

# APPENDICES

## APPENDIX 1: FISHERIES LAW OF JAPAN, 1949

### Chapter II: Fishery Rights and Piscaries

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Article 7 In this Act, “a piscary” refers to the right of operating the whole or a part of the fishery covered by another person’s common fishery right or by the demarcated fishery right for a bamboo-installed aquaculture business, algae aquaculture business, suspension-type aquaculture business (which refers to a business of suspending aquatic animals, operated with ropes, steel wires, or the like kept hanging; excluding the pearl aquaculture business), fish pen aquaculture business (which refers to a business of culturing aquatic animals using net creels or other creels), or shellfish aquaculture business as a class 3 demarcated fishery (hereinafter referred to as “the specific demarcated fishery right”), in the fishing ground pertaining to the fishery right, based on the act of establishment. (Right of Association Partner to Operate a Fishery)

Article 8

1. A member (limited to a fishery manager or a fishery employee) of a Fisheries Cooperative Association, who falls under the qualification provided in the Fishery Right Exercise Rule or the Piscary Exercise Rule respectively established for each provided demarcated fishery right or common fishery right or piscary held by the Fishery Cooperative Association or by a Federation of Fishery Cooperative Associations, to

- which the Fishery Cooperative Association belongs as a member, has the right of operating a fishery within the scope of said provided demarcated fishery right or common fishery right or piscary.
2. The Fishery Right Exercise Rule or the Piscary Exercise Rule of the preceding paragraph (hereinafter simply referred to as “the Fishery Right Exercise Rule” or “the Piscary Exercise Rule”) shall provide the matters concerning the qualification of the persons who have the right of operating the fishery pursuant to the same paragraph, and also the region where and the period when the fishery covered by said fishery right or piscary may be operated, methods of the fishery and other matters the persons having the right of operating said fishery shall observe when they operate said fishery.
  3. When a Fisheries Cooperative Association or a Federation of Fisheries Cooperative Associations is going to establish the Fishery Right Exercise Rule for the provided specific demarcated fishery right or the common fishery right covering the class 1 common fishery held by the association or the federation, the association or the federation shall obtain the consents in writing of not less than two thirds of the partner of the association or the federation (the partner of the Fisheries Cooperative Associations which are the partner of the Federation of Fisheries Cooperative Associations, in the case of the federation; the same shall apply hereinafter), who operate the fishery covered by said fishery right when the association or the federation is granted the license of the fishery pertaining to said fishery right (or who operate a shore fishery (which refers to the fishery excluding the fishery operated using a powered fishing boat with a total tonnage of 20 tons or more and the fishery in inland waters; the same shall apply hereinafter) in the case where the region of the fishing ground pertaining to said fishery right is waters other than inland waters (excluding the lakes and marshes designated by the Agriculture, Forestry and Fisheries Minister pursuant to the provision of paragraph (1), Article 84; the same shall apply hereinafter except paragraph (1), Article 21) with respect to the provided demarcated fishery right and the common fishery right covering the class 1 common fishery established for the persons qualified pursuant to the provision of paragraph (6), Article 14; or who operate a fishery in the inland waters other than rivers in the case where said region is said inland waters; or who gather, catch or culture aquatic animals and plants in a river in the case where said region is said river), and who have addresses in the region of the local district provided in

Article 11 pertaining to said fishery right (the district concerned provided in the same Article for the common fishery right), before any resolution is made in the general meeting provided in the Fisheries Industry Cooperative Association Act (Act No. 242 of 1948) (including a sectional meeting and a representatives' meeting of the general meeting).

4. In the case of the preceding paragraph, if it is provided in the Article of the Association or the Federation concerned that voting rights may be exercised by an electromagnetic means (which refers to the electromagnetic means provided in paragraph (4), Article 11-2 of the Fisheries Industry Cooperative Association Act) pursuant to the provision of paragraph (3), Article 21 of the same Act (including the case where this paragraph is applied mutatis mutandis in paragraph (3), Article 89 of the same Act), the consents concerning said Fishery Right Exercise Rule may be obtained by said electromagnetic means in lieu of said consents in writing. In this case, said Fishery Cooperative Association or Federation of Fishery Cooperative Associations shall be deemed to have obtained said consents in writing.
5. The consents concerning said Fishery Right Exercise Rule obtained by the electromagnetic means of the first sentence of the preceding paragraph (excluding the method prescribed in the Ordinance of the Ministry of Agriculture, Forestry and Fisheries of paragraph (5), Article 11-2 of the Fisheries Industry Cooperation Association Act) shall be deemed to have arrived at said Fisheries Cooperative Association or Federation of Fisheries Cooperative Associations when the consents have been recorded in a file of the computer used by the Fisheries Cooperative Association or Federation of Fisheries Cooperative Associations.
6. The Fishery Right Exercise Rule or the Piscary Exercise Rule shall not be valid unless the regulation is approved by the Governor concerned.
7. The provisions of paragraph (3) through paragraph (5) shall be applied mutatis mutandis to the change or abolition of the Fishery Right Exercise Rule pertaining to the specific demarcated fishery right or the common fishery right covering the class 1 common fishery, and the provision of the preceding paragraph shall be applied mutatis mutandis to the change or abolition of the Fishery Right Exercise Rule or the Piscary Exercise Rule. In this case, "who operate the fishery covered by said fishery right when the association or the federation is granted the license of the fishery pertaining to said fishery right" shall be deemed

to be replaced with “who operate the fishery covered said fishery right.” (Prohibition of Fixed Fishery, not Based on a Fishery Right)

- (ii) A person who has been judged to be likely to allow the person judged to be unqualified pursuant to the provision of the preceding item to substantially govern the management of the fishery pertaining to the application, irrespective of the pretext, by not less than two thirds of all the commission members as a result of voting in the Sea-area Fisheries Adjustment Commission concerned.
2. With regard to the license of the demarcated fishery covered by a specific demarcated fishery right, the Fisheries Cooperative Association covering the whole or a part of the local district prescribed in Article 11 (hereinafter simply referred to as “the local district”) in the district of the association or the Federation of Fisheries Cooperative Associations, to which the Fisheries Cooperative Association belongs as a member, who does not operate the fishery covered by said specific demarcated fishery right is qualified only if the association or the federation conforms to the following, notwithstanding the provision of the preceding paragraph; provided that any Fisheries Cooperative Association, in which the partner qualified pursuant to the provision of paragraph 4, Article 18 of the Fisheries Industry Cooperative Association Act are limited to those operating the fishery of a specific type, and any Federation of Fisheries Cooperative Associations, to which the Fisheries Cooperative Association belongs as a member, shall not be qualified.
    - (i) The number of households of the partner of the association or the federation, who have addresses in the local district and operate said fishery is not less than two thirds of the number of households of the persons who have addresses in the local district and operate said fishery.
    - (ii) In the case where two or more associations or federations jointly file an application, the total number of households of the partner of the associations or the federations, who have addresses in the local district and operate said fishery is not less than two thirds of the number of households of the persons who have addresses in the local district and operate said fishery.

