

**Act No. 27/1992 of 24 November 1992 concerning  
national ports and merchant shipping (excerpts)**

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**Chapter III**  
**Merchant shipping**

**Article 6**  
**Merchant shipping**

1. For the purposes of this Act, merchant shipping shall comprise:

(a) The activity of shipping, except such shipping as is carried out solely between ports or points within a single Autonomous Community having competence in this area, which does not involve ports or points in other territorial areas;

(b) The management and inspection of the Spanish civilian fleet;

(c) The safety of navigation and life at sea;

(d) Maritime safety, including the training of pilots for in-port pilotage and the determination of in-port towage requirements as well as the availability of both services in cases of emergency;

(e) Maritime rescue operations, as provided for in article 87;

(f) The prevention of pollution from ships, fixed platforms and other installations in waters located in areas over which Spain exercises sovereignty, sovereign rights or jurisdiction, and the protection of the marine environment;

(g) Technical and operational inspections of ships, crews and cargoes;

(h) The management of maritime traffic and communications;

(i) Verification of the position, flag and registry of civilian ships and the issuing of clearance therefor, without prejudice to any prior authorizations required by other competent authorities;

(j) Ensuring compliance with national defence obligations and obligations to protect civilians at sea;

(k) Any other maritime service which the Administration provided for in Title III, Chapter III, of this Act is required to provide by law.

2. Merchant shipping shall not include the management of the fishing fleet, with specific reference to fishing and management of the fisheries sector, or inspection activities in these areas.

**Article 7**  
**Areas and types of navigation**

1. Areas of navigation are those areas, in addition to internal waters, the territorial sea, the contiguous zone and the exclusive economic zone, over which Spain exercises sovereignty, sovereign rights or jurisdiction.

- For the purposes of this Act, "Spanish internal waters" means those waters situated within the baselines of the territorial sea, including rivers, lakes and continental waters.

- "Territorial sea" means the sea extending to a distance of 12 nautical miles from the baselines from which its breadth is measured.

- "Contiguous zone" means the zone extending from the outer limit of the territorial sea up to a distance of 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

- "Exclusive economic zone" means the zone extending from the outer limit of the territorial sea to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

2. Depending on the area in which it takes place, navigation shall be internal, coastal, external or extra-national.

- "Internal navigation" means navigation which takes place wholly within the area of a given port or other Spanish internal waters.

- "Coastal navigation" means navigation other than internal navigation which is carried out between ports or points in areas over which Spain exercises sovereignty, sovereign rights or jurisdiction.

- "External navigation" means navigation between ports or points in areas over which Spain exercises sovereignty, sovereign rights or jurisdiction and ports or points outside those areas.

"Extra-national navigation" means navigation between ports or points outside areas over which Spain exercises sovereignty, sovereign rights or jurisdiction.

3. Depending on the conditions under which it takes place, navigation may be classified as regular or irregular.

- "Regular navigation" means navigation that is subject to predetermined itineraries, schedules, tariffs and conditions of transport.

- "Irregular navigation" means navigation not listed in the preceding paragraph.

4. Navigation that serves the public interest means any navigation deemed necessary to ensure essential maritime communications on the Peninsula between the Peninsula and the non-peninsular Spanish territories, and between non-peninsular Spanish territories.

The Government shall classify navigation in accordance with the aforementioned categories.

**Article 8**  
**Civilian fleet and fixed platforms**

1. For the purposes of this Act, "Spanish civilian fleet" means:

(a) The national merchant fleet;

- (b) The national fishing fleet;
  - (c) National pleasure boats and sports craft;
  - (d) Other Spanish civilian vessels not included under (a), (b) and (c) above.
2. "Civilian ship" means any craft, platform or floating device with or without displacement, which is suitable for navigation and not intended for national defence.
3. "Merchant ship" means any civilian ship used for commercial navigation, excluding fishing vessels.
4. "Fixed platform" means any device or installation that may be used for the exploration or exploitation of marine natural resources, or for any other activities, which is located on the seabed or anchored or supported thereon.
5. This Act shall apply to the Spanish civilian fleet, as well as to fixed platforms in waters over which Spain exercises sovereignty, sovereign rights or jurisdiction.
- The provisions of this Act shall apply also to foreign civilian ships in waters located in areas over which Spain exercises sovereignty, sovereign rights or jurisdiction, within the limitations established by international law, particularly with regard to cases of immunity.
6. Regulations shall be established to govern the application of this Act in respect of ships used by the police or to combat smuggling.

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### **TITLE III**

#### **Merchant navy**

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#### **Chapter I**

#### **Objectives**

#### **Article 74**

#### **Objectives**

Within the framework of the jurisdiction conferred upon the State Administration by article 149.1 of the Spanish Constitution, the policy of the Merchant Navy shall aim to achieve the following objectives:

- 1. Ensuring the safety of life at sea;
- 2. Ensuring the safety of maritime navigation;
- 3. Ensuring maritime safety;
- 4. Protecting the marine environment;
- 5. Ensuring the availability of any maritime transport services required to meet the needs of the country;
- 6. Ensuring navigation that serves the public interest.

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**Chapter II**  
**Shipping operations and the regime of navigation**

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**Section 1.a**  
**Ships and shipping companies**

**Article 75**  
**Register of Ships and Shipping Companies**

1. The Register of Ships and Shipping Companies is a public administrative register in which are recorded:
  - Ships flying the Spanish flag;
  - Spanish shipping companies.
2. For purposes of identification, entries in the Register shall indicate all relevant information about the ship and the modifications effected thereto, as well as the instruments and contracts by virtue of which it is owned or transferred, mortgages are constituted or rights in rem are enforced, and any other particulars required by statute or regulation.
3. Entries pertaining to shipping companies shall indicate their instrument of incorporation and amendments thereto, the appointment and dismissal of administrators, ships owned or operated, and any other particulars required by statute or regulation.
4. Inclusion in the Register of Ships and Shipping Companies shall not exempt a ship or shipping company listed therein from fulfilling the duties of inscription in other public registers that may exist.
5. The provisions of this article shall be without prejudice to the provisions of the fifteenth supplementary provision, governing the Special Register of Ships and Shipping Companies.

**Article 76**  
**Flagging of ships**

1. Ships which are duly registered in Spain and fly the Spanish flag shall for all purposes have Spanish nationality.
2. Natural persons resident in Spain and corporations domiciled in Spain or in countries of the European Economic Community shall have the right to register and flag civilian ships, provided that corporations domiciled in countries of the European Economic Community designate a representative in Spain.
3. Spanish civilian ships may provisionally fly the flag of a foreign country and foreign civilian ships may fly the Spanish flag where the relevant regulations so provide.
4. All conditions to be met before a ship is granted the right to fly the Spanish flag shall be determined in the relevant regulations.

