



LIBRARY of PARLIAMENT  
BIBLIOTHÈQUE du PARLEMENT

## LEGISLATIVE SUMMARY



### **Bill S-3: An Act to amend the Coastal Fisheries Protection Act**

**Publication No. 41-2-S3-E**  
**28 October 2013**  
***Revised 21 May 2015***

**Penny Becklumb**

Economics, Resources and International Affairs Division  
Parliamentary Information and Research Service

Library of Parliament **Legislative Summaries** summarize government bills currently before Parliament and provide background about them in an objective and impartial manner. They are prepared by the Parliamentary Information and Research Service, which carries out research for and provides information and analysis to parliamentarians and Senate and House of Commons committees and parliamentary associations. Legislative Summaries are revised as needed to reflect amendments made to bills as they move through the legislative process.

Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

© Library of Parliament, Ottawa, Canada, 2015

*Legislative Summary of Bill S-3*  
(Legislative Summary)

Publication No. 41-2-S3-E

Ce document est également publié en français.

# CONTENTS

1	BACKGROUND.....	1
1.1	The <i>Coastal Fisheries Protection Act</i> .....	1
1.2	The Port State Measures Agreement .....	2
2	DESCRIPTION AND ANALYSIS .....	3
2.1	Extension of Controls Over Foreign Fishing Vessels Seeking Access to Canadian Ports .....	3
2.1.1	Foreign Fishing Vessels Ordered to Port .....	3
2.1.2	Forfeiture Under an International Fisheries Treaty or Arrangement .....	4
2.2	Implementation of the Port State Measures Agreement.....	5
2.2.1	Information Sharing .....	5
2.2.2	Sending Abroad Anything Seized.....	5
2.2.3	Definitions .....	5
2.3	Prohibition on Importing Illegally Acquired Fish and Marine Plants and Clarifications for the Purposes of Administration and Enforcement of the Act .....	6
2.3.1	Prohibition on Importing Illegally Acquired Fish and Marine Plants .....	6
2.3.2	Clarifications for the Purposes of Administration and Enforcement of the Act .....	7
2.3.2.1	Measures Incorporated by Reference .....	7
2.3.2.2	Justice Who Considers Applications .....	7
2.3.2.3	Entering, Inspecting and Searching a Place .....	7
2.3.2.4	Seizure, Detention and Return .....	9
2.3.2.5	<b>Forfeiture</b> .....	9
2.3.2.6	Maximum Fines .....	10
2.4	Insubstantial Amendments.....	10
2.5	Coming into Force.....	10
3	COMMENTARY .....	10



# LEGISLATIVE SUMMARY OF BILL S-3: AN ACT TO AMEND THE COASTAL FISHERIES PROTECTION ACT

---

## 1 BACKGROUND

Bill S-3, An Act to amend the Coastal Fisheries Protection Act (alternative title: Port State Measures Agreement Implementation Act) was introduced in the Senate on 23 October 2013 **and subsequently passed without amendment. In the House of Commons, the Standing Committee on Fisheries and Oceans amended the bill on 29 April 2015.**

Bill S-3 was previously introduced during the 1<sup>st</sup> Session of the 41<sup>st</sup> Parliament as Bill S-13. That bill died on the *Order Paper* with the prorogation of Parliament on 13 September 2013.

Bill S-3 amends the *Coastal Fisheries Protection Act*<sup>1</sup> to implement the United Nations Food and Agriculture Organization (FAO)'s 2009 *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*.<sup>2</sup> In addition, the bill extends Canadian controls over foreign fishing vessels seeking access to Canadian ports, adds to the Act prohibitions related to importing illegally acquired fish and marine plants, and clarifies some of the Act's administration and enforcement provisions.

### 1.1 THE *COASTAL FISHERIES PROTECTION ACT*

The *Coastal Fisheries Protection Act* regulates foreign fishing vessels fishing in Canadian fisheries waters,<sup>3</sup> as well as harvesting sedentary species on the continental shelf of Canada beyond Canadian fisheries waters.<sup>4</sup>

In 1994, the Act was amended to extend its application to the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area, a very large area of the Atlantic Ocean on the high seas.<sup>5</sup> The Act now prohibits prescribed classes of foreign fishing vessels from fishing for straddling stocks in the NAFO Regulatory Area in contravention of any prescribed conservation and management measures.