3. In the case where a Fisheries Cooperative Association, the partner of which are the persons who have addresses in the local district of the preceding paragraph and operate said fishery, or the corresponding Federation of Fisheries Cooperative Associations proposes another Fisheries Cooperative Association or Federation of Fisheries Cooperative Associations qualified pursuant to the provision of the same paragraph, to jointly file an application for the license of the fishery provided in the same paragraph, the qualified Fisheries Cooperative Association or Federation of Fisheries Cooperative Associations may not reject the proposal without any justifiable reason.
4. In the case where a Fisheries Cooperative Association or the corresponding Federation of Fisheries Cooperative Associations qualified pursuant to the provision of paragraph (2) has been granted the license of the fishery provided in the same paragraph, another Fisheries Cooperative Association, the partner of which are the persons who had addresses in the local district of the same paragraph and operated said fishery when said license was granted or the corresponding Federation of Cooperative Associations may request the licensed Fisheries Cooperative Association or the corresponding Federation of Fisheries Cooperative Associations to co-own said fishery right, if approved by the Governor concerned. In this case, the provision of paragraph (1), Article 26 shall not apply.
5. When an application for the approval set forth in the preceding paragraph has been filed, the Governor concerned shall hear the opinions of the Sea-area Fisheries Adjustment Commission concerned.
6. In the case where the whole of the area of the fishing ground for the demarcated fishery covered by a specific demarcated fishery right publicly notified pursuant to the provision of paragraph (5), Article 11 is waters where no specific demarcated fishery right for said demarcated fishery existed for one year before the date of said public notice (the date of the public notice of change, in the case where said public notice of change was made pursuant to the provision of the same paragraph for the area of the fishing ground pertaining to said demarcated fishery), the Fisheries Cooperative Association or the corresponding Federation of Fisheries Cooperative Associations which does not operate the fishery covered by said specific demarcated fishery right is qualified for the license of the demarcated fishery covered by said specific demarcated fishery right, only if the association or the

federation falls under the following, notwithstanding the provisions of paragraph (1) and paragraph (2).

- (i) The number of households of the partner of the association or the federation, who have addresses in the local district and operate a shore fishery for 90 days or more per year (or who operate a fishery for 30 days or more per year in inland waters other than rivers in the case of a license of said fishery in said inland waters, or who gather, catch or culture aquatic animals and plants for 30 days or more per year in a river in the case of a license of said fishery in the river; hereinafter the same shall apply) is not less than two thirds of the number of households of the persons who have addresses in the local district and operate the shore fishery for 90 days or more per year.
  - (ii) In the case where two or more associations or federations jointly file an application, the total number of households of the partner of the associations or federations, who have addresses in the local district and operate a shore fishery for 90 days or more per year is not less than two thirds of the number of households of the persons who have addresses in the local district and operate the shore fishery for 90 days or more per year.
7. The provisions of the proviso of paragraph (2) and paragraph (3) through paragraph (5) shall apply *mutatis mutandis* to the license of the demarcated fishery of the preceding paragraph. In this case, “who ... and operate said fishery” in paragraph (3) shall be deemed to be replaced with “who ... and operate a shore fishery for 90 days or more per year,” and “who ... and operated said fishery” in paragraph (4), with “who ... and operated said fishery for 90 days or more per year.”
  8. A person qualified for the license of a common fishery shall be a Fisheries Cooperative Association which has the whole or a part of the district concerned provided in Article 11 (hereinafter simply referred to as “the district concerned”) included in its district or the Federation of Fisheries Cooperative Associations, to which the Fisheries Cooperative Association belongs as a member (excluding the Fisheries Cooperative Association or the corresponding Federation of Fisheries Cooperative Associations provided in the proviso of paragraph (2)), and falls under the following.

- (i) The number of households of the partner who have addresses in the district concerned and operate a shore fishery for 90 days or more per year is not less than two thirds of the number of households of the persons who have addresses in the district concerned and operate the shore fishery for 90 days or more per year.
  - (ii) In the case where two or more associations or federations jointly file an application, the total number of households of the partner of the associations or federations, who have addresses in the district concerned and operate a shore fishery for 90 days or more per year is not less than two thirds of the number of households of the persons who have addresses in the district concerned and operate the shore fishery for 90 days or more per year.
9. In the case where the number of households provided in each item of paragraph (2), each item of paragraph (6) or in each item of the preceding paragraph is calculated, if the person who operates said fishery is a juridical person, the number of households of the members, partners or shareholders of said juridical person (if the juridical person is a joint stock company, the company shall not be an open corporation (an open corporation provided in item (v), Article 2 of the Companies Act (Act No. 86 of 2005); the same shall apply); the same shall apply in this paragraph), or the number of households of the members, partners or shareholders of the juridical persons as members, partners or shareholders of said juridical person, who are fishery employees of said fishery, shall be counted.
10. The provisions from paragraph (3) through paragraph (5) shall apply mutatis mutandis to a common fishery. In this case, “the local district” in paragraph (3) and paragraph (4) shall be deemed to be replaced with “the district concerned”; “who ... and operate said fishery” in paragraph (3), with “who ... and operate a shore fishery for 90 days or more per year”; and “who ... and operated said fishery” in paragraph (4), with “who ... and operated said fishery for 90 days or more per year.”
11. In the case where a Fisheries Cooperative Association or a Federation of Fisheries Cooperative Associations acquires a common fishery right for the class 1 common fishery or the class 5 common fishery, the Sea-area Fisheries Adjustment Commission concerned shall give necessary instructions pursuant to the provision of paragraph 1, Article 67, for appropriate exercise of said common fishery right in the relationship

between the association or the federation and the fishermen (fishery managers or fishery employees as individuals; hereinafter the same shall apply) who have addresses in the district concerned and are not the partner.