**Article 77**  
**Crews of ships**

1. The number of a ship's crew members and the conditions under which they are trained must be adequate to ensure the safety of navigation and of the ship at all times, having regard to its technical and operational characteristics, in accordance with the relevant regulations.
2. The nationality requirements for States' crew members shall likewise be determined in the relevant regulations; however, citizens of the European Economic Community may, from the date of entry into force of this Act, be employed on ships as crew members provided that they do not exercise, even occasionally, public functions, which right shall be reserved for Spanish citizens.

**Article 78**  
**Civil liability**

Spanish shipping companies shall be required to maintain insurance coverage against any civil liability they may incur while operating their ships, under terms to be specified in regulations by the Government that are consistent with standard liability policies on the international market.

Such regulations shall also establish the mandatory nature and the extent of civil liability insurance in respect of navigation by any other Spanish civilian ships not covered by the provisions of the preceding paragraph.

The Government shall likewise specify those cases in which foreign ships navigating in the exclusive economic zone, contiguous zone, territorial sea or internal waters of Spain shall be required to maintain insurance coverage against any civil liability that may arise from their navigation, as well as the extent of such coverage.

**Section 2.a**  
**Foreign trade in ships**

**Article 79**  
**Import and export of ships**

1. Spanish shipping companies may import any merchant ships they require for their activities, subject to proof of their removal from the register of origin and satisfactory results of technical safety inspection or other relevant inspections, as required by the legislation in force.
2. Spanish shipping companies may freely export Spanish merchant ships which they own.

Nevertheless, where such ships are subject to preferred charges, liens or shipping credits recognized by the legislation in force and listed in the commercial Register or in such other registers as may replace it, in accordance with the second final provision of Act No. 19/1989 of 25 July 1989, the creditor may demand, prior to export, that the shipping company provide sufficient guarantees executable on property or rights in Spanish territory, or that the shipping interest deposit the amount of the debt in the manner provided in articles 1.176 to 1.181 of the Civil Code. To this end, the Department of the Merchant Navy shall notify creditors holding registered liens of the existence of the dossier pertaining to the removal of the ship from the Registry of Ships so that they may exercise their right conferred on them by this article.

3. Requests for removal from the Register of Ships and Shipping Companies shall be submitted by the registered owner of the ship to the Department of the Merchant Navy and shall be considered granted if no other action is taken

within a period of forty-five days.

4. Exceptionally, when essential maritime communications within the national territory or the provision of supplies and goods cannot be ensured, the Government may establish regulations prescribing the conditions or restrictions that shall apply to the export of merchant ships.

Such measures shall remain in force for as long as the above-mentioned circumstances continue to exist.

5. The provisions of this article shall be without prejudice to the laws and regulations governing foreign trade.

### Section 3.a Internal navigation

#### Article 80 Regime of internal navigation

1. Internal navigation for commercial purposes may be carried out only by Spanish merchant ships, except as otherwise provided in Community regulations.

Exceptionally, if no suitable Spanish merchant ship is available for a specific activity, and for as long as such a situation exists, Spanish shipping companies may be authorized by the Ministry of Public Works and Transport to hire and utilize foreign merchant ships to engage in internal navigation.

2. The ships referred to in the preceding paragraph may freely engage in internal navigation, subject to the relevant maritime safety, navigation and clearance regulations.
3. Regular internal navigation for commercial purposes may be subject to administrative authorization by the competent authorities.

### Section 4.a Coastal shipping

#### Article 81 Coastal shipping

1. Coastal shipping for commercial purposes may be carried out only by Spanish merchant ships, except as otherwise provided under Community regulations.

Exceptionally, if no suitable Spanish merchant ship is available, and for as long as such a situation exists, Spanish shipping companies may be authorized by the Ministry of Public Works and Transport to hire and utilize foreign merchant ships to engage in coastal shipping.

2. Regular coastal shipping for commercial purposes shall be subject to administrative authorization. The Ministry of Public Works and Transport shall determine the requirements to be met by shipping companies in certifying their economic capacity and that of the vessels in order to engage in such shipping.
3. For the purposes of this Act, regular shipping lines shall be considered to include any coastal shipping services which, although not designated as such, make themselves generally available to prospective users and offer services

that, by virtue of their regularity, advertising and contracting practices are similar to regular coastal shipping services.

4. The provisions of this article shall not apply to those Autonomous Communities having jurisdiction in the area of maritime transport when such transport takes place between ports or points of the same Community without involving ports or points of other territories.

**Section 5.a**  
**External and extra-national navigation**

**Article 82**  
**External and extra-national navigation**

1. When there exists a serious threat to the principles of open competition or free trade or to the principles on which international shipping is based and which affects Spanish ships, the Government may adopt any measures and provisions necessary to protect Spanish interests in the dispute.

2. Where the provisions of Community laws and regulations or international agreements signed by Spain are concerned, the Government may restrict all or part of certain traffic to Spanish or Community merchant ships if the national economy or defence so require.

**Section 6.a**  
**Public service obligations**

**Article 83**  
**Public service obligations**

1. The competent authorities may establish public service obligations for regular domestic or coastal shipping services as they deem appropriate, taking into consideration the special characteristics of such services, in order to ensure that they are provided on a continuous and regular basis. Such obligations may, where appropriate, result in entitlement to economic compensation from the authorities under conditions to be determined generally or in the relevant authorizations.

2. The competent authorities may also establish specific obligations for shipping companies providing regular or irregular internal, coastal, external or extra-national shipping services for purposes of rescue maritime safety, pollution control and other major undertakings that are in the public or social interest. This requirement shall, where appropriate, entitle the companies concerned to receive economic compensation for any additional costs incurred.

**Section 7.a**  
**Liner conferences and shippers' councils**

**Article 84**  
**Liner conferences and shippers' councils**

1. A liner conference means a group of two or more shipping companies that engage in regular coastal, external or international shipping on one or several specific routes within set geographical limits and have concluded an

agreement of any type under which they operate on the basis of uniform or common rates or other agreed terms regarding navigation.

2. Liner conferences shall ensure adequate and efficient services, bearing in mind the interests of users.

Such conferences shall be subject to competition from regular non-member services and, in certain cases, from irregular services operating on the same routes. In no case, however, may conference activities imply the elimination of competition from a substantial share of the market in which they provide services, thereby leading to the domination of the companies comprising the conference.

3. Users of services provided by shipping lines which have formed conferences in accordance with the provisions of the preceding paragraph may form organizations known as shippers' councils for the purpose of protecting their interests, particularly with regard to the pricing, quality and regularity of the services provided, and may offer their members advisory and consultancy services in respect of shipping rates and services.

**Article 85**  
**Reporting and consultative obligations**

1. Liner conferences whose ships stop in Spanish ports to take on or discharge goods shall, at the request of the Department of the Merchant Navy, transmit to the Department any agreements pertaining to the distribution of cargoes, stops or departures made, documents directly related to such agreements, tariffs and other conditions of transport.

2. When liner conferences and shippers' councils are established, both organizations shall consult with each other whenever either of the parties so requests with a view to resolving problems relating to shipping operations.

