing of local fishing vessels to undertake fishing activity on the high seas in order to facilitate the monitoring, control and surveillance of such local fishing vessels. The amendment also seeks to increase the general penalty for the offences under Act 317.

2. *Clause 1* contains the short title and the provision on the commencement of the proposed Act.
3. *Clauses 2 and 3* seek to amend the long title and preamble of Act 317 respectively to clarify that Act 317 seeks to provide for the monitoring, control and surveillance of local fishing vessels on the high seas.
4. *Clause 4* seeks to amend subsection 1(1) of Act 317 to extend the application of Act 317 to the high seas in respect of local fishing vessels.
5. *Clause 5* seeks to amend subsection 3(1) of Act 317 to provide that the Minister shall be responsible for matters relating to the monitoring, control and surveillance of local fishing vessels on the high seas.
6. *Clause 6* seeks to amend section 8 of Act 317 to make it an offence for any person to undertake any fishing activity, operates, or allows to be operated on the high seas, any local fishing vessel for the purpose of fishing without a valid licence issued under Act 317, in contravention of any condition in the licence issued in respect of such vessel or in contravention of any direction in writing issued by the Director General under Act 317.
7. *Clause 7* seeks to amend section 11 of Act 317. *Subclause 7(a)* seeks to amend subsection 11(2) of Act 317 to provide that no licence shall be issued in respect of any fishing appliance or fish-aggregation device which causes or is likely to cause any obstruction to navigation or any impediment to the natural flow of water on the high seas. *Subclause 7(b)* seeks to introduce a new subsection 11(3A) into Act 317 to make it an offence for any person who, on the high seas operates, or allows to be operated, any fishing appliance

or fish-aggregation device without a licence, has under his control or in his possession any fishing appliance without a licence or sets up, or causes to be set up, any fishing appliance or fish-aggregation device without written permission from the Director General prior to the issue of a licence.

8. *Clause 8* seeks to amend section 14A of Act 317 to provide that if any person not being a Malaysian citizen is found on board of any local fishing vessel on the high seas, such person shall be presumed, unless the contrary is proven, to be a crew member of such fishing vessel.

9. *Clause 9* seeks to amend section 25 of Act 317. *Subclause 9(a)* seeks to amend paragraph 25(a) of Act 317 to increase the general penalty for offences under Act 317 in the case of foreign fishing vessel or foreign national from one million ringgit to six million ringgit for owner or master and from one hundred thousand ringgit to six hundred thousand ringgit for every member of the crew. *Subclause 9(b)* seeks to introduce a new paragraph 25(aa) into Act 317 to provide a fine not exceeding four million ringgit as a general penalty for offences under Act 317 in the case of any local fishing vessel on the high seas.

10. *Clause 10* seeks to amend section 31 of Act 317. *Subclause 10(a)* seeks to amend subsection 31(1) of Act 317 to empower the Director General to compound any offence under Act 317 with the written consent of the Public Prosecutor. Currently, the power to compound is given to a fisheries officer. *Subclause 10(b)* seeks to introduce new subsections 31(1A) and (1B). The proposed subsection 31(1A) seeks to provide that any offer to compound may be made at any time after the offence has been committed but before any prosecution for it has been instituted. However, prosecution for the offence may be instituted if the amount specified is not paid within the time specified. The proposed subsection 31(1B) seeks to provide that no prosecution shall be instituted if the offence has been compounded. *Subclause 10(c)* seeks to amend subsection 31(2) of Act 317 to provide that any offence committed in contravention of the proposed subsection 11(3A) is not compoundable. *Subclause 10(d)* seeks to amend subsection 31(3) of Act 317 to empower the Director General to compound any offence under the proposed subsection 11(3A) if the fishing appliance in relation to the offence committed is a traditional fishing appliance.

11. *Clause 11* seeks to amend paragraph 52(1)(a) of Act 317 to provide that if a person is found guilty of an offence under the proposed subsection 11(3A), the court shall order the forfeiture of anything used in the commission of the offence.

12. *Clause 12* seeks to amend section 61 of Act 317. *Subclause 12(a)* seeks to empower the Minister to make regulations for the monitoring, control and surveillance of the local fishing vessels on the high seas. *Subclause 12(b)* seeks to amend paragraph 61(m) of Act 317 to provide for the power of the Minister to make regulations relating to the monitoring, control and surveillance of fishing vessels, fishing stakes, fishing appliances, fish-aggregation devices and marine culture systems.

13. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

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