Parliament amended the Act again, in 1999, to implement the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (the "Fish Stocks Agreement") of 1995.<sup>6</sup> The Act now prohibits fishing vessels of any state participating in the Fish Stocks Agreement from contravening prescribed international conservation or management measures in prescribed areas of the sea. The 1999 amendments also enabled the implementation of further international fisheries treaties or arrangements to which Canada is a party by prohibiting the contravention of prescribed measures in prescribed areas of the sea, and adding related regulatory powers. Finally, the

1999 amendments included a prohibition against fishing vessels without nationality fishing in any such prescribed areas of the sea.

## 1.2 THE PORT STATE MEASURES AGREEMENT

The FAO Conference approved the *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (the “Port State Measures Agreement”) on 22 November 2009. Canada signed the Port State Measures Agreement on 19 November 2010, but has yet to ratify it.<sup>7</sup> As stated by Fisheries and Oceans Canada, the amendments to the *Coastal Fisheries Protection Act* contained in Bill S-3 will assist Canada “to meet its international commitments regarding the PMSA [Port State Measures Agreement].”<sup>8</sup>

As described by the FAO,

[t]he Agreement aims to prevent illegally caught fish from entering international markets through ports. Under the terms of the treaty, foreign vessels will provide advance notice and request permission for port entry, countries will conduct regular inspections in accordance with universal minimum standards, offending vessels will be denied use of port or certain port services and information sharing networks will be created.<sup>9</sup>

The Port State Measures Agreement is the “first ever global treaty focused specifically on the problem of IUU [illegal, unreported and unregulated] fishing,”<sup>10</sup> and is the culmination of a progression of measures taken by the international community to address the problem. Such measures include:

- the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (1993);
- the UN Fish Stocks Agreement (1995);
- the FAO voluntary *Code of Conduct for Responsible Fisheries* (1995);
- the FAO *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (2001); and
- the FAO *Model Scheme on Port State Measures to Combat IUU Fishing* (2005).

The Port State Measures Agreement will enter into force 30 days after 25 states and regional economic integration organizations have ratified, accepted, approved or acceded to it (article 29). In August 2014, the FAO reported that 11 states and regional economic integration organizations had done so.<sup>11</sup>

## 2 DESCRIPTION AND ANALYSIS

Bill S-3 has three interrelated purposes:

- to extend controls over foreign fishing vessels seeking access to Canadian ports;
- to implement the Port State Measures Agreement; and
- to prohibit importing illegally acquired fish and marine plants and clarify certain administration and enforcement powers in the Act.

### 2.1 EXTENSION OF CONTROLS OVER FOREIGN FISHING VESSELS SEEKING ACCESS TO CANADIAN PORTS

#### 2.1.1 FOREIGN FISHING VESSELS ORDERED TO PORT

Bill S-3 provides a regulatory power for authorizing (including by means of licences or permits) foreign fishing vessels ordered to port by their flag state<sup>12</sup> to enter Canadian fisheries waters for any purpose related to verifying compliance with:

- a foreign fisheries law;
- any conservation or management measures of a fisheries management organization; or
- an international fisheries treaty or arrangement to which Canada is a party, including any conservation, management or enforcement measures taken under the treaty or arrangement (subclause 5(1), adding new subparagraph 6(a)(iii)).

(Collectively, these are “non-Canadian fisheries requirements.”)

Bill S-3 includes new administrative and enforcement provisions that apply to such a foreign fishing vessel, as follows:

- **Inspection:** For a purpose related to verifying compliance with a non-Canadian fisheries requirement, a protection officer may board and inspect a foreign fishing vessel, and in doing so, exercise powers described in section 2.3.2.3 of this legislative summary, to the extent that the exercise of those powers is authorized by the relevant non-Canadian fisheries requirement (clause 6, adding new subsections 7.1(4) and 7.1(5) to the Act).
- **Search:** A protection officer may search a foreign fishing vessel, or any other place, with a warrant obtained on *ex parte* application<sup>13</sup> before a justice, for any fish, marine plant or other thing, if there are reasonable grounds to believe that the search would produce evidence of a contravention of a non-Canadian fisheries requirement, and the vessel’s flag state does not object to the search. The vessel’s flag state is deemed not to object if it does not communicate its objection within a prescribed time after being informed of the protection officer’s intention to apply for a search warrant (clause 6, adding new subsections 7.6(3) and 7.6(4) to the Act).