#### Article 21

1. The duration of a fishery right shall be 10 years from the date of the license for the demarcated fishery right for performing the pearl aquaculture business, the demarcated fishery right for performing the aquatic animal aquaculture business in the waters other than the inland waters pursuant to the provision of item (v), paragraph (5), Article 6 (excluding the provided demarcated fishery right and the demarcated fishery right for performing the pearl aquaculture business), or the common fishery right, and 5 years from the date of the license for the other fishery rights.
2. The Governor concerned may decide a period shorter than the period set forth in the preceding paragraph to such a limit necessary for fisheries adjustment. (Division or Change of Fishery Right)

#### Article 22

1. When it is intended to divide or change a fishery right, an application shall be filed with the Governor concerned, to be granted a license.
2. The Governor concerned shall not grant the license set forth in the preceding paragraph in the case where the Governor finds that the fisheries adjustment and other public interest will be impaired.
3. In the case of paragraph (1), the provisions of Article 12 (Consultation with the Sea-area Fisheries Adjustment Commission) and Article 13 (Cases Where no License Is Granted) shall apply *mutatis mutandis*. (Nature of Fishery Right)

#### Article 23

1. A fishery right shall be deemed to be a property, and the provisions concerning land shall apply *mutatis mutandis*.
2. The provision of Chapter IX (Pledge), Part II of the Civil Code (Act No. 89 of 1896) shall not apply to either the fixed gear fishery right or the demarcated fishery right (excluding the specific demarcated fishery



right owned by a Fisheries Cooperative Association or a Federation of Fisheries Cooperative Associations; the same shall apply in the following Article and Article 26 and 27), and the provisions of Chapter VIII through Chapter X (Lien, Pledge and Mortgage) shall not apply to either the specific demarcated fishery right owned by a Fisheries Cooperative Association or a Federation of Fisheries Cooperative Associations or the common fishery right.

#### Article 24

1. In the case where a mortgage is established on a fixed gear fishery right or a demarcated fishery right, the structures fixed on the fishing ground shall be deemed to be a property integrally added to the fishery right with respect to the mutatis mutandis application of the provision of Article 370 (Scope to Which the Validity of Mortgage Extends) of the Civil Code. The same shall apply also in the case where a lien covers a fixed gear fishery right or a demarcated fishery right.
2. The establishment of a mortgage covering a fixed gear fishery right or a demarcated fishery right shall not be valid unless it is approved by the Governor concerned.
3. The Governor concerned shall not make the approval pursuant to the preceding paragraph unless the Governor finds that the establishment of a mortgage covering a fixed gear fishery right or a demarcated fishery right is inevitable for the financing necessary for the management of said fishery.
4. When the Governor concerned is going to make the approval pursuant to the provision of paragraph (2), the Governor shall hear the opinions of the Sea area Fisheries Adjustment Commission concerned. (Case Where a Lien or Mortgage Extinguishes due to Transfer of Specific Demarcated Fishery Right)

#### Article 25

1. In the case where a lien or a mortgage covers a specific demarcated fishery right, when the fishery right holder notified pursuant to the provision of paragraph (2), Article 27 transfers the specific demarcated fishery right to a Fisheries Cooperative Association or a Federation of Fisheries Cooperative Associations, the fishery right holder shall obtain

the consent of the lien holder or the mortgage holder (limited to a registered person; the same shall apply hereinafter).

2. The lien holder or the mortgage holder may not reject the consent set forth in the preceding paragraph without any justifiable reason.
3. When the transfer of paragraph (1) has been performed, the line or the mortgage extinguishes. (Restriction of Transfer of Fishery Right)

#### Article 26

1. A fishery right may not be the purpose of transfer unless it is necessitated by inheritance or merger of juridical persons or demerger or a juridical person; provided that the same shall not apply to a fixed gear fishery right or a demarcated fishery right when the Governor concerned approves it in the case where it is necessitated by nonpayment, or in the case where a lien holder or a mortgage holder exercises his/her right, or in the case where a person notified pursuant to the provision of paragraph (2), Article 27 transfers.
2. The Governor concerned shall not make the approval pursuant to the preceding paragraph unless the transfer is made to a person qualified pursuant to the provision of paragraph (1), paragraph (2) or paragraph (6), Article 14.
3. When the Governor concerned is going to make the approval pursuant to the provision of the preceding paragraph, he/she shall hear the opinions of the Searea Fisheries Adjustment Commission concerned. (Fixed Gear Fishery Right or Demarcated Fishery Right Acquired by Inheritance or Merger of Juridical Persons or Demerger of a Juridical Person)

#### Article 27

1. A person who has acquired a fixed gear fishery right or a demarcated fishery right by inheritance or merger of juridical persons or demerger of a juridical person shall notify the Governor concerned to that effect within two months from the data of the acquisition.
2. When the Governor concerned listens to the opinions of the Sea-area Fisheries Adjustment Commission concerned and finds that the person of the preceding paragraph lacks the qualification pursuant to the provision of paragraph (1), Article 14, he/she shall notify the person to

the effect that unless the fishery right is transferred within a certain period of time, the fishery right shall be rescinded. (Rights and Obligations concerning the Use of Waters)

Article 28 The rights and obligations concerning the use of waters owned by a fishery right holder (including the rights and obligations owned by said fishery right holder based on the permissions, approvals and other dispositions of the administrative agency concerning said fishery) shall follow the disposition of the fishery right. (Prohibition of Loan)

Article 29 A fishery right may not be the purpose of loan. (Consent of Registered Right Holder)