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**Chapter III**  
**Maritime administration**

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**Section I.a**  
**Central administration**

**Article 86**  
**Jurisdiction of the Ministry of Public Works and Transport**

In keeping with provisions of article 74, the Ministry of Public Works and Transport shall have jurisdiction over the general management of maritime navigation and the civilian fleet, except for the activities of the fishing fleet and management of the fishing sector, over which the Ministry of Agriculture, Fisheries and Food shall have jurisdiction. In particular, the Ministry of Public Works shall be responsible for:

1. The safety of life at sea and the safety of navigation as it relates to all fixed platforms or Spanish civilian ships and to foreign ships in waters located in areas over which Spain exercises sovereignty, sovereign rights and jurisdiction, and in accordance with international law;

2. The rescue of life at sea, the cleanliness of maritime waters and control of marine pollution from ships or fixed platforms in waters located in areas over which Spain exercises sovereignty, sovereign rights or jurisdiction, taking

any measures necessary to this end, particularly those indicated in article 118.2 (d) of this Act and in accordance with the plans and programmes provided for in article 87;

3. Verification of the position, registry and flag of all Spanish civilian ships and the regulation of clearance, without prejudice to any authorizations issued previously by other authorities;
4. The granting of shipping concessions or permits, except when an Autonomous Community has jurisdiction over maritime transport and if such transport takes place between ports or points of the Community without involving ports or points belonging to other territories;
5. Organizing and conducting technical, radio, safety and pollution-control inspections and monitoring in respect of all Spanish civilian ships, ships under construction in Spain and foreign ships, where authorized by international agreements. This shall include approvals and confirmations of equipment and parts of ships or of materials or appliances belonging thereto which are issued to ensure maritime safety, safety of life at sea and safety of navigation.

The aforesaid inspections and monitoring may be carried out either directly by the Ministry of Public Works and Transport or by collaborating bodies, in accordance with the relevant regulation. Such bodies shall in all cases follow the criteria and guidelines issued by the supervisory authority and shall be entitled to receive economic compensation to cover the cost of their services;

Assistance, rescue and towing, maritime findings and removals, except in the case of military equipment or materials that may affect defence, responsibility for which shall remain with the Ministry of Defence, without prejudice to any powers of the competent authorities in respect of findings or removals of historical, artistic or archaeological or value.

When direct action by the State Administration results in the awarding of prizes or compensation, such prizes or compensation shall be deposited directly in the Treasury, where they may generate credit to be used in developing the activities which resulted in such income.

When the Administration carries out the aforesaid activities through private or public entities, arrangements may be made for the distribution of such prizes or compensation under the terms of the service contracts concluded;

7. The management and supervision of shipping in waters located in zones over which Spain exercises sovereignty, sovereign rights or jurisdiction, without prejudice to the jurisdiction attributed to other authorities, and particularly the responsibility of the Ministry of Defence for the safeguarding of national sovereignty;
8. The pricing regime and the regime for the provision of all types of maritime services, including the establishment of public-service obligations when such responsibilities are not vested in other authorities;
9. Registration and supervision of civilian maritime personnel, establishment of minimum crew requirements for civilian ships in order to ensure safety, determination of the general suitability, professional and certification requirements for membership in the crew of all Spanish civilian ships, without prejudice to the responsibilities of the Ministry of Agriculture, Fishes and Food for training and vocational education in the areas of maritime and submarine fishery for crews of fishing vessels;
10. Participation in the Lighthouse Commission and other institutional arrangements for collaboration in the field of maritime signalling in waters located in areas over which Spain exercises sovereignty, sovereign rights or jurisdiction, with a view to:

(a) Helping to determine the technical characteristics and operational functioning of signals and their correct placement with a view to ensuring the safety of vessels and navigation;

- (b) Coordinating maritime signalling systems with each other and with other active navigational aid systems;
- 11. Acting as a sanctioning authority, in accordance with the legislation in force;
- 12. Any other responsibilities attributed to it by this Act or by any other legislation.

**Article 87**  
**Public service: rescues**

1. Public service in the form of life-saving and pollution control at sea shall be provided by the State Administration and by the other competent public authorities, in accordance with the principle of coordination as articulated in the relevant plans and programmes. Such plans and programmes shall set out all the actions to be taken by each authority and measures for implementing them independently of its authority, functional role or location.
2. On the proposal of the Ministry of Public Works and Transport, the Government shall adopt the National Plan of Special Services for life-saving and pollution control at sea. The plans of this type adopted by the competent Autonomous Communities shall follow the guidelines for the mobilization and coordination of resources set out in the National Plan.

The National Plan shall have as its basic objectives:

- Coordinating the efforts of those units of the various authorities as well as public and private agencies that are capable of carrying out search-and-rescue and marine pollution control operations;
  - Establishing a maritime traffic-control system covering the entire Spanish coast through the establishment of regional and local coordination centres;
  - Strengthening existing life-saving and marine pollution control units and training specialized personnel to manage and coordinate search-and-rescue and marine pollution control operations.
3. The National Plan shall be implemented by means of sectoral and local programmes to be approved by the Ministry of Public Works and Transport.

In formulating programmes, the State Administration may rely on the collaboration of the competent Autonomous Communities or those Communities which possess the human and material resources needed to carry out programme activities with a view to ensuring appropriate coordination.

The State Administration may implement programmes with its own staff and resources or those assigned to it, or by means of contracts with public or public enterprises or agreements with non-profit bodies.

4. The National Maritime Rescue Commission shall be established as a coordinating body to facilitate the participation of the competent public authorities in the planning and pursuit of Commission objectives. Regulations shall be established to determine composition and functions.

Section 2.a  
Auxiliary Administration

Article 88  
Harbour-master's office  
Functions

1. Every port registering a significant level of navigation or in which traffic or safety conditions so warrant shall have a harbour-master's office. Regulations shall be established to determine the necessary minimum requirements and the procedure for establishing such auxiliary bodies.

In ports under the jurisdiction of the Autonomous Communities, the harbour administration and the harbour-master's office shall coordinate their activities in order to achieve their respective objectives.

2. In ports which have no navigation and ports councils, navigation councils may be established under the chairmanship of the harbour-master. These bodies shall offer assistance, information and collaboration in maritime affairs and regulations shall be established to determine their composition and functions.

3. The harbour-master's functions shall include the following:

(a) Authorizing or denying entry and exit to ships in waters located in areas over which Spain exercises sovereignty, sovereign rights or jurisdiction, and the dispatching of ships, without prejudice to such prior authorizations as may be required by other authorities;

(b) Identifying, for reasons of maritime safety, anchorage and manoeuvring areas in waters located in zones over which Spain exercises sovereignty, sovereign rights or jurisdiction; authorizations for anchorage and the assigning of berths in port service areas shall be the responsibility of the competent harbour administration;

(c) Helping to determine the condition of port entry and exit channels on the basis of maritime safety reports;

(d) Establishing, for reasons of maritime safety, criteria for the manoeuvres, including berthing, engaged in by ships carrying dangerous cargoes or in exceptional situations;

(e) Providing, for reasons of maritime safety, pilotage and towage services in waters located in areas over which Spain exercises sovereignty, sovereign rights or jurisdiction;

(f) Supervision of technical inspections of Spanish civilian ships, ships under construction in Spain and foreign ships, where authorized by international agreements, and of the cargoes on board, particularly those internationally classified as hazardous, as well as of the means of stowing and breaking bulk from the standpoint of maritime safety;

(g) In general, all functions relating to navigation, maritime safety, rescue at sea and marine pollution control in waters located in areas over which Spain exercises sovereignty, sovereign rights or jurisdiction.