- **Seizure:** With a warrant obtained on *ex parte* application, a protection officer may seize any fish, marine plant or other thing in such a vessel or in any other place. A justice may issue the warrant only if there are reasonable grounds to believe that the vessel contains evidence of a contravention of a non-Canadian fisheries requirement, or that there is any such fish, marine plant or other thing from the vessel in the other place; and the vessel's flag state does not object to the seizure. Before issuing a warrant, the justice may require that notice of the application be given to any interested person in order to give that person an opportunity to make representations (subclause 7(3), adding new subsections 9(2) to 9(4) to the Act).
- **Period of Detention:** Any fish, marine plant or other thing so seized (or if it was sold because it was perishable, the proceeds realized from the sale) must be returned or paid three months after the seizure unless an application to forfeit is filed before that time. The period of detention may be extended, by court order, on request of the Minister of Fisheries and Oceans before the end of the period of detention if the court is satisfied that such an extension is justified in the circumstances (clause 8, adding new section 12.1 to the Act).
- **Forfeiture:** A justice may order the forfeiture of any fish, marine plant or other thing so seized (or the proceeds of sale of the seized thing) on *ex parte* application by a protection officer, if there are reasonable grounds to believe that the fish, marine plant or other thing is evidence of a contravention of a non-Canadian fisheries requirement and the foreign fishing vessel's flag state does not object to the forfeiture. Before making the order, the justice may require that notice of the application be given to an interested person in order to give that person an opportunity to make representations. Once forfeited, the fish, marine plant or other thing may be disposed of as the minister directs. If not forfeited, the fish, marine plant, other thing, or proceeds from a sale must be returned or paid to the person from whom the thing was seized (clause 11, adding new section 16.01 to the Act).

#### 2.1.2 FORFEITURE UNDER AN INTERNATIONAL FISHERIES TREATY OR ARRANGEMENT

Another new provision, distinct from new section 16.01 (described above), provides for forfeiture of any fish or marine plant that a protection officer has detained from a foreign fishing vessel pursuant to an international fisheries treaty or arrangement to which Canada is a party. A justice hearing the *ex parte* application for forfeiture must first be satisfied that the detention and proposed forfeiture are both consistent with the treaty or arrangement, and that the foreign fishing vessel's flag state has not provided the minister, within the time period provided in the treaty or arrangement, with information required by the treaty or arrangement to prevent the forfeiture. Before making the order, the justice may require that notice of the application be given to any interested person in order to give that person the opportunity to make representations. Once forfeited, the fish or marine plant must be disposed of as the minister directs (clause 13, adding new section 16.3 to the Act).



## 2.2 IMPLEMENTATION OF THE PORT STATE MEASURES AGREEMENT

### 2.2.1 INFORMATION SHARING

In order to implement the Port State Measures Agreement, Bill S-3 adds to the Act significant new powers for the minister to share information with other countries, fisheries management organizations and international organizations. Specifically, the minister may disclose information about the following:

- Canada's refusing to authorize a foreign fishing vessel to enter Canadian fisheries waters;
- Canada's suspending, amending or cancelling such an authorization;
- an inspection report in respect of a foreign fishing vessel; and
- an enforcement action taken in respect of a foreign fishing vessel (clause 13, adding new section 16.4 to the Act).

In addition, if another state takes a measure under the Port State Measures Agreement in respect of a Canadian fishing vessel, the minister may disclose to another country or organization any measure that is taken under the Canadian *Fisheries Act* in respect of that Canadian fishing vessel (clause 13, adding new section 16.5 to the Act).

### 2.2.2 SENDING ABROAD ANYTHING SEIZED

Bill S-3 includes a new provision allowing for a justice, on *ex parte* application, to order anything seized under the Act to be sent to a foreign state that has requested that the thing be sent to it for the purpose of administering or enforcing its laws. The justice may require that the thing be brought before him or her, and may include in the order any appropriate terms and conditions, including in relation to the preservation and return to Canada of the thing or the protection of the interests of third parties. Before making the order, the justice may require that any interested party be given notice of the application in order to allow that person to make representations (clause 13, adding new section 16.7 to the Act).

