

# § 5 Fisheries law [Fischereirecht]

## I. Introduction to fisheries law

### 1) An area of law relating to one of the most vulnerable natural resources

- fish has always been an important food source in Europe, but fish resources are limited and can easily be depleted by the use of modern, industrialised fishing technology
- in the waters in and around Europe, fish stocks have been under *constant threat by over-fishing and pollution* for many decades
- fisheries law in Europe therefore is to a large extent *fish resources conservation law*

### 2) The differentiation according to the place of fishing

- the term "fishing" includes fishing with a rod (angling) and also aquaculture

#### a) Marine fishery (sea fishery): fishing in sea waters

- at high seas, within the 200-mile exclusive economic zone of a state or within the 12-mile territorial sea covered by the sovereignty of the state (see art. 3, 55, 57, 86 of the UN Convention on the Law of the Sea [UNCLOS])

##### aa) Deep-sea fishery: fishing outside the territorial sea of any state

- usually with larger, heavily mechanised fishing vessels
- actors often not locally rooted

##### bb) Coastal fishery (inshore fishery): fishing within the territorial sea (coastal waters) of a state

- usually with smaller, less mechanised fishing vessels
- actors usually locally rooted
- includes aquaculture in fish cages and inshore cage farms (mariculture)

#### b) Freshwater fishery (inland fishery): fishing in inland waters

- in lakes, streams and rivers
- includes aquaculture in ponds and raceways

### 3) The applicable law for fishing at the various places

#### a) Marine fishery

##### aa) Deep-sea fishery outside the exclusive economic zone of any state

- free in principle, but... (→ art. 116 et seq. UNCLOS)
- actually increasingly restricted for certain regions or prey by *international law*, which is implemented by European Union law
  - multilateral *international treaties* (e.g. the Convention on Conduct of Fishing Operations in the North Atlantic of 1967)
  - the rules of *Regional Fishery Management Organisations (RFMOs)*

##### bb) Deep-sea fishery within the German exclusive economic zone

- *basically regulated in European Union law*:
  - the Common Fisheries Policy Regulation (CFP Regulation) (Regulation 1380/2013)
  - the Regulation on the Common Market Organisation in Fishery and Aquaculture Products (Regulation 1379/2013)
  - the Fisheries Control Regulation (Regulation 1224/2009)
  - the Illegal, Unreported and Unregulated Fishing Regulation (Regulation 1005/2008)
  - the Regulation on the European Maritime, Fisheries and Aquaculture Fund (Regulation 2021/1139)
- the European fisheries law is implemented and supplemented in details by German federal law:
  - the Marine Fisheries Act [Seefischereigesetz]
  - the Marine Fisheries Ordinance [Seefischereiverordnung] and other ordinances

##### cc) Coastal fishery

- regulated in some aspects by European and federal German fisheries law, but predominantly, within the framework of these requirements, in the fisheries acts and special coastal fisheries ordinances of the German coastal Länder

## b) Freshwater fishery

- regulated only in a few aspects by European fisheries law, but essentially in the fisheries acts & fisheries ordinances of the German Länder

# II. The European Union's Common Fisheries Policy (CFP)

## 1) General aspects

- a special EU policy with a special regime, closely linked to the EU's very influential Common Agricultural Policy (CAP)
- covers in principle the whole wide spectrum of fisheries (cf. art. 1(1) CFP Regulation):
  - *marine fishery* (the management of fisheries and fleets exploiting the marine biological resources)
  - the **conservation of the marine biological resources** (this is even an exclusive EU competence)
  - *freshwater fishery* (market-related and support measures for exploiting freshwater biological resources)
  - *aquaculture* (in coastal and inland areas)
  - and the processing and marketing of their *products*
- strives to strike a complicated balance between economic and ecological interests for a sustainable development by pursuing numerous but cautiously formulated objectives (see the long, detailed and highly differentiated enumeration in the monstrous art. 2 CFP Regulation):
  - to ensure that fishing & aquaculture are environmentally sustainable
  - to *restore & maintain fish populations* above biomass levels capable of producing the maximum sustainable yield (→ following the **principle of the maximum sustainable yield [MSY]**)
  - to *minimise negative impacts* on the marine ecosystem and avoid degradation of the marine environment by fishery and aquaculture
  - but also to provide conditions for a *profitable & competitive* fish capture & processing industry and to contribute to a *fair living standard* of those involved
  - last but not least: to *promote coastal fishery*, taking into account socio-economic aspects
- special principles of **good governance in the fishing sector** (art. 3 CFP Regulation)
- **limited equal access** of union fishing vessels to the *Union waters* (art. 5 CFP Regulation)
  - a) full equal access to the waters and resources in the exclusive economic zone of all member states outside their territorial seas around Europe
  - b) but within their territorial seas, member states can restrict access to traditional fishing grounds to vessels from their local ports (art. 5(2), with exceptions under Annex I)
- the implementation of the Common Fisheries Policy is financially supported by the European Maritime, Fisheries and Aquaculture Fund (Regulation 2021/1139)
  - with a 6.11 billion € budget for 2021 - 2027