Article 30

1. A fishery right may not be divided, changed or waved without the consent of the right holder registered pursuant to the provision of Article 50.
2. The provisions of paragraph (2) through paragraph (4) of Article 13 (Case Where No Consent Is Obtained.) shall apply mutatis mutandis to the preceding paragraph. (Consents of Partner)

Article 31 The provisions of paragraph (3) through paragraph (5) of Article 8 shall apply mutatis mutandis to the case where a Fisheries Cooperative Association or a Federation of Fisheries Cooperative Associations is going to divide, change or wave a specific demarcated fishery right or a common fishery right for the class 1 common fishery owned by the association or the federation. In this case, “who operate the fishery covered by said fishery right when the association or the federation is granted the license of the fishery pertaining to said fishery right” shall be deemed to be replaced with “who operate the fishery covered by said fishery right.” (Co-ownership of Fishery Right)

Article 32

1. Each co-owner of a fishery right may not dispose of his/her share unless the consents of not less than two thirds of the other co-owners are obtained.
2. The provisions of paragraph (2) through paragraph (4) of Article 13 (Case Where No Consent Is Obtained.) shall apply mutatis mutandis to the preceding paragraph.

Article 33 In the case where each co-owner of a fishery right is going to obtain the consents of the other co-owners for changing the co-owned fishery right, the provisions of paragraph (2) through paragraph (4) of Article 13 (Case Where No Consent Is Obtained.) shall apply *mutatis mutandis*. (Restrictions or Conditions of Fishery Right)

Article 34

1. The Governor concerned may add restrictions or conditions to the fishery right when granting a license, if he/she finds it necessary for fisheries adjustment and other public interest.
2. When the restrictions or conditions set forth in the preceding paragraph are going to be added, the Governor concerned shall hear the opinions of the Seaarea Fisheries Adjustment Commission concerned.
3. With respect to the addition of restrictions or conditions pursuant to the provision of paragraph (1), the provision of paragraph (6), Article 11 shall apply *mutatis mutandis*.
4. If the Sea-area Fisheries Adjustment Commission concerned finds it necessary for fisheries adjustment and other public interest after grant of a license and files an application, the Governor concerned may add restrictions or conditions to the fishery right.
5. When the Sea-area Fisheries Adjustment Commission concerned is going to file the application of the preceding paragraph, the commission shall notify said fishery right holder of the reason for adding restrictions or conditions in writing, and hear his/her opinions publicly in advance.
6. When the opinions are heard pursuant to the preceding paragraph, said fishery right holder or his/her agent may make explanation and submit evidences.
7. During the period from the time when the notice pursuant to the provision of paragraph (5) is made to the time when the hearing of the opinions is completed, said fishery right holder or his/her agent may request the Sea-area Fisheries Adjustment Commission concerned, to allow him/her to inspect the written statement pertaining to the results of the investigation made on said issue and other data proving the fact causing said application. In this case, the Sea-area Fisheries Adjustment Commission concerned may not reject the inspection unless there is any possibility of impairing the interest of a third party or without any other justifiable grounds.

8. The matters necessary for the provisions of the preceding three paragraphs and for the hearing of opinions of paragraph (5) performed by the Sea-area Fisheries Adjustment Commission concerned shall be provided by a cabinet order. (Notification of Absence from Work)

Article 35 When a fishery right holder is going to be absent from work for more than one fishery season, he/she shall decide the absence period and notify the Governor concerned of it in advance. (Permission of Fishery during Absence from Work)

#### Article 36

1. During the period of absence from work of the previous Article, a person qualified pursuant to the provision of paragraph (1), Article 14 may operate the fishery covered by said fishery right, if permitted by the Governor concerned, notwithstanding the provision of Article 9.
2. If an application for the permission set forth in the preceding paragraph has been filed, the Governor concerned shall hear the opinions of the Sea-area Fisheries Adjustment Commission concerned.
3. With respect to the permission of paragraph (1), the provisions of paragraph (5) and paragraph (6), Article 13 (Hearing of Opinions), paragraph (2), Article 22 (Case Where no License is Granted), Article 34 (Restrictions or Conditions of Fishery Right), the preceding Article (Notification of Absence from Work), the next Article, paragraph (1), paragraph (2) and paragraph (5) of Article 38.

Article 39 (Rescission of Fishery Right) and Article 40 (Rescission of the License Granted by Mistake) shall apply *mutatis mutandis*. In this case, "Article 14" in paragraph (1), Article 38 shall be deemed to be replaced with "paragraph (1), Article 14." (4) The provisions of the preceding three paragraphs shall apply *mutatis mutandis* to the case where in the period during which the exercise of a fishery right is suspended owing to the disposition pursuant to the provision of paragraph (2), Article 39, another person is going to operate said fishery. (Rescission of Fishery Right due to Absence from Work)

#### Article 37

1. When the absence from work is made for one year from the date when a license was granted or made for two years successively, the Governor concerned may rescind the fishery right.

2. The period during which the exercise of a fishery right is suspended based on the disposition pursuant to the provision of paragraph (1), Article 39, the order pursuant to the provision of paragraph (1) or paragraph (2), Article 65, the instruction pursuant to the provision of paragraph (1), Article 67, the order pursuant to the provision of paragraph (11) of the same Article, the instruction pursuant to the provision of paragraph (1), Article 68 or the order pursuant to the provision of paragraph (11), Article 67 applied mutatis mutandis by replacement in paragraph (4) of the same Article shall not be included in the period of the preceding paragraph, except for the case where the suspension is due to the cause imputable to the fishery right holder.
3. When the Governor concerned is going to rescind a fishery right pursuant to the provision of paragraph (1), he/she shall hear the opinions of the Sea-area Fisheries Adjustment Commission concerned.
4. In the case of the preceding paragraph, the provisions of paragraph (5) through paragraph (8) of Article 34 (Hearing of Opinions) shall apply mutatis mutandis. In this case, “the Sea-area Fisheries Adjustment Commission concerned” in paragraph (7) of the same Article shall be deemed to be replaced with “the Governor concerned.” (Rescission of Fishery Right due to Loss of Qualification, etc.)

