

Coastal Fisheries Protection Act Amendment of 12 May 1994 (S.C.1994, c.14)

1. Section 2 of the Coastal Fisheries Protection Act is amended by adding the following in alphabetical order:

"NAFO Regulatory Area' means that part of the following area, being the Convention Area of the Northwest Atlantic Fisheries Organization, that is on the high seas:

(a) the waters of the Northwest Atlantic Ocean north of 35°00' north latitude and west of a line extending due north from 35°00' north latitude and 42°00' west longitude to 59°00' north latitude, thence due west to 44°00' west longitude and thence due north to the coast of Greenland, and

(b) the waters of the Gulf of St. Lawrence, Davis Strait and Baffin Bay south of 78°10' north latitude;

'straddling stock' means a prescribed stock of fish."

2. The Act is amended by adding the following after section 5:

"5.1 Parliament, recognizing:

(a) that straddling stocks on the Grand Banks of Newfoundland are a major renewable world food source having provided a livelihood for centuries to fishers,

(b) that those stocks are threatened with extinction,

(c) that there is an urgent need for all fishing vessels to comply in both Canadian fisheries waters and the NAFO Regulatory Area with sound conservation and management measures for those stocks, notably those measures that are taken under the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, done at Ottawa on 24 October 1978, Canada Treaty Series 1979, No. 11, and

(d) that some foreign fishing vessels continue to fish for those stocks in the NAFO Regulatory Area in a manner that undermines the effectiveness of sound conservation and management measures,

"declares that the purpose of section 5.2 is to enable Canada to take urgent action necessary to prevent further destruction of those stocks and to permit their rebuilding, while continuing to seek effective international solutions to the situation referred to in paragraph (d).

"5.2 No person, being aboard a foreign fishing vessel of a prescribed class, shall, in the NAFO Regulatory Area, fish or prepare to fish for a straddling stock in contravention of any of the prescribed conservation and management measures."

3. Section 6 of the Act is amended by adding the following after paragraph (b):

"(b.1) prescribing as a straddling stock, for the purposes of section 5.2, any stock of fish that occurs both within Canadian fisheries waters and in an area beyond and adjacent to Canadian fisheries waters;

"(b.2) prescribing any class of foreign fishing vessel for the purposes of section 5.2;

"(b.3) prescribing, for the purposes of section 5.2,

(i) any measure for the conservation and management of any straddling stock to be complied with by persons aboard a foreign fishing vessel of a prescribed class in order to ensure that the foreign fishing vessel does not engage in any activity that undermines the effectiveness of conservation and management measures for any straddling stock that are taken under the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, done at Ottawa on 24 October 1978, Canada Treaty Series 1979, No. 11, or

(ii) any other measure for the conservation and management of any straddling stock to be complied with by persons aboard a foreign fishing vessel of a prescribed class;

"(b.4) prescribing the manner in which and the extent to which a protection officer is permitted to use the force referred to in section 8.1;

"(b.5) prescribing forms that may be used instead of the forms set out in Part XXVIII of the Criminal Code in proceedings against fishing vessels under this Act or the Fisheries Act;

4. Section 7 of the Act is replaced by the following:

"7. A protection officer may

"(a) for the purpose of ensuring compliance with this Act and the regulations, board and inspect any fishing vessel found within Canadian fisheries waters or the NAFO Regulatory Area; and

"(b) with a warrant issued under section 7.1, search any fishing vessel found within Canadian fisheries waters or the NAFO Regulatory Area and its cargo.

"7.1 (1) A justice of the peace who on ex parte application is satisfied by information on oath that there are reasonable grounds to believe that there is in any place, including any premises, vessel or vehicle, any fish or other thing that was obtained by or used in, or that will afford evidence in respect of, a contravention of this Act or the regulations, may issue a warrant authorizing the protection officer named in the warrant to enter and search the place for the fish or other thing subject to any conditions that may be specified in the warrant,

"(2) A protection officer may exercise the powers referred to in paragraph 7 (b) without a warrant if the conditions for obtaining a warrant exist but, by reason of exigent circumstances, it would not be practical to obtain a warrant."

5. The Act is amended by adding the following after section 8:

"(8.1) A protection officer may, in the manner and to the extent prescribed by the regulations, use force that is intended or is likely to disable a foreign fishing vessel, if the protection officer

"(a) is proceeding lawfully to arrest the master or other person in command of the vessel; and

"(b) believes on reasonable grounds that the force is necessary for the purpose of arresting that master or other person."