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## **TITLE IV**

### **Regime of police**

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#### **Chapter I**

#### **State port and police regulations**

##### **Article 106**

##### **Service and police regulations**

1. The port authorities, with a report from the harbour-master's office, shall formulate port service and police regulations to govern the functioning of the various services and operations. The regulations shall be sent to State ports for forwarding, along with the appropriate report, to the Ministry of Public Works and Transportation for approval.
2. Once regulations referred to in the preceding paragraph have been approved, they shall be published in the Official State Gazette.

#### **Chapter II**

#### **Measures to safeguard port activities and navigation**

##### **Article 107**

##### **Sinking of ships**

1. If a ship is in danger of sinking in a port and the shipping interest or consignee fails to leave the port or repair the vessel after being requested to do so, the port authority may, on the basis of a report from the harbour-master's office, move the vessel or scuttle it, at the expense of the shipping interest or consignee, so that it does not obstruct port activities, navigation or fishing. In the case of fishing activities, a report shall be requested from the fisheries administration, which shall be assumed to be favourable if it is not issued within a period of 15 days or within a period fixed by the port authorities if there is an imminent risk of the ship's sinking.
2. In the event that a ship sinks in the waters of a port, the port authority shall indicate to the owners, the shipping interest, representatives thereof or to the insurance companies where the wreckage or the ship, once it has been refloated, should be placed within the prescribed period, and shall also indicate the safeguards or safety measures to be taken to prevent it from sinking again.

If the orders or agreements of the port authority are disregarded, the port authority may use the means of forcible execution provided for by law in order to salvage the sunken ship; the shipowner or shipping interest shall in all cases be obliged to defray the costs incurred.

If the shipowner or shipping interest does not reimburse the amounts expended on salvage within the prescribed period, the port authority may alienate the wreckage and deduct from the proceeds the costs incurred. If that sum is not sufficient, the remainder shall be secured by court order.

3. If a ship is at risk of sinking or sinks outside the port in an area over which Spain exercises sovereignty, sovereign rights or jurisdiction, the harbour-master shall be competent to take the action referred to in this article.

**Article 108**  
**Break-up operations**

When the breaking up of ships, maritime installations and non-functioning equipment is carried out in port waters, a report from the harbour-master shall first be required to ensure compliance with maritime safety standards.

**Article 109**  
**Protection of freedom of navigation**

In the event that one or more ships impede or obstruct free access to a port, canal or navigable waterway, or free transit through them, or a vessel sets out to sea after grossly disregarding the clearance regulations or disobeys the orders of the competent harbour-masters' offices, the latter may immediately take all necessary measures for as long as they deem necessary, in accordance with the law, to redress the violation or restore freedom of navigation.

To this end, the harbour-master shall give appropriate orders to the captain of the vessel or to his deputy. These orders must be complied with by the person concerned and by all persons on board the ship, without prejudice to any action that may be taken under the law by those who consider themselves to have been injured.

If necessary, the harbour-master may order that the ship be detained, anchored and restrained in a specified location for as long as necessary until normal conditions have been restored.

**Article 110**  
**Danger on board**

Ships' captains or their deputies may, on an emergency basis, take whatever police measures they deem necessary to ensure good order on board in the event of danger.

**Article 111**  
**Prevention of illicit activities and trafficking**

In order to prevent the conduct of illicit activities or trafficking of any kind, the Government may stop, restrict or place conditions on the navigation of certain categories of civilian ships in internal waters, the territorial sea or the contiguous zone.

**Article 112**  
**Measures to protect maritime navigation and the marine environment**

In order to protect the safety of navigation and prevent pollution of the marine environment in waters over which Spain exercises sovereignty, sovereign rights or jurisdiction, the Ministry of Public Works and Transport, through the port authorities and the harbour-masters' offices, may visit, inspect, search, seize, initiate legal proceedings and, in general, take any steps deemed necessary in respect of ships which infringe or may infringe those legal rights.

Such measures may be adopted without prejudice to any measures adopted for this purpose, by other bodies or public authorities having jurisdiction over conservation of the marine environment.

**Chapter III**  
**Offences**

**Article 113**  
**Definition and classification**

1. The actions and omissions described in and punishable under this Act shall constitute administrative infractions in the sphere of merchant shipping and matters relating to State ports.
2. Offences shall be classified as minor, serious and major, in accordance with the criteria set out in the following articles.

**Article 114**  
**Minor offences**

Minor offences are actions and omissions which are not considered serious or major by virtue of their scope or the magnitude of the damage caused and fall into one of the following categories:

1. Offences relating to the use of ports and port facilities.
  - (a) Failure to comply with the provisions of the port service and police regulations;
  - (b) Failure to comply with ordinances or instructions issued by the port authority with regard to maritime operations in the port area;
  - (c) Conducting maritime operations in the port area in a manner that endangers structures, installations, port facilities and other vessels, or without taking the necessary precautions;
  - (d) Failure to comply with ordinances or instructions issued by the port authority in respect of stevedoring operations, loading and unloading, storage, delivery and receipt and any other operations related to cargo;
  - (e) Unauthorized or inappropriate utilization, or utilization without adequate safety precautions, of port facilities belonging either to the port authority or to individuals;
  - (f) Failure to comply with ordinances or instructions issued by the port authority in the exercise of its competence for the regulation of traffic and land or maritime vehicles;
  - (g) The provision of incorrect information to the port authority on the movement of vessels, cargoes, passengers and land vehicles, especially those data on the basis of which port charges are calculated.
  - (h) Negligent or wilful damage to structures, installations, equipment, cargoes, containers and maritime or land vehicles situated in the port area;
  - (i) Failure to comply with regulations or instructions issued by the competent bodies with regard to maritime safety or pollution;
  - (j) Any other act or omission which causes damage or injury to public property in the port, or to its use or operation.
2. Offences relating to activities that are subject to prior authorization or licensing or carried out under contract.

(a) Failure to comply with the conditions of the relevant administrative sections of the terms of contracts for the indirect provision of port services or of the lists of general conditions governing them, without prejudice to their expiry or revocation;

(b) Unauthorized advertising on external surfaces in the port area;

(c) The provision of incorrect or inadequate information to the port authority, voluntarily or upon request;

(d) Partial or total failure to comply with other obligations set out in this Act and in the provisions that amplify and implement it, and failure to perform any acts that may be required under them;

(e) Failure to comply with port service and police regulations, the General Pilotage Regulations and other regulations governing port activities.