#### Article 38

1. If a fishery right holder granted a license of a fishery loses the qualification pursuant to the provision of Article 14, the Governor concerned shall rescind the fishery right.
2. When the Governor concerned is going to rescind the fishery right pursuant to the provision of the preceding paragraph, he/she shall hear the opinions of the Sea-area Fisheries Adjustment Commission concerned.
3. In the case where a person other than a fishery right holder substantially governs the management of the fishery covered by said fishery right, if the Sea-area Fisheries Adjustment Commission concerned finds it obvious that the person will not be granted the license of said fishery pursuant to the provisions of Article 15 through 19 (Priority Order) and files an application proposing that the fishery right should be rescinded, the Governor concerned may rescind the fishery right.
4. With respect to the application of the provision of the preceding paragraph, in the case where a Fisheries Cooperative Association as a fishery right holder operates the fishery covered by said fishery right, with an

contribution from another person, it shall not be construed that the other person substantially governs the management of said fishery based on the fact that the amount of said contribution accounts for a majority of the total amount of contribution.

5. In the case of paragraph (2), the provision of paragraph (4) of the preceding Article (Hearing of Opinions) shall apply *mutatis mutandis*, and in the case of paragraph (3), the provisions of paragraph (5) through paragraph (8) of Article 34 (Hearing of Opinions) shall apply *mutatis mutandis*. (Change, Rescission or Suspension of Exercise of Fishery Right for the Necessity of Public Interest)

### Article 39

1. The Governor concerned may change, rescind or suspend the exercise of a fishery right, when he/she finds it necessary for fisheries adjustment, the navigation, anchoring or mooring of ships, installation of underwater cables and other public interest.
2. Also when a fishery right holder violates the provisions of the acts and ordinances concerning fisheries, the preceding paragraph shall apply.
3. When the Governor concerned is going to dispose pursuant to the provisions of the preceding two paragraphs, he/she shall hear the opinions of the Sea-area Fisheries Adjustment Commission concerned.
4. In the case of the preceding paragraph, the provision of paragraph (4), Article 37 (Hearing of Opinions) shall apply *mutatis mutandis*.
5. With respect to the change or rescission or the suspension of exercise of a fishery right pursuant to the provision of paragraph (1) or paragraph (2), the provision of paragraph (6), Article 11 shall apply *mutatis mutandis*.
6. The prefectural government concerned shall compensate said fishery right holder for the loss caused by the change or the rescission or the suspension of exercise of the fishery right pursuant to the provision of paragraph (1).
7. The loss to be compensated for pursuant to the provision of the preceding paragraph shall be the loss usually caused by the disposition of the same paragraph.
8. The amount of compensation money of paragraph (6) shall be decided by the Governor concerned, after he/she hears the opinions of the Sea-area Fisheries Adjustment Commission concerned.

9. A person who is dissatisfied with the amount of compensation money set forth in the preceding paragraph may demand an increase of amount by means of an appeal made within six months from the date when the notice of the decision is received.
10. In the appeal set forth in the preceding paragraph, the prefectural government concerned shall be the defendant.
11. If there is a lien or a mortgage on the fishery right rescinded pursuant to the provision of paragraph (1), the prefectural government concerned shall deposit the compensation money unless said lien holder or mortgage holder offers to the effect that no deposit is required.
12. The lien holder or mortgage holder of the preceding paragraph may exercise his/her right for the compensation money deposited pursuant to the provision of the same paragraph.
13. If there is a person who is benefited from the change or rescind or suspension of exercise of the fishery right pursuant to the provision of paragraph (1), the prefectural government concerned may let the person bear the whole or a part of the amount of compensation money of paragraph (6).
14. In the case of the preceding paragraph, the provisions of paragraph (9) and paragraph (10), paragraph (2), Article 34 (Consultation with the Sea-area Fisheries Adjustment Commission) and paragraph (4), Article 37 (Hearing of Opinions) shall apply *mutatis mutandis*. In this case, “an increase of amount” in paragraph (9) shall be deemed to be replaced with “a decrease of amount.”
15. The amount to be borne pursuant to the provision of paragraph (13) may be collected as in the disposition for nonpayment of local tax; provided that the order of lien shall come after the national tax and the local tax. (Rescission of the License Granted by Mistake)

Article 40 In the case where a license is granted by mistake, when the Governor concerned is going to rescind it, he/she shall hear the opinions of the Sea-area Fisheries Adjustment Commission concerned. (Protection of Mortgage Holder)

#### Article 41

1. When the Governor concerned has rescinded a fishery right, he/she shall immediately notify the lien holder or mortgage holder to that effect.



2. The right holder of the preceding paragraph may request an auction of the fishery right within 30 days from the date when the notice is received; provided that the same shall not apply to the rescission pursuant to the provision of paragraph (1), Article 39 or the rescission of the license granted by mistake.
3. The fishery right shall continue to exist within the period set forth in the preceding paragraph or till the date when the procedure of the auction is completed within the scope of the purpose of the auction.
4. The sale amount of the auction shall be allocated for covering the expense of the auction and the payment of the debt to the right holder of paragraph 1, and the balance shall belong to the national treasury.
5. When the purchaser has paid the amount, the rescission of the fishery right shall not be deemed to have come into effect. (Purchase of Structure Fixed to Fishing Ground)

Article 42 The fishery right holder who installed a structure fixed to the fishing ground for increasing the value of the fishery right may request the person who is granted the license of the fishery and benefited from the use of said structure should purchase said structure at the current value, when the fishery right becomes extinct. (Qualification for Acquiring Piscary)

Article 42-2 Any other person than Fisheries Cooperative Associations and Federations of Fisheries Cooperative Associations cannot acquire a piscary. (Nature of Piscary)

#### Article 43

1. A piscary shall be deemed to be a property.
2. A piscary may be the purpose of transfer or the merger of juridical persons, and may not be the purpose of a right.
3. A piscary may not be transferred without the consent of the fishery right holder. (Documentation of the Contents of Piscary)

Article 44 For a piscary, the following matters shall be clarified in a document.