6. (1) The portion of subsection 18 (1) of the Act before paragraph (a) is replaced by the following:

"18. (1) Every person who contravenes paragraph 4 (1) (a), subsection 4 (2) or section 5.2, is guilty of an offence and liable;"

"(2) The portion of subsection 18 (2) of the Act before paragraph (a) is replaced by the following:

"(2) Every person who contravenes any of paragraphs 4 (1) (b) to (e), section 5 of the regulations is guilty of an offence and liable;

7. The Act is amended by adding the following after section 18:

"18.1 An act or omission that would be an offence under an Act of Parliament if it occurred in Canada is deemed to have been committed in Canada if it occurs, in the course of enforcing this Act,

(a) in the NAFO Regulatory Area on board or by means of a foreign fishing vessel on board or by means of which a contravention of section 5.2 has been committed; or

(b) in the course of continuing pursuit that commenced while a foreign fishing vessel was in Canadian fisheries waters or the NAFO Regulatory Area.

"18.2 (1) Every power of arrest, entry, search or seizure or other power that could be exercised in Canada in respect of an act or omission referred to in section 18.1 in the circumstances referred to in that section may be exercised

(a) on board the foreign fishing vessel; or

(b) where pursuit has been commenced, at any place on the seas, other than a place that is in the territorial sea or internal waters of a State other than Canada.

(2) A justice of the peace or judge in any territorial division in Canada has jurisdiction to authorize an arrest, entry, search or seizure or an investigation or other ancillary matter related to an offence referred to in section 18.1 in the same manner as if the offence had been committed in that territorial division.

(3) Where an act or omission that is an offence by virtue only of section 18.1 is alleged to have been committed on board or by means of a vessel that is registered or licensed under the laws of a State other than Canada, the powers referred to in subsection (1) may not be exercised outside Canada with respect to that act or omission without the consent of the Attorney General of Canada.

"18.3 A proceeding in respect of

(a) an offence under this Act consisting of a contravention of section 5.2, or

(b) an offence referred to in section 18.1 that is committed outside Canada may, whether or not the accused is in Canada, be commenced in any territorial division in Canada and the accused may be tried and punished for that offence in the same manner as if the offence had been committed in that territorial division.

"18.4 No proceeding in respect of

(a) an offence under this Act consisting of a contravention of section 5.2;

(b) an offence referred to in section 18.1; or

(c) an offence under paragraph 17 (d) consisting of resistance to or obstruction of a protection officer in the execution of the officer's duty in relation to section 5.2

may be commenced without the personal consent in writing of the Attorney General of Canada or the Deputy

Attorney General, and such a proceeding may be conducted only by the Attorney General of Canada or counsel acting on his or her behalf.

"18.5 All the provisions of this Act and the Criminal Code or the Fisheries Act and the Criminal Code relating to indictable offences that are applicable to or in respect of persons apply, in their application to indictable offences created by this Act or the Fisheries Act, to or in respect of fishing vessels, with such modifications as the circumstances require, and all the provisions of this Act and the Criminal Code or the Fisheries Act and the Criminal Code relating to summary conviction offences that are applicable to or in respect of persons apply, in their application to all other offences created by this Act or the Fisheries Act, to or in respect of fishing vessels, with such modifications as the circumstances require."

8. If Bill C-8, introduced in the first session of the thirty-fifth Parliament and entitled An Act to Amend the Criminal Code and the Coastal Fisheries Protection Act (force), is assented to, then

(a) if section 2 of that Act enacts section 8.1 of the Coastal Fisheries Protection Act but section 2 does not come into force before the day on which this Act is assented to, section 2 of that Act and the heading before it are repealed on the later of the day on which that Act is assented to and the day on which this Act is assented to; or

(b) if section 2 of that Act enacts section 8.1 of the Coastal Fisheries Protection Act and section 2 comes into force before the day on which this Act is assented to, section 8.1 of the Coastal Fisheries Protection Act, as enacted by section 2 of that Act, is repealed on the day on which this Act, other than subsection 6 (2) and this section, comes into force.

9. This Act, other than subsection 6 (2) and section 8, comes into force on a day to be fixed by order of the Governor in Council.