## 2) Comprehensive fisheries management

- a **broad spectrum of European Union measures** for the conservation, restoration and sustainable exploitation of marine biological resources (art. 6 et seq. CFP Regulation)
  - a wide range of **conservation measures** (art. 7)
    - includes rules on fishing gears (e.g. an almost complete ban on driftnet fishing, art. 9 Regulation 2019/1241)
    - includes orders to cease operations in certain areas for certain periods
    - includes measures to adapt the fishing capacity of fishing vessels to the available fishing opportunities
  - creation of **fish stock recovery areas** (art. 8)
  - **multiannual plans** (art. 9, 10)
  - **emergency measures** in case of serious threats to marine resources (art. 12)
  - determination and allocation of **fishing opportunities (fishing quota)** (art. 16, 17)
    - determination of the annual *Total Allowable Catch (TAC)* for each individual fish species on a scientific basis
    - allocation of an individual share of the TAC (national quota) to each member state
    - in a regulation adopted by the Council of the European Union on proposal of the European Commission
    - allocation of the national quota to the national players by the national authorities according to domestic rules (in Germany by the Federal Office for Agriculture and Food [Bundesanstalt für Landwirtschaft und Ernährung])
- ▶ member states may take additional measures under certain conditions (art. 19, 20)

- a *management of the fishing capacity* of the national fishing fleets, to achieve a balance between national fishing capacity and fishing opportunities (art. 21 et seq.)
  - basically by the member states but under the rules of European fisheries law
  - includes national registers of transferable fishing concessions (art. 21)
  - includes national entry/exit schemes for changes in the national fishing fleet (art. 23)
  - includes an *EU Fleet Register* (art. 24)
- fisheries management *based on science* (art. 25 et seq.)
  - European Commission regularly consults scientific bodies, in particular the *Scientific, Technical and Economic Committee for Fisheries (STECF)*
  - member states must carry out fisheries & aquaculture research & innovation programmes and coordinate them

### 3) Common market organisation in fishery and aquaculture products

- see the the *Regulation on the Common Market Organisation in Fishery and Aquaculture Products* of 2013 (Regulation 1379/2013, originally of 1970)
- aims at protecting producers and ensuring the environmental sustainability and economic viability of this market
- rules on professional organisations, production and marketing plans of producer organisations, marketing standards, consumer information, competition and market intelligence

### 4) Fisheries control

#### a) The EU Fisheries Control Regulation (Regulation 1224/2009, revised 2023)

- a comprehensive & elaborate, technology-based system of intensive control of the entire fishing process (from vessel equipment to the marketing of the catch), by member states authorities but under European rules
- commercial fishing vessels need a *fishing license*, which is granted, administered and if necessary withdrawn (also in the wake of fleet capacity adjustment) by the authorities of the member states under the conditions and requirements set in EU law (cf. art. 6)
- in addition, fishing vessels need for most fishing activities a *fishing authorisation*, which must authorise the specific fishing activity and its scope (cf. art. 7)
- the member states operate a *satellite-based vessel monitoring system (VMS)* for an effective monitoring of all fishing activities in their waters and of their own fishing fleets anywhere (art. 9)
  - for this purpose, they have established *fisheries monitoring centres* (see art. 10)
  - fishing vessels from 12 metres must carry a device that allows to locate and identify them automatically; they *must transmit their position data* at regular intervals (art. 9(2))
  - these data may also be made available to third countries and intern. organisations (art. 9(4))
- a broad spectrum of *instruments of general fisheries control*
  - of the use of fishing opportunities (fishing quota) (art. 14 et seq.)
  - of fleet management (art. 38 et seq.)
  - of multiannual plans (art. 42 et seq.)
  - of technical measures, esp. fishing gear (art. 47 et seq.)
- detailed regulations on *control of marketing* (art. 56 et seq.), surveillance of ship movements (art. 71 et seq.), inspections (art. 74 et seq.), enforcement measures and sanctions (art. 89 et seq.) and even measures against non-complying member states (art. 104 et seq.)
- support and coordination by a *European Fisheries Control Agency (EFCA)*