- (i) Area of the other's waters in which a fishery can be performed
- (ii) Type of the fishery to be performed in the waters, kinds of catches and fishery season
- (iii) Period, if the duration is to be stipulated
- (iv) Fishery fee, if the fee is to be stipulated

- (v) Fishery method, if the method is to be stipulated
- (vi) Fishing boats, gear and number of fishery managers, if they are to be stipulated
- (vii) Qualification of the persons engaged in the fishery in the waters, if the qualification is to be stipulated
- (viii) Other details of the fishery in the waters (Establishment, Change and Extinction of Piscary by Ruling)

## APPENDIX 2: FISHERIES COOPERATIVE ASSOCIATION LAW OF JAPAN, 1957

### Chapter II: Fishermen's Cooperative Association

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Article 18. Any person qualified for membership in an Association shall be a fisherman who has his residence within the area of the Association and operates or engages in fisheries for over the period in a year from thirty days to ninety days which will be determined by the articles of incorporation. However, in the case of an Association whose principal membership consists of fishermen carrying on gathering, taking or culturing of aquatic animals and plants in rivers, those who have their residence within the jurisdictional area of the Association, and gather, take or culture aquatic animals and plants (excluding sport fishermen) for over the period in a year thirty days to ninety days which will be determined by the articles of incorporation, shall also be qualified for membership.

In the case of any Association whose area is larger than the sphere of a city, town or village, special ward or administrative ward, the fishermen qualified for membership as prescribed in the preceding paragraph may be limited to those operating or engaging in fisheries of specific types which will be determined by the articles of incorporation.

In addition to those prescribed in the preceding paragraphs, any Association may, in accordance with the articles of incorporation, admit the following persons as qualified for the membership:

1. Aquatic products processors who are not members of a Aquatic Products Processing Cooperative Association, but who have their residence or place of business within the jurisdictional area of the Association;
2. Fishermen's Production Association;

3. Fishermen other than those as prescribed III Par. 1 or the preceding paragraph;
4. Juridical persons (excluding Fishermen's Cooperative Associations and Fishermen's Production Associations) who have their residence or their place of business within the jurisdictional area of the Association and operate fisheries by employing less than 100 regular fisheries employees and with fishing boats whose total tonnage does not exceed 300 tons. (Capitalization)

Article 19. An Association can make its members capitalize in accordance with the articles of incorporation. Each member of the Association as prescribed in the preceding paragraph (hereinafter referred to as "capitalized association" in this chapter) shall possess one or more units of capitalization.

3. The amount of each unit of capitalization shall be equal.
4. The liability of a member shall be limited to the amount of his investment.
5. No member can exercise the right of set-off against the Association with respect to the payment for his investment. (Transfer of Share)

Article 20. No member of a capitalized association can transfer his share without the assent of the Association.

In case any person other than a member desires to acquire a share by transfer, he shall take the same proceeding as in the case of admission.

Any transferee of share shall succeed to the rights and obligations of the transferor in respect of the share.

No share may be held jointly by the members. (Voting Right and Election Right)

Article 21. Each member of any Association shall be entitled to only one voting right and one election right of officers. However, any member prescribed in Art. 18 Par. 3 (hereinafter referred to as "associate member" in this chapter and Chapter N) shall have no voting right and election right.

Any member may, in accordance with the articles of incorporation, exercise his voting right or election right on the matters previously noticed of in accordance with the provision of Art. 41 Par. 3 by a written ballot or his proxy.

Any member who exercises his voting right or election right in accordance with the provision of the preceding paragraph shall be deemed to be present at the meeting.

No proxy can represent more than two members for such voting purpose. However, in the case of an Association whose principal membership consists of fishermen carrying on gathering, taking or culturing of aquatic animals and plants in rivers and whose members (excluding associate members) exceed 1000 persons, proxy can represent as many as two members.

Any proxy must submit to the Association a document certifying his attorney. (Charge of Assessment)

Article 22. Any Association may, in accordance with the articles of incorporation, charge assessment upon its members.

No member can exercise the right of set-off against the Association with respect to the payment of assessment mentioned in the preceding paragraph. (Monetary Obligation for Contractual Infringement)

Article 23. Any Association may provide in the articles of incorporation for monetary penalties in cases where any member fails to comply with his contractual obligations to the association. (Contract for Exclusive Utilization)

Article 24. Members of an Association can, in accordance with the articles of incorporation, authorize the Association to enter into contracts with members for the exclusive utilization of a part of the facilities of the Association by its member for a specific period of time not exceeding two years.

2. The contract mentioned in the preceding paragraph shall be voluntary, and services carried on by an Association shall not be denied to a member because of his refusal to enter into such contract. (No Restriction on Admission)

Article 25. No eligible applicant for membership shall be refused by any Association without due cause, and shall no heavier condition than those attached to other members' be imposed upon him at such application. (Secession)

Article 26. Any member may secede from the Association at the end of business year by giving a minimum of sixty days' notice.

A longer period than mentioned in the preceding paragraph may be designated in the articles of incorporation.

However, the period of the required notice shall not exceed one year.

Article 27. Any member shall secede from an Association upon the occurrence of any of the following events:

1. Disqualification for membership;
2. Death, or dissolution;
3. Expulsion.

Expulsion may be exercised against members coming under any of the following items by a resolution at a general meeting; however, it shall not be effective against such member until notices of such action have been communicated to him:

1. A member who has failed to utilize the facilities of the Association for an unreasonably long period of time.
2. A member who has continually refused to comply with his obligations such as payment of investment and assessment, etc.
3. A member who has come under such cause as prescribed in the articles of incorporation. (Refundment of Secede's Share)

Article 28. Any person who has seceded from a capitalized association may, in accordance with the articles of incorporation, demand the refundment of the whole or part of his share.

The share mentioned in the preceding paragraph shall be determined in accordance with the assets of the said association as they stand at the end of the business year in which such secession has been effected.

Article 29. The right of demand prescribed in the preceding Article, shall be extinguished by prescription, if it has not been exercised for two years from the time of his secession.

Article 30. Any capitalized association may suspend refundment of the share of a person who has seceded from the Association until he has completely performed his obligation to it. (Reduction of Number of Units of Capitalization)

Article 31. Any member may, in accordance with the articles of incorporation, reduce the number of the units of capitalization held by him.

The provisions of Arts. 28 and 29 shall apply with necessary modifications to the case mentioned in the preceding paragraph.