Under related amendments, an order that a seized item be sent to a foreign state takes precedence over legal obligations that would otherwise exist to return the item (or pay the proceeds from its sale) to the person from whom it was seized (clause 8, adding new subsection 12(2) to the Act; clause 10, amending subsection 16(1); and clause 11, adding new subsection 16.01(5) to the Act).

### 2.2.3 DEFINITIONS

Bill S-3 clarifies the existing definition of "fishing vessel" and expands the definition to include a vessel that is used in "transshipping<sup>[14]</sup> fish, or marine plants, that have not been previously landed." According to the government backgrounder, this amendment is being made to "close a potential loophole to ensure that IUU fishing activities are not displaced from fishing vessels to other types of vessels."<sup>15</sup>

Bill S-3 also revises some of the definitions set out in the Act to distinguish between the Fish Stocks Agreement, which the Act already implements, and the new Port State Measures Agreement. It clarifies and expands the existing definition of “fish,” which includes shellfish, crustaceans and marine animals, to include any part or derivative of a fish, as well as eggs, sperm, spawn, larvae, spat or juvenile stages of fish. In addition, new terms “fisheries management organization” and “flag state” are defined (clause 2, amending subsection 2(1) of the Act).

## 2.3 PROHIBITION ON IMPORTING ILLEGALLY ACQUIRED FISH AND MARINE PLANTS AND CLARIFICATIONS FOR THE PURPOSES OF ADMINISTRATION AND ENFORCEMENT OF THE ACT

### 2.3.1 PROHIBITION ON IMPORTING ILLEGALLY ACQUIRED FISH AND MARINE PLANTS

Bill S-3 adds to the Act prohibitions against importing any illegally acquired fish or marine plant, and, in connection with such an importation, transporting, selling, distributing, purchasing or accepting it. These prohibitions apply when the person taking any of these actions knows that the fish or marine plant was taken, harvested, possessed, transported, distributed or sold contrary to:

- an international fisheries treaty or arrangement to which Canada is a party;
- any conservation or management measures of a prescribed fisheries management organization of which Canada is not a member; or
- a fisheries law of a foreign state (clause 4, adding new section 5.6 to the Act).

**The House of Commons Standing Committee on Fisheries and Oceans amended the bill to include an additional prohibition against importing any fish or marine plant that is not accompanied by the documentation required by regulation (clause 4, adding new section 5.6(3) to the Act). A related regulatory power was also added (clause 5, adding new section 6(d.1) to the Act).**

In support of the new prohibitions:

- a new definition of “marine plant” is added (clause 2, amending subsection 2(1) of the Act);
- a new regulatory power allows the Governor in Council to prescribe fisheries management organizations of which Canada is not a member (subclause 5(2), adding new paragraph 6(b.31) of the Act);
- existing administration and enforcement provisions referring to “fish” are expanded to also apply in respect of marine plants (clause 6, replacing subsection 7.1 of the Act with new subsection 7.6(1); subclause 7(1), amending paragraph 9(b) of the Act; and clause 8, amending section 11 of the Act);
- a new provision allows the minister to disclose information relating to the importation of any fish or marine plant to the Canada Border Services Agency for a purpose related to verifying compliance with the Act (clause 13, adding new section 16.6 to the Act); and

- a new offence and punishment section sets a maximum fine of \$500,000 on conviction on indictment, and \$100,000 on summary conviction for contravening the prohibitions. Maximum fines may be doubled for subsequent offences **of importing, transporting, selling, distributing, purchasing or accepting any illegally acquired fish or marine plant but not for subsequent offences of importing any fish or marine plant without the documentation required by regulation** (clause 16, adding new section 18.03 to the Act).

### 2.3.2 CLARIFICATIONS FOR THE PURPOSES OF ADMINISTRATION AND ENFORCEMENT OF THE ACT

Many of the amendments that Bill S-3 makes to the Act are for the purposes of clarifying and expanding upon powers with respect to the administration or enforcement of the Act.