3. Offences affecting maritime safety.

(a) The actions of persons on board who, while inebriated or under the influence of psychotropic substances or toxic or narcotic drugs, endanger the safety of the vessel;

(b) Acts which are contrary to the regulatory provisions or orders issued by the captain or ship's officers and may adversely affect the safety of navigation.

4. Offences affecting the control of maritime traffic.

(a) Failure by the captain or designated person to present the necessary documentation;

(b) Failure to comply with the merchant shipping regulations pertaining to the loading or unloading of cargo or the taking on or discharging of passengers;

(c) The use, within the port, of sound signals which are not permitted under the relevant regulations;

(d) Navigation by any type of ship, craft or device designed for transportation, fishing or pleasure in the belt of sea contiguous with the coast having a width of 200 metres along beaches and 50 metres along the rest of the coast, undertaken in excess of the speed limit set in the relevant regulations;

(e) Navigation, except in cases of force majeure, by any type of ship, craft or device used for sports, undertaken outside the buoyed coastal access channels or in the buoyed zones duly marked as reserved for bathing;

(f) Failure to provide, voluntarily or upon request, information required by the maritime authority, or the improper or inadequate provision of such information.

5. Offences relating to pollution of the marine environment.

(a) Failure to comply with the provisions of the police regulations for ports or other waters on the maintenance of water purity or common use of the maritime environment, or disregard of the prohibitions contained therein;

(b) Carrying out any repairs, graving or dredging that may cause pollution in violation of the applicable rules.

Article 115  
Serious offences

The actions or omissions set out in the preceding article shall be considered to be serious offences when they cause injury to a person resulting in absence from work, on grounds of disability, for up to seven days, or damage or losses of more than 200,000 pesetas and less than 1 million pesetas, when they endanger the safety of the vessel or of navigation, when any of the offences classified as minor are repeated before they are time-barred, and in all cases the following:

1. Offences relating to the use of ports and port facilities.
  - (a) Offences which involve or entail, directly or indirectly, serious risk to individuals;
  - (b) The unauthorized dumping from vessels or floating devices of solid, liquid or gaseous substances in zone II, outside the port waters;
  - (c) Failure to comply with the rules established for stevedoring operations in the pertinent legislation;
  - (d) Failure to comply with the rules, ordinances or instructions relating to the handling and storage on land of dangerous goods or the concealment of such goods or of their condition;
  - (e) The offer or delivery of money or other types of gifts or presents to personnel of the port or maritime authority or to personnel of State stevedoring companies in order to secure favourable consideration for the person giving the bribe, and also the solicitation, requirement or acceptance by personnel of such bodies or companies of presents, tokens, gifts or money;
  - (f) Obstruction of the exercise by the port or maritime authority of their police functions;
  - (g) Falsification of information provided, voluntarily or upon request, to the port authority;
  - (h) Failure by the captain to request the pilotage or towage services required under the provisions in force.
2. Offences affecting maritime safety.
  - (a) Disputes and conflicts between persons on board when they affect the safety of the vessel or of navigation;
  - (b) Acts contrary to the regulations or orders issued by the captain or officers which may seriously affect the safety of the vessel or of navigation;
  - (c) The carrying of weapons or dangerous devices or substances without the prior authorization of the ship's captain;
  - (d) Actions or omissions by any member of the ship's crew while inebriated or under the influence of psychotropic substances or of toxic or narcotic drugs which may interfere with his ability to perform his duties;
  - (e) Refusal by the captain to keep a stowaway on board pending delivery to the competent authorities or those designated by them;
  - (f) Unjustified refusal by the captain, or by the person replacing him, in the event of a collision, to provide information about the name and port of registration of the ship under his command, the port of origin and the destination;

- (g) The clandestine boarding of a Spanish ship;
  - (h) Cases in which captains exceed the limits of the powers vested in them by their professional or recreational certification masters or other seagoing personnel;
  - (i) Except where justified, failure by the parties concerned to inform the nearest harbour-master's office that the state of distress of a ship or fixed platform which gave rise to their request for help has ceased to exist;
  - (j) Ignorance on the part of the crew members of a Spanish civilian ship of their official duties and functions in emergencies, as approved by the Administration in accordance with the applicable regulations, or failure to fulfil those duties and functions;
  - (k) Failure on the part of shipping interests, captains and masters to comply with the rules governing inspections and certificates of the ship and its components;
  - (l) Navigation, except in cases of force majeure, by any type of ship, craft or device designed for transportation, fishing or pleasure outside the buoyed coastal access channels or in bathing areas, when such navigation causes injury to the users of those areas;
  - (m) Actions or omissions not included in the preceding paragraphs which threaten the safety of the ship or of navigation.
3. Offences affecting the control of maritime traffic.
- (a) Failure to comply with the rules in force on governing the use of the national flag or passwords on ships;
  - (b) Navigation of a ship without displaying its name or carrying the required register;
  - (c) Deficiencies, deterioration or serious inaccuracies in the required documentation of the ship;
  - (d) Carrying out port trade, foreign trade or trade between Autonomous Communities without the requisite authorization in ports, coastal locations or anchorage points in the internal waters or the territorial sea;
  - (e) Failure to carry out the instructions issued by harbour-masters' offices within their spheres of competence with regard to the manoeuvring and navigation of ships in ports, roadsteads and other maritime waters outside ports;
  - (f) Failure to comply with the regulations or instructions issued by harbour-masters' offices with regard to the regime and traffic of ships, including pleasure boats and craft used for any purpose, and the use of any device which may pose a risk to navigation or persons;
  - (g) Failure to comply with the rules governing the clearance of ships and other craft or the enlistment of crews and the roster system for harbour-masters' and consular offices;
  - (h) Engaging in work at sea in violation of the rules governing maritime employment, and failure to possess a certificate or any other document or item required by regulation in order to engage in such work;
  - (i) Violation of the rules governing the registration of ships, boats or fixed platforms in the corresponding lists of the Register of Ships and Shipping Companies and the use of ships or shipping companies in traffic or activities prohibited under the terms of such registration;
  - (j) Violation of the rules governing the use of radio stations and services by ships;

- (k) Failure to comply with the obligation to register companies in the Registry of Ships and Shipping Companies or to report therein any documents, contracts or agreements requiring registration or notation;
  - (l) Building a ship, making alterations to it or changing its motor without the requisite State administrative authorization or in violation of the rules regulating such activities, and launching a ship without the appropriate permit;
  - (m) Violation of the regulations governing the break-up of ships and the destruction or abandonment of fixed platforms in waters located in areas over which Spain exercises sovereignty, sovereign rights or jurisdiction;
  - (n) Failure to comply with the terms of concessions or authorizations for the provision of maritime services;
  - (o) Failure to comply with the duty to provide the information which must be supplied to the maritime authorities in accordance with the relevant regulations, or doing so in an improper manner.
4. Offences relating to pollution of the marine environment from ships or fixed platforms or other installations in waters located in areas over which Spain exercises sovereignty, sovereign rights or jurisdiction.
- (a) Negligent discharge into waters located in areas over which Spain exercises sovereignty, sovereign rights or jurisdiction of waste or other substances from ships, fixed platforms or other structures in the sea when such discharge violates the relevant legislation in force;
  - (b) Failure to comply with the special rules governing navigation, cargo handling and compulsory insurance in respect of ships that transport oil and other pollutants;
  - (c) Failure to comply with the provisions in force with regard to facilities, installations and documents on board for the prevention and control of operations for the disposal of waste and other substances;
  - (d) Failure to inform the nearest harbour-master's office or the Department of the Merchant Navy immediately, in the cases and in the manner provided for in the relevant legislation, of the discharge or disposal of pollutants from vessels or from fixed platforms or other installations in waters located in areas over which Spain exercises sovereignty, sovereign rights or jurisdiction;
  - (e) Negligent introduction into the marine environment, directly or indirectly, of substances, materials or energy sources that may be harmful to human health, adversely affect tourist, scenic or biological resources and marine life, limit recreational opportunities or obstruct other legal uses of the seas, when such disposal contravenes the legislation in force or is not duly authorized.