## APPENDIX 3: THE FISHERIES LAW OF VIETNAM 2003

### Chapter II: Protection and Development of Fisheries Resources

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#### Article 7: Habitat protection

1. Organizations and individuals shall be responsible for the protection of aquatic habitat.
  2. Organizations and individuals conducting fisheries activities and other activities that directly affect the aquatic habitat, migration, spawning of fish species shall comply with provisions as set out by this Law and other legislation dealing with environmental protection, water resources and other relevant legislation.
  3. Organizations and individuals while setting up, altering or destroying the constructions related to aquatic habitat, migration, spawning of fisheries resources shall conduct environment impact assessment as set out by legislation dealing with environmental protection.
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1. Organizations and individuals while fishing by setting barriers, set nets in rivers, lakes, lagoons shall have to set up a corridor area for the movement of fisheries resources as regulated by local People's Committees.

#### Article 8: Conservation, protection, rehabilitation and development of fisheries resources

1. The State shall issue policies regarding the conservation and protection of fisheries resources, particularly of the endangered, rare and precious ones and ones that have economic value and scientific importance; shall encourage the scientific research for suitable measures to develop fisheries resources; shall invest in production of fish fry for releasing into their natural habitat and shall create artificial residence places in order to rehabilitate and develop fisheries resources.
2. Organizations and individuals shall be responsible for conservation, protection, rehabilitation and development of fisheries resources as set out by this Law and other relevant legislation.
3. Ministry of Fisheries shall periodically proclaim the followings:
  - (a) The list of aquatic species which are named in the Red Book of Vietnam and other species prohibited to be fished; the list of

- aquatic species which are prohibited to be fished in time-limited manner and the closed time as well.
- (b) Fishing methods, types of fishery and fishing gear which are prohibited to be used or are restricted to be used;
  - (c) Minimum size and type of aquatic species which are allowed to be fished and fishing seasons;
  - (d) Closed areas and time-limited closed areas.
4. In case of necessity and with the acceptance of Ministry of Fisheries, the People's Committees of provinces and cities under central level (hereinafter referred to as "provincial People's Committee") shall proclaim the supplement to the regulations made in paragraph 3 of this Article to make it suitable with practical fishing operations in their provinces.

Article 9: Planning and management of inland protected areas and marine parks

1. The inland protected areas and marine parks shall be classified as national parks, sanctuaries and aquatic habitat reserves based on the levels of typical biodiversity in accordance with national and international standards.
2. The Government shall issue the standards to classify and proclaim the protected area; shall plan, establish, manage and decentralize the inland protected areas and marine parks; shall issue the management rules of protected areas which are of national and international significant importance.  
Provincial People's Committee shall issue the management rule of protected areas to be decentralized to the local authorities for management in accordance with guidance provided by Ministry of Fisheries.
3. The State shall invest in conservation of genetic sources and biodiversity of aquatic resources; shall issue policies to encourage the domestic and foreign organizations and individuals to establish and manage the protected areas; shall issue policies to support the job alternatives and the resettlement to ensure the interests of the residents living in protected areas.
4. The organizations and individuals shall be responsible for protection of inland protected areas and marine parks in accordance with management rule of protected areas.

Article 10: Financial sources for rehabilitation of fisheries resources

1. The financial sources for rehabilitation of fisheries resources shall come from:
  - (a) State's budget;
  - (b) The Fund for Rehabilitation of Fisheries Resources shall be contributed by organizations and individuals engaged in fishing operations, aquaculture, trading, import and export of fish; by organizations and individuals involved in occupations that directly affect the fisheries resources; by donation of domestic and foreign organizations and individuals; and other sources as regulated by legislation.
2. The Government shall make regulations on the management, usage the financial sources for purposes of fisheries resources rehabilitation; shall make specific regulations on the persons, contribution and exempted cases of the Fund.

**Chapter III: Fishing Operations**

Article 11: Principles in fishing operations

1. The fishing operations conducted at seas, in rivers, lakes, lagoons and other natural waters shall be ensured not lead to the depletion of fisheries resources; shall be done in compliance with regulations relating to fishing seasons, fishing time, fishing grounds, permitted types and sizes, annual allowable catch and shall be complied with provisions stated in this Law and other relevant legislation.
2. The fishing gear and fishing vessels used shall have sizes suitable with permitted fish species.

Article 12: Offshore fishing

1. The State shall issue integrated policies on investment, job training, establishment of communication system, assessment of fisheries resources, prediction of fishing grounds, logistic service, organization of proper production means in order to promote organizations and individuals to develop offshore fishing.



2. Organizations and individuals investing in offshore fishing shall be subject to Law on Domestic Investment Encouragement and shall enjoy other preferential policies of the State.
3. Organizations and individuals involved in offshore fishing shall have communication system and lifevest on board; shall comply with regulations on maritime legislation.
4. The owners of offshore fishing vessels shall be responsible for buying insurance for crewmembers. The State shall have promotion policies for the owners who are voluntary to buy the insurance for offshore fishing vessels.

The insurance conditions, premium, minimum insurance fees of the crewmembers shall be applied in accordance with legislation on insurance trade.

#### Article 13: Coastal fishing

1. The State shall issue policies regarding the re-organization of production, job alternatives related to coastal fishing operations and job structure among capture fishery, aquaculture, fish processing, farming, plantation and services.
2. Organizations and individuals engaged in coastal fishing when transferring to offshore fishing shall be provided with guidance, training, capital support, allocation of land and marine areas for aquaculture in accordance with State policies.
3. Organizations and individuals engaged in coastal fishing shall have life-vest, weather forecast monitoring equipment; shall comply with legislation on inland water ways and maritime.

#### Article 14: Survey and research of fisheries resources

1. The State shall invest in survey, research and assessment of fisheries resources and draw the maps on fisheries resources.
2. Ministry of Fisheries shall chair and in coordination with relevant Ministries and sectors and provincial People's Committees to conduct the survey and assessment of fisheries resources in specific sea areas, fishing grounds, rivers and big lakes; shall proclaim fishing grounds and identify annual allowable catch in specific sea areas and fishing grounds.
3. Provincial People's Committee shall have responsibility to conduct the assessment of fisheries resources within local jurisdiction in accordance with guidance of Ministry of Fisheries.