#### 2.3.2.1 MEASURES INCORPORATED BY REFERENCE

Bill S-3 amends existing provisions to clarify that international<sup>16</sup> conservation, management and enforcement measures may be incorporated by reference, or carried out and given effect to, in Canadian regulations “as of a fixed date or as they are amended from time to time” (subclause 5(3), amending subparagraph 6(e)(i) of the Act; and subclause 5(6), amending subparagraph 6(f)(i) of the Act).

#### 2.3.2.2 JUSTICE WHO CONSIDERS APPLICATIONS

Currently, section 7.1 of the Act provides that a justice of the peace may issue a warrant authorizing a protection officer to enter and search a place for fish or other evidence of a contravention of the Act. Bill S-3 amends that provision to replace “justice of the peace” with a “justice, as defined in section 2 of the *Criminal Code*.”

Section 2 of the *Criminal Code* states that “justice” means “a justice of the peace or a provincial court judge, and includes two or more justices where two or more justices are, by law, required to act or, by law, act or have jurisdiction” (clause 6, amending section 7.1 of the Act and renumbering it section 7.6).

As discussed elsewhere in this legislative summary, Bill S-3 also adds a number of new provisions under which a justice, as defined in section 2 of the *Criminal Code*, may hear applications, including for a search warrant, a warrant authorizing a protection officer to seize something, or a forfeiture order.

#### 2.3.2.3 ENTERING, INSPECTING AND SEARCHING A PLACE

Currently, paragraph 7(a) of the Act allows a protection officer to *board and inspect* any fishing vessel found within Canadian fisheries waters or the NAFO Regulatory Area for the purpose of ensuring compliance with the Act. Bill S-3 substantially reproduces that paragraph (clause 6, replacing paragraph 7(a) of the Act with subsection 7.1(2)) and adds new sections providing details about the powers a protection officer has to enter and inspect a place, as described below.

Under the new sections, a place that may be inspected (and under other provisions, searched) is not limited to a fishing vessel found within Canadian fisheries waters or the NAFO Regulatory Area, but may include any other vehicle, including a vessel or aircraft, a container and a dwelling place (clause 6, adding new sections 7 and 7.4 to the Act).

Clause 6 expands the power to enter and inspect a place, as follows:

- A protection officer may enter a place for a purpose related to verifying compliance with the Act if the officer has reasonable grounds to believe that there is any fish, marine plant or other thing, or any activity carried on, in respect of which the Act applies, or any related records, books or other documents (new subsection 7.1(1)). In a case where the place is a vehicle, the protection officer may direct that the vehicle be stopped and moved to another location and detained for a reasonable time (new section 7.3).
- For a purpose related to verifying compliance with the Act, a protection officer may exercise specific powers on entering such a place, including:
  - examining, photographing, measuring, removing and taking samples of things;
  - using any means of communication, computer system, and copying equipment;
  - conducting tests or analyses of anything;
  - directing any person to put any machinery, vehicle or equipment in the place into operation or cease operating it; and
  - prohibiting or limiting access to all or part of the place (new subsection 7.1(3)).
- A protection officer may be accompanied by an assistant (new section 7.2).

The owner or person in charge of the place must give all assistance that the protection officer reasonably requires, including providing access to any document, information or data that is reasonably required (new subsection 7.1(6)).

- A protection officer may only enter a dwelling place without the occupant's consent under the authority of a warrant. A warrant may be obtained, on *ex parte* application, when necessary to verify compliance with the Act if the protection officer has reasonable grounds to believe that there is any fish, marine plant, other thing, or activity carried on, in respect of which the Act applies, or any related records, books or other documents in the dwelling place (new section 7.4).
- As discussed in section 2.1.1 of this legislative summary, the power to enter and inspect a vessel is expanded to cover foreign fishing vessels ordered to port by their flag state (new subsections 7.1(4) and 7.1(5)).

With respect to a protection officer's power to *search* a vessel or other place when authorized by a warrant, Bill S-3 substantially reproduces existing provisions of the Act (namely subsections 7.1(1) and 7.1(2)) in new subsections 7.6(1) and 7.6(2) of the Act, and expands the power to provide for a search, with a warrant, of a foreign fishing vessel ordered to port by the flag state, as discussed in section 2.1.1 of this legislative summary (clause 6, adding new subsections 7.6(3) and 7.6(4) to the Act).