#### Article 116 Major offences

The actions or omissions set out in articles 114 and 115 above shall be considered to be major offences when they cause injury to a person that results in absence from work, on grounds of disability, for more than seven days, or damages or losses of more than 1 million pesetas, when they severely threaten the safety of the ship or of navigation, when any of the offences classified as serious are repeated before they are time-barred, and in all cases the following:

- 1. Offences relating to the use of ports and to the exercise of port activities.
  - (a) Offences which may pose a major risk to human health and safety;
  - (b) Unauthorized dumping from vessels or floating devices of solid, liquid or gaseous substances in zone I,

within port waters;

(c) The construction, without the proper administrative document required under this Act, of any works or facilities within the port area, or increasing occupied surface area or structural volume or height beyond authorized limits, in disregard of the port authority's express order that the offending conduct be halted, or the persistence of such conduct after notice of the institution of penal proceedings has been served.

2. Offences affecting maritime safety.

(a) Ordering or engaging in navigation when the ship fails to meet the necessary standards of seaworthiness, thereby jeopardizing its safety;

(b) Making substantial alterations in the design of life-saving equipment which renders it inconsistent with official authorized models;

(c) Failure to comply with the rules or instructions issued by the maritime authorities with regard to the storage, handling, loading, stowage and breaking bulk, transport or maintenance on board of explosive or dangerous materials;

(d) The unwarranted use of distress signals and the unauthorized display of distinguishing marks that would identify the vessel as a hospital ship or invest it with any other characteristic that contravenes the provisions of international law;

(e) Hiring as captain, master or watch officer any person not in possession of the proper certification legally qualifying him for such positions or allowing any such person to perform those functions, or the performance of such functions without the aforementioned certification, except in the case of pleasure boats;

(f) Ignorance on the part of the crew members of Spanish passenger ships of their official duties and functions in emergencies, as approved by the Administration in accordance with the applicable rules, or failure to fulfil those duties and functions;

(g) Failure to comply with Administration rules or resolutions concerning the minimum safe crew size referred to in article 77 of this Act;

(h) Failure to comply with the provisions of maritime safety regulations which result in accidents involving injury to persons;

(i) Failure to comply with rules or resolutions of the maritime authorities concerning the construction of, or the exercise of activities on, fixed platforms in waters located in areas over which Spain exercises sovereignty, sovereign rights or jurisdiction, where maritime safety is threatened;

(j) Acts or omissions by the captain, master or pilot on duty while inebriated or under the influence of psychotropic substances or toxic or narcotic drugs which results in the impairment of his capacity to discharge his duties;

(k) Acts or omissions by the captain or members of the crew involving failure or refusal to provide assistance to persons or ships where such assistance is sought or presumed necessary;

(l) Acts or omissions not included in the preceding subparagraphs which gravely imperil the safety of the ship or navigation thereof.

3. Offences affecting the control of maritime traffic.

- (a) Navigating without regulation signalling systems that allow for continuous indication of position and viewing of a ship;
  - (b) Navigating without having obtained a certificate of registry, sea letter or document certifying the nationality of the ship or craft, or after the certificate required by regulation has expired;
  - (c) Navigating when the ship is not duly registered;
  - (d) Failure to comply with the rules that reserve specific traffic or activities for ships flying the Spanish flag, in accordance with the provisions of this Act;
  - (e) Failure to comply with rules governing the Register of Ships and Shipping Companies and the export, import or provisional flagging of Spanish ships by foreigners or of foreign ships in Spain;
  - (f) Failure to comply with the orders, prohibitions and conditions referred to in articles 109, 110, 111 and 112 of this Act;
  - (g) The provision of marine navigation services without the corresponding administrative concession or authorization where such is required under the provisions of this Act;
  - (h) Falsification of information that should be furnished to the maritime authorities in accordance with the regulations in force;
  - (i) Failure to perform public-service obligations required of shipping companies operating regular or non-regular services in internal, coastal, external or extra-national waters;
  - (j) Failure to fulfil obligations set out in regulations designed to implement the provisions of this Act and relating to the coordination of State ports and the merchant navy with the needs of national defence and public security.
4. Offences relating to pollution of the marine environment from ships or fixed platforms or other installations located in areas over which Spain exercises sovereignty, sovereign rights or jurisdiction.
- (a) Deliberate discharge from vessels, fixed platforms or other installations in waters located in areas over which Spain exercises sovereignty, sovereign rights or jurisdiction, of debris, waste or other materials carried on board or stored there for the purpose of dumping, except when dumping has been duly authorized or when such authorization is not required under the provisions of the relevant legislation in force;
  - (b) Deliberate pollution of the marine environment by the sinking of vessels or the destruction of fixed platforms or other installations in waters located in areas over which Spain exercises sovereignty, sovereign rights or jurisdiction, subject to the exceptions set out in the preceding paragraph;
  - (c) Deliberate discharge of waste or other materials produced directly or indirectly by the normal operations of ships, fixed platforms or other installations in waters located in areas over which Spain exercises sovereignty, sovereign rights or jurisdiction, when such discharges contravene the relevant legislation in force;
  - (d) Deliberate introduction into the marine environment, directly or indirectly, of substances, materials or energy sources that may be harmful to human health, adversely affect tourist, scenic or biological resources and marine life, limit recreational opportunities or obstruct other legal uses of the seas, when such disposal contravenes the legislation in force or is not duly authorized.

Article 117  
Limitation of actions

1. Major offences shall be time-barred after five years, serious offences after three years and minor offences after one year.

The limitation period shall be measured from the time the offence is committed.

2. In the case of recurrent offences, the limitation period shall be measured from the time the activity is concluded or the time of the last act by virtue of which the offence becomes complete.

If the events or activities that constitute the offence are not detected because they produce no external signs, the limitation period shall be measured from the time such signs are observed.

3. However, irrespective of the time elapsed since the commission of the offence, all objects shall be returned and restored to their former condition.