Article 15: Management of fishing grounds

1. Organizations and individuals engaged in fishing operations at seas, in rivers, lakes, lagoons and other natural waters shall comply with the regulations set out by this Law and other relevant legislation.
2. The Government shall have responsibility to demarcate sea areas and fishing routes, shall authorize powers to relevant Ministries and sectors and provinces to ensure the close and integrated coordination between fisheries inspection forces at seas and fishing routes.
3. The provincial People's Committees shall have responsibility to issue rules of fishing grounds in rivers, lakes, lagoons and other natural waters under its jurisdiction in accordance with guidance of Ministry of Fisheries; shall organize and promote the local residents to take part in monitoring, detection and prosecution of any violations committed to fisheries activities in fishing grounds.

APPENDIX 4: REGULATIONS ON THE MANAGEMENT  
OF LAGOON FISHERIES IN THUA

**Thien Hue dated 19 December 2005**

**Chapter II: Fishers' Organizations**

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Article 3. Individuals and households participating in lagoon fisheries must organize themselves in Fisheries Associations at the village's level, inter-village or commune levels. The State will only delegate the power of lagoon fisheries management to the fishery associations at the grassroots level.

Article 4. Fisheries Associations at the grassroots level are social and professional organizations. Fisheries Associations are under the Vietnamese Fisheries Society (VINAFIS). The Fisheries Associations are operated under the leadership of the Communist Party and authority of the communes, sponsored by the Department of Fisheries and Districts' Offices of Agriculture and Rural Development and professionally instructed by the higher Fisheries Associations.

Article 5. The State delegates management of fisheries resources in certain areas of lagoon to Fisheries Associations at the grassroots level. On that basis Fisheries Associations properly and creatively regulate the fisheries activities of their members, ensuring the harmony among members and between members and associations and the whole society.

Article 6. Fisheries Associations can take the initiative in arranging the fishing grounds while maintaining the traditional fishing grounds of individuals and households in line with the general planning of the State and the benefit of the community.

Article 7. Fisheries Associations have to act as management agencies on behalf of government agencies at all levels in the fields of lagoon fisheries tax, management and protection of aquatic resources, management of the aquatic environment and transportation through the fishing grounds, etc.

Article 8. Fisheries Associations at the local level are responsible for resolving conflicts in fishing grounds and about resources among individuals and/or household members. Only when conflict resolution fails do the authorities intervene.

Article 9. Within the framework of their associations, fisherfolk can create forms of voluntary fisheries economic cooperation in the community such as: credit, savings, fisheries product processing and sale, material supply, etc.

Article 10. Fisheries researchers, managers, traders, manufacturers and investors can participate in Fisheries Associations at the local level as unofficial members who provide assistance and cooperation for development. Fisheries Associations at the local level can admit or refuse these people.

Article 11. The State encourages Fisheries Associations at the local level, based on the State Law, to develop their “self-management rules” detailing community rules and aimed at protecting fishing grounds, aquatic resources and other issues such as protection of the aquatic environment and management of water ways and collection of fisheries tax, etc.

Article 12. Fisheries Associations at the local level have the right to expel members who seriously violate their rules many times, seriously violate the State Law or whose action adversely impacts the environment and aquatic resources.

### **Chapter III: Management of Fisheries Capacity**

Article 13. The Provincial People’s Committee delegates power to the People’s Committees of Lagoon Districts to issue the fishing rights to Fisheries Associations at the village and commune levels in certain water bodies in their designated area based on the quantity and types of fishing gear, fishing seasons and aquatic species. The fishing rights in the lagoon area include the rights and responsibilities to timely prevent acts of fishery law violation, responsibilities of protecting fishing grounds, developing aquatic resources, ensuring free access to water ways, preventing degradation of the water environment and ensuring submission of taxes to the State.

Article 14. Fisherfolk using fixed fishing gear can only locate their gear within the designated water area of their local association. They have to maintain corridors, for aquatic species to move, according to the improved planning. Fisherfolk using mobile fishing gear are allowed to carry out their activity in adjacent areas, but they are not allowed to disturb the fixed fishing gear.

Article 15. In the lagoon it is forbidden to use fishing boats with a machine capacity of more than 16.5 HP.

Article 16. Natural aquatic resources exploitation taxes in the lagoon fully contribute to commune budgets. The People's Committees of the Communes define the percentage of tax that is left for Fisheries Associations at the local levels to cover the expenses of tax collection in the community, management, organization and implementation of aquatic resources protection and development activities.

Article 17. The taxed production norm of aquatic resource exploitation for each area of lagoon fisheries is agreed upon by the Provincial Tax Department and the Department of Fisheries and is then submitted to the Provincial People's Committee for approval after consultation is made with communes' authorities and local Fisheries Associations.

Article 18. Fisheries Associations are granted the fishing right for a period of ten years in normal water bodies and five years in sensitive water bodies. In extremely sensitive water bodies, the District People's Committee annually grants the fishing rights or authorizes the Commune People's Committees to carry out an annual auction for this exploitation.

Article 19. The State can revoke rights over all or parts of the allocated water bodies from Fisheries Associations in the following cases:

1. The Fisheries Association does not exist anymore.
2. The Fisheries Association voluntarily returns the allocated water bodies.
3. The term of use of the allocated water bodies has expired.
4. The Fisheries Association does not fish, protect the aquatic resources or abuse the resources without the permission of concerned agencies.
5. The Fisheries Associations seriously violate the law on fisheries management or other laws.
6. The term of use of fishing rights in the water bodies has not expired but the State needs the allocated water bodies for socio-economic development.

Article 20. The government agencies that decide to grant the fishing rights are entitled to make a decision to annul or cancel it.

Article 21. Sports and recreational fisheries and some small fishing jobs including handline fishery, fishing-tackle, casting-net fishing, gill net fishery with the net's length less than 50 m, fishing with pots of all kinds, oyster raking, crab and snail catching by hand can freely use the lagoon areas. These activities cannot disturb the fishing gear registered by the local Fisheries Associations.

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