#### 2.3.2.4 SEIZURE, DETENTION AND RETURN

Bill S-3 clarifies and expands upon a protection officer's existing powers to seize, detain and return a fishing vessel or related goods.

Related to the amendments expanding a protection officer's power to enter and inspect a "place," as opposed to a fishing vessel, Bill S-3 also expands a protection officer's power to seize goods "in any place," not just aboard a fishing vessel, if the protection officer believes on reasonable grounds that an offence under the Act has been committed (subclause 7(1), amending paragraph 9(b) of the Act).

When a protection officer or other person has custody of any fish, marine plant or other thing that has been seized and is perishable, section 11 of the Act currently allows for that person to sell it. Bill S-3 expands that power, allowing the person who has custody of the thing that is perishable "or susceptible to deterioration" to "dispose of it in any manner that he or she considers appropriate" (clause 8, amending section 11 of the Act).

Under section 12 of the Act, a seized vessel or goods, or payment of the proceeds realized from a sale of a seized vessel or goods, are to be returned if the minister decides not to institute a prosecution; they are to be returned in any event at the end of three months, unless proceedings are instituted before that time. Bill S-3 allows for the period of detention to be extended by court order if the minister requests it before the end of the period of detention and the court is satisfied that such an extension is justified in the circumstances (clause 8, adding new subsection 12(3)).

The bill also provides for returning, or extending the period of detention of, any fish, marine plant or other thing seized from a foreign fishing vessel, as discussed in section 2.1.1 of this legislative summary (clause 8, adding new section 12.1).

#### 2.3.2.5 FORFEITURE

**Under section 14 of the Act, a court or judge that convicts a person or fishing vessel of an offence under the Act may order that a fishing vessel seized in relation to the offence and/or any of the goods aboard the fishing vessel (or their proceeds of sale) be forfeited. Bill S-3 expands this power:**

- **to provide for the forfeiture of the proceeds of the sale of a seized fishing vessel, if the vessel has been sold;**
- **to specify that marine plants are goods that may be subject to forfeiture; and**
- **to provide for forfeiture of seized goods that are not aboard a seized fishing vessel – or the proceeds of sale of such goods – as long as the goods are related to the commission of the offence (clause 9, amending section 14).**

### 2.3.2.6 MAXIMUM FINES

Bill S-3 includes a new provision stating that, if a person is convicted of an offence under the Act and as a result of the offence, a financial benefit had accrued to the person, the court may, despite maximum fine amounts set under the Act, order the person to pay a fine in an amount estimated to equal the benefit (clause 16, adding new section 18.04 to the Act).

### 2.4 INSUBSTANTIAL AMENDMENTS

Bill S-3 makes a number of insubstantial amendments to better align the English and French versions of the Act, modernize the existing language, or update a provision number that is changed by Bill S-3 (subclause 7(2), amending paragraph 9(c); clause 8, replacing section 12 with subsection 12(1) and amending section 13; clause 10, amending subsection 16(1); clause 13, amending section 16.2; subclause 15(2), amending subsection 18.01(2); and clause 18, amending section 18.2).

A number of clauses incorporate the new definition of “Fish Stocks Agreement” or “party to the Fish Stocks Agreement” into the Act (to distinguish it from the Port State Measures Agreement) without changing the substance of the existing provisions (clause 3, amending section 5.3; subclause 5(3), amending paragraph 6(e); subclause 5(4), amending subparagraphs 6(e)(iii) and 6(e)(iv); subclause 5(5), amending subparagraphs 6(e)(vi) and 6(e)(vii); clause 6, replacing section 7.01 with new section 7.5; clause 12, amending section 16.1; clause 13, amending section 16.2; clause 14, amending paragraph 17(2)(a); subclause 15(1), amending subsection 18.01(1); clause 16, amending section 18.02; and clause 17, amending paragraph 18.1(a.1)).

### 2.5 COMING INTO FORCE

Bill S-3 comes into force on a day to be fixed by order of the Governor in Council (clause 19).