4. Construction work or installations shall be considered to have been completed when they can be used for their intended purpose without any further action. To this end, the date of completion shall be confirmed by the port authority or, alternatively, shall be considered to be the date of licence, permit or operating clearances or a certificate of completion of work signed by a qualified expert.

Article 118  
Liability

The following individuals and legal entities shall be held liable for:

1. Offences relating to the improper use of ports.

(a) In the event of a breach of the terms of a contract or administrative post, the holder of the contract or post;

(b) In the case of other offences relating to a ship, the shipping interest and, jointly and severally, the shipping agent or, in the absence of the agent, the ship's captain, without prejudice to any liability that may be incurred by the holder of a pilotage contract holder and by the pilot in the performance of his duties under the applicable regulations;

(c) In the case of offences relating to the handling of goods, the personnel handling such goods and the stevedoring company responsible for such operations shall be liable, jointly and severally, alternatively, with secondary liability borne by the freight agent;

(d) In the case provided for in article 114.1 (g), the entities required to provide such information;

(e) In the case of the actions or omissions referred to in article 114.1 (h) and (j), the perpetrator or the person responsible for the action or omission and, if applicable, the firm providing the service and which employed the perpetrator at the time such losses occurred shall be jointly and severally liable;

(f) In the case provided for under article 115.1 (d), the entities responsible for the transport of dangerous goods and, alternatively, those required to provide information in accordance with applicable regulations;

(g) In the case provided for in article 115.1 (e), the persons offering or delivering money or gifts and the

workers soliciting or receiving such money or gifts;

(h) In the case of the construction of works without due administrative authorization, the promoter of the activity, the contractor carrying out the construction and the chief engineer.

2. Offences relating to civilian ships.

(a) In case of offences committed in the navigation of non-merchant civilian ships, or as a result of the installation of fixed platforms or other construction works situated outside the port service area, the individual or legal entity that owns the business involving the ship, platform or construction work or, in the case of ships used exclusively as pleasure craft, the individual or legal entity that owns the vessel or is directly liable for the offence. In such cases, secondary liability shall be borne by the ship's captain or master;

(b) In the case of offences committed in the navigation of merchant ships, the shipping company engaging in the activity or, failing that, the ship's captain;

(c) In the case of offences committed by users and, in general, by third parties who, while not covered by the preceding subparagraphs, nevertheless engage in activities that are governed by the legislation regulating the merchant navy, the individual or legal entity to whom the rule violated applies or who is specifically held liable under the applicable rules;

(d) In the case of pollution of the marine environment from ships, the shipping interest, shipowner, civil liability underwriter and the ship's captain shall be jointly and severally liable. Should the offence be committed from fixed platforms or other facilities in waters located in areas over which Spain exercises sovereignty, sovereign rights or jurisdiction, the owner of the fixed platforms or facilities, the party engaging in the activity, where appropriate, and the underwriter of the activity shall be jointly and severally liable. Similarly, the aforementioned individuals shall be held jointly and severally liable for reparation of the damage caused and the competent administration may perform or cause to be performed, at their expense, any urgent operations required to protect the environment.

3. The provisions concerning offences and sanctions in the area of civilian ships shall not apply to non-nationals on board foreign ships, even when such ships are in areas under Spanish jurisdiction, provided that the act affects only the order on board ship and involves only foreign nationals.

In such cases, the Spanish authorities shall extend to the captains and consuls of the flag State only such assistance as they request, in accordance with international law.

4. The sanctions imposed on several individuals as a result of a single offence shall bear no relation to each other unless otherwise provided in this Act.

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## Chapter IV Penalties and other measures

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### Section 1 General provisions

#### Article 119 General principles

1. Acts or omissions constituting offences shall be subject to penalties in accordance with the provisions of this Act.
2. If a single act or omission gives rise to two or more offences, only the offence which entails the greater penalty shall be considered. Nevertheless, holders of concessions granted in accordance with this Act may in all cases be penalized for offences established thereunder, independently of any other liability they may incur.
3. When an offence may constitute either a crime or a misdemeanour, it shall be referred to the public prosecutor, and penalty proceedings shall be suspended until the judicial authorities render a final judgement or a decision which brings the proceedings to an end.

Criminal penalties shall preclude the imposition of administrative penalties. If no crime or misdemeanour is found to exist, the Administration shall continue the penal proceedings, taking into account, as appropriate, the facts established in the decision of the competent judicial body.

In all cases, administrative measures taken in order to safeguard port activities, maritime safety and maritime traffic control and to protect the marine environment from pollution shall be carried out immediately. The suspension of penal proceedings shall not extend to the execution of measures to restore the legal order.

4. Likewise, procedures shall be initiated for the suspension of the effects and cancellation or nullification of administrative acts or contracts under which the unlawful act could presumably be shielded from punishment.
5. [In cases in which this Act provides for liability, imposition of administrative penalties on an employee when he had already been punished by the employer as a consequence of the same acts.]<sup>2(1)</sup>

### Section 2 Applicable penalties

#### Article 120 Fines and additional penalties

1. Minor offences shall be punishable by a fine of up to 10 million pesetas.
2. The penalties for serious offences shall be as follows:

(a) For offences involving the use of ports and the exercise of port activities: in the cases provided for in article 115.1 (b), (c), (e), (f), (g), and (h), a fine of up to 20 million pesetas; in the cases provided for in article 115.1 (a) and (d), a fine of up to 50 million pesetas;

(b) For offences affecting maritime safety: a fine of up to 30 million pesetas;

(c) For offences affecting the control of maritime traffic: a fine of up to 20 million pesetas.

(d) For offences involving pollution of the marine environment: a fine of up to 100 million pesetas.

3. The penalties for major offences shall be as follows:

(a) For offences involving the use of ports and the exercise of port activities: in the cases provided for in article 116.1 (c), a fine of 50 per cent of the value of the works or facilities. In all other cases, a fine of up to 100 million pesetas;

(b) For offences affecting the control of maritime traffic: a fine of up to 150 million pesetas;

(c) For offences affecting maritime traffic: a fine of up to 50 million pesetas;

(d) For offences involving pollution of the marine environment: a fine of up to 500 million pesetas.

4. In the event that a serious or major offence is committed by the repetition of a minor or serious offence, respectively, prior to the expiry of the statute of limitations, the fine shall be reckoned to be the sum of the fines set for each offence.

5. A portion of the fine set in accordance with the provisions of the preceding paragraphs may be forgiven by means of an agreement with the competent body imposing the fine, provided that the offender has taken action to correct the situation created through the commission of the offence in the manner and within the time limit prescribed by the relevant regulations.

6. In the case of major offences, a ship may be impounded or its entry, loading and unloading prohibited as a penalty supplementary to those imposed in each case.

7. In the cases provided for in article 116.2 (b), the fine shall entail the revocation of official approval of the model.

8. In the case of major offences involving the use of ports and port facilities which are committed while engaging in the activities referred to in article 54 of this Act, the Ministry of Public Works and Transport may, at the request of the State port authority, temporarily bar offenders for a period not exceeding three to five years from holding authorizations and concessions, respectively, in the relevant port area or from engaging in port activities.