#### b) The EU Illegal, Unreported and Unregulated Fishing Regulation

(Regulation 1005/2008)

- see also the efforts in Indonesia to fight IUU fishing
- the European Union's contribution to the global fight against the traditional and still widespread phenomenon of IUU fishing
  - fulfilling its responsibility as the world's largest import market for fisheries products
- provides a detailed definition of IUU fishing (art. 3)

- prohibits the import of fishery products obtained from IUU fishing (art. 12(1))
- takes *precautions to prevent the import of IUU fishing products*:
  - requires a **catch certificate** by the flag state of the vessel that made the catch (art. 12)
    - the flag state and its fisheries law must meet certain requirements (art. 20)
    - catch certificate *also required for the export of catches by Union fishing vessels* from the EU (art. 15)
  - prohibits transshipments from third-country fishing vessels outside ports (art. 4(3..4))
  - limits access of third-country fishing vessels to EU ports to those who comply with its requirements (art. 4(2))
  - requires third-country vessels to notify their arrival at EU ports in advance (art. 6)
  - provides for port inspections (art. 9 et seq.)
  - precautions to identify IUU fishing vessels (art. 25 et seq.)

### 5) **Active external fisheries policy** (art. 28 et seq. CFP Regulation)

- the European Union plays a key role in international fisheries cooperation
- numerous fisheries agreements with third countries
  - *sustainable fisheries partnership agreements*, granting Union fishing vessels access to the marine biological resources of other states (art. 31, 32)
  - multilateral agreements on the sustainable exploitation, management and conservation of marine resources
  - agreements on the fight against IUU fishing
- membership in international fishery organisations (art. 29)
  - in particular in 18 Regional Fishery Management Organisations (RFMOs)
- cooperation with third countries in the management of stocks of common interest (art. 33)

## III. The German Marine Fisheries Act [Seefischereigesetz]

- implementing, enforcing and supplementing rules for the execution of the European fisheries law
- regulations on numerous aspects, in particular
  - the fishing authorisation and the allocation of quota (sect. 3)
  - special permits for non-Union fishing vessels (sect. 4)
  - the monitoring of marine fishery and the authorities' powers of intervention (sect. 5, 16),
  - cooperation of customs authorities (sect. 9)
  - regulatory and criminal offences in the field of fishery (sect. 18, 19)
  - a point system for serious infringements of fisheries law (sect. 13 et seq.)  
(from 18 points, the captain's license may be suspended or withdrawn, sect. 17(7))
- details are regulated in the Marine Fisheries Ordinance [Seefischereiverordnung] and other ordinances
- the Federal Office for Agriculture and Food [Bundesanstalt für Landwirtschaft und Ernährung] is entrusted with most executive tasks at the federal level (cf. sect. 2(1) and Annex)
  - it also serves as the German fisheries monitoring centre (sect. 6)

## IV. German Land law on coastal fishing

- in some coastal Länder regulations on shellfish fishing
- in some Länder the use of fishing gear other than hand fishing rods is reserved to professionals
- restrictions on *recreational fishing with a rod (angling)*
  - some coastal Länder require a personal fishing license [Fischereischein], which is only issued after proving one's personal fishing expertise in an exam
    - alternatively, for a short period a special tourist/holiday fishing license can be purchased for a fee
  - in addition, most coastal Länder require to buy a fishing permit [Erlaubnisschein]
  - the caught fish is only for personal consumption and cannot be sold on the market
  - the practice of "catch and release" is illegal and may be prosecuted as cruelty to animals  
(a criminal offence under sect. 17 of the Animal Protection Act [Tierschutzgesetz])

## V. German Land law on inland fishing

- no free inland fishing:
- the *fishing right* for an inland water (right to fish [Fischereirecht]) is reserved to the water's owner
  - in most Länder, it can no longer be separated from ownership or the subject of special rights in rem
  - but preexisting independent fishing rights remain in place and can still be officially registered
- however, the holder of the fishing right can *lease the fishery* to others (→ usufructary lease)
- fishing in an inland water - also recreational angling - requires
  - the personal fishing license [Fischereischein]
  - a fishing permit (authorisation) issued by the holder or lessee of the fishing right for that water
- heterogeneous regulations on the conservation and care for fish populations and the obligation to show consideration for fauna & flora
- regulations on fishing cooperatives and fisheries control