## 3 COMMENTARY

According to Fisheries and Oceans Canada,

IUU fishing is a global problem that undercuts responsible fishing activities and has adverse consequences on food security, safety at sea, marine environmental protection and stability of prices in some key markets. A 2008 study estimated that the global economic loss due to IUU fishing ranges from US\$10–23 billion annually, in addition to potential effects on marine ecosystems and fish stocks. Since approximately 85% of fish caught in Canadian waters are exported, an industry worth more than \$3 billion annually, Canadian fish harvesters can be susceptible to depletion of stocks from overfishing, unfair competition with illegal fish products as well as price fluctuations in some markets created by the unpredictable supply of IUU fish products in foreign markets.<sup>17</sup>

Fisheries and Oceans Canada maintains that implementing and strengthening port state measures is “cost-effective in preventing, deterring, and eliminating IUU fishing activities around the world.”<sup>18</sup> It cites, as an example, “several IUU vessels fishing in the area regulated by the North-East Atlantic Fisheries Commission [that] were decommissioned because they were consistently denied port access by Commission members.”<sup>19</sup>

In its Port State Performance report published in 2010, the Pew Environment Group, one of the few public voices on the issue, consolidated six years of movement data on IUU-listed vessels and concluded at that time that “the system of port State measures lacks transparency, accountability and global reach, and is thus failing to close loopholes exploited by IUU operators and to keep IUU fish out of ports.”<sup>20</sup> In a brief on the topic published in June 2013, the Pew Charitable Trusts opined that the Port State Measures Agreement, once it takes effect, could “help reverse years of rampant and widespread disregard for fisheries laws and policies.”<sup>21</sup>

---

## NOTES

1. [Coastal Fisheries Protection Act](#), R.S.C., 1985, c. C-33.
2. Food and Agriculture Organization [FAO] of the United Nations, [Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing](#) [Port State Measures Agreement], 36<sup>th</sup> Conference, 22 November 2009.
3. Under subsection 2(1) of the Act, “Canadian fisheries waters” means “all waters in the fishing zones of Canada, all waters in the territorial sea of Canada and all internal waters of Canada.” For descriptions of those three types of waters, see the [Oceans Act](#), S.C. 1996, c. 31, and the three Fishing Zones of Canada [orders](#) made under the [Oceans Act](#).
4. Note that the [Foreign Vessel Fishing Regulations](#), C.R.C., c. 815, made under the [Fisheries Act](#) set out detailed fishing restrictions applicable to foreign vessels.
5. [An Act to amend the Coastal Fisheries Protection Act](#), S.C. 1994, c. 14.
6. [An Act to amend the Coastal Fisheries Protection Act and the Canada Shipping Act to enable Canada to implement the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks and other international fisheries treaties or arrangements](#), S.C. 1999, c. 19.
7. Fisheries and Oceans Canada, “[Canada Signs On to New International Measures to Fight Illegal Fishing](#),” News release, 22 November 2010; and FAO (2009).
8. Fisheries and Oceans Canada, “[Amendments to the Coastal Fisheries Protection Act](#),” Backgrounder, November 2012.
9. FAO, Fisheries and Aquaculture Department, [Port State Measures](#).
10. FAO, “[New treaty will leave ‘fish pirates’ without safe haven](#),” News release, Rome, 1 September 2009.
11. FAO, [Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing](#), 22 August 2014.

12. According to a new definition that clause 2 adds to subsection 2(1) of the *Coastal Fisheries Protection Act*, “‘flag state’ means the state whose flag a fishing vessel is entitled to fly.”
13. An *ex parte* application is an application made without the presence of one of the parties or their counsel. The party absent from the proceedings is the one whose place is to be searched, or whose vessel or goods are to be seized, depending on the context.
14. According to the [Oxford English Dictionary](#), “tranship” means to “transfer from one ship to another.”
15. Fisheries and Oceans Canada (2012).
16. In this context, “international” conservation, management and enforcement measures refers to:
  - measures of a regional fisheries management organization or arrangement that was established by two or more states, or that was established by one or more states and an organization of states; or
  - an international fisheries treaty or arrangement to which Canada is party.
17. Fisheries and Oceans Canada (2010).
18. Fisheries and Oceans Canada, [United Nations Food and Agriculture Organization's Port State Measures](#).
19. Ibid.
20. Pew Environment Group, “[Executive Summary](#),” *Port State Performance*, 2010.
21. Pew Charitable Trusts, “[Stopping Illegally Caught Fish at the Dock: How the Port State Measures Agreement will curb illegal fishing](#),” *Brief*, June 2013.