9. In the case of authorizations for activities covered under article 59.1 of this Act which are carried out in the port service area, offences relating to the use of this area or activities conducted therein may also entail the temporary suspension of the activity, in accordance with the following criteria:

- Minor offences: suspension not exceeding one month;

- Serious offences: suspension not exceeding six months;

- Major offences: suspension and temporary disqualification from engaging in any activity whatsoever in the area in question for a period not exceeding five years.

10. In the case of serious or major offences affecting maritime safety which are committed by the ship's captain or master, the pilot on duty or other crew members, the Director-General of the Merchant Navy, in the case of serious offences, or the Ministry of Public Works and Transport on the recommendation of the Department of the Merchant Navy, in the case of major offences, may suspend their professional licences as follows:

- (a) Serious offences: suspension not exceeding one year;
- (b) Major offences: suspension from one to five years.

11. Once they have been set, the penalties imposed for serious or major offences shall be made public in the manner established in the relevant regulations.

12. The statute of limitations applicable to penalties shall be five years for penalties corresponding to major offences, three years for serious offences and one year for minor offences.

#### Article 121 Non-penalty measures

In addition to the imposition of the preceding penalties, acts or omissions constituting offences shall give rise to the following measures:

- (a) Restitution of items or restoration thereof to their former condition;
- (b) Compensation for irreparable damage in an amount equal to the value of the items destroyed or of the damage or loss caused, within the prescribed time period.

When the profit derived by the offender from the acts or omissions constituting the offence exceeds the amount of compensation, the amount of the profit shall be taken as the minimum in fixing compensation;

- (c) Invalidation of administrative certification when the offence is the result of a failure to comply with the conditions of such certification;
- (d) The denial of a ship's stopover, exit, loading or unloading rights where the relevant laws and regulations so provide.

#### Article 122 Criteria for ranking of penalties

1. The amounts of fines and the application of additional penalties shall be determined having regard to the profit obtained through the commission of the offence, the importance of the unlawful conduct, the negligence or intent of the offender, the damage caused, the number of offences committed and any other aggravating or extenuating circumstances which might have a bearing on the degree of fault.

2. In so far as possible, and making allowances and adaptations as required by the specific nature of the administrative sector concerned, the criminal rules governing preclusion of wrongfulness and guilt shall be applied in an analogous manner, without prejudice to the consideration, for the same purpose, of other relevant circumstances in the aforementioned sector.

**Article 123**  
**Competence**

1. Competence to impose the penalties contained in this Act shall be accorded to:
  - (a) The board of directors of the port authority, in cases of minor offences involving the use of ports and the exercise of port activities;
  - (b) Harbour-masters, in cases of minor offences affecting maritime safety and the control of marine traffic or offences involving pollution of the marine environment from ships, fixed platforms or other installations in waters located in zones over which Spain exercises sovereignty, sovereign rights or jurisdiction;
  - (c) The board of directors of the port authority and the Director-General of the Merchant Navy, within their areas of competence, in cases of serious offences as described in this Act;
  - (d) The Minister of Public Works and Transport, on the recommendation of State ports or of the Director-General of the Merchant Navy in their area of competence, in cases of major offences involving amounts under 200 million pesetas;
  - (e) The Council of Ministers, on the recommendation of the Minister of Public Works and Transport, in cases of major offences involving amounts greater than those mentioned in the preceding subparagraph.
2. These limits, as well as the amount of fines, may be updated or amended by the Government in accordance with movements in the consumer price index.
3. The amount of fines and compensation for offences involving the use of ports and the exercise of port activities shall be considered to be revenue belonging to the port authority in whose area the offence was committed.

**Section 3**  
**Compensation for damage and loss**

**Article 124**  
**Compensation for damage and loss**

1. When restitution and restoration to prior condition is impossible, and in all cases where damage and loss have occurred, the perpetrators of the offence shall pay any compensation deriving therefrom.
2. When the amount of profit exceeds the amount of compensation, the former shall be taken as the minimum in fixing the latter.
3. When damages are difficult to evaluate, the port or maritime authority shall, in fixing the amount of compensation, take into account the following criteria, applying whichever shall result in the highest amount:
  - (a) The national cost of restitution and restoration;
  - (b) The value of the damaged goods;
  - (c) The profit obtained by the offender through his wrongful act.

Chapter V  
Procedures, methods of execution and precautionary measures

Article 125  
Procedures

1. The staff and officials of the maritime or port authority shall be required to bring charges against offenders, institute proceedings when charges are brought and resolve matters within their area of competence through the imposition of the relevant penalties.
2. Where so indicated, staff with inspection and monitoring duties shall be granted access to areas and installations under concession or authorization located in the service area of the port or to ships and platforms flying the Spanish flag, or, within the limits established by the international conventions to which Spain is signatory, those flying foreign flags in waters located in areas over which Spain exercises sovereignty, sovereign rights or jurisdiction, for the purpose of carrying out tests and related activities, unless they are legally considered to constitute a domicile in which case the inspection shall comply with the rules guaranteeing inviolability.
3. Notwithstanding the foregoing, in the case of offences involving the use of ports and the exercise of port activities, the initiation of penalty procedures and measures to restore the legal order shall conform to the provisions of the Law on Costs, except that the competent body shall be the port authority. In all cases, the port authority shall undertake restoration measures.

Offences covered under this Act shall be subject to penalties after the appropriate administrative proceedings have been conducted in the form established by the Administrative Procedures Act.

Article 126  
Methods for ensuring collection

1. The amounts of fines and compensation for damage or loss caused may be exacted by means of a court order.
2. Likewise, in order to guarantee the collection of fines and compensation and the restoration of the legal order, the maritime and port authorities may use the means of forcible execution provided for in the Administrative Procedures Act and in the Law on Costs.

Article 127  
Obligation to document incidents

Ships' captains shall be obligated to note in the navigational log or in the list of clearances any incidents involving persons on board during a voyage which, in their judgement, might constitute an offence as provided for in this Act. The entry shall be signed by the captain and by the individual concerned or, if he refuses, by two witnesses.

Article 128  
Impounding of vessels

The harbour-master may order the impounding of a vessel as a precautionary measure, in order to ensure compliance with the requirements of article 118.2 (d) of this Act.

A promissory note or a guarantee which the Department of the Merchant Navy deems adequate may be substituted.

**First supplementary provision**  
**Service area**

If the delimitation provided for in article 15.1 has not yet been carried out, the service area of ports under State jurisdiction shall be considered to be the entire land area included in the existing service area upon the entry into force of this Act and the water surfaces included in zones I and II delimited by each port for tariff purposes, in accordance with the rules in force.

**Second supplementary provision**  
**Contiguous zone**

In the contiguous zone defined in article 7.1 of this Act, the Government may take the necessary control measures to:

(a) Prevent violations of customs, smuggling, taxation, immigration and health laws and regulations in national territory and territorial waters;

(b) Punish such violations.

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## Endnotes

### 1 (Popup - Popup)