

ELIZABETH II



The Territories of South Georgia  
and the South Sandwich Islands

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RUSSELL THOMAS JARVIS,  
*Acting Commissioner.*

**FISHERIES (CONSERVATION AND MANAGEMENT) ORDINANCE 2000**

*(No: 2 of 2000)*

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**FISHERIES (CONSERVATION AND MANAGEMENT) ORDINANCE 2000**

*(No. 2 of 2000)*

*(assented to: 30 June 2000)*  
*(commencement: in accordance with section 1)*  
*(published: 19 July 2000)*

AN ORDINANCE

To repeal the Fishing (Conservation and Management) Ordinance 1993 and to re-enact it with amendments.

ENACTED by the Commissioner of South Georgia and the South Sandwich Islands as follows —

PART I  
INTRODUCTORY

*Short title, commencement and interpretation*

**Short title**

1. This Ordinance may be cited as the Fisheries (Conservation and Management) Ordinance 2000 and shall come into force on such date as the Commissioner may appoint by notice published in the *Gazette*.

**Interpretation**

2. In this Ordinance unless the context otherwise requires —

“catch” and its correlatives include “take” and its correlatives;

“Convention” means the Convention on the Conservation of Antarctic Marine Living Resources made in Canberra on 20th May 1980, as amended from time to time, and includes any Protocol

to that Convention and any decision or measure which is for the time being in force adopted pursuant to that Convention by the Commission to that Convention;

“Director of Fisheries” means the Director of Fisheries appointed as provided in section 4(1);

“Fisheries Protection Officer” means the Director of Fisheries and any of the Fisheries Protection Officers provided for in section 4(4);

“fish” means any sea fish, including shellfish, and any marine animal other than a bird;

“fish product” means anything made from or derived from fish;

“fishing” means the catching of fish and any other activity which can reasonably be expected to result in the catching of fish;

“fishing boat” means any vessel of whatever size, and in whatever way propelled, which is for the time being adapted or used for fishing;

“fishing gear” includes nets of every kind, fish-hooks, lines, pots, trawl doors and buoys;

“fishing licence” means a licence provided for under section 5;

“fishing-related operations” means the processing, storage, carriage or trans-shipment of fish aboard any vessel and any operation ancillary to any of those operations;

“fishing waters” means the fishing waters of South Georgia and the South Sandwich Islands provided for in section 3;

“individual” means a living person;

“internal waters” means those sea waters on the landward side of the base line from which the territorial sea is measured;

“Maritime Zone” means the zone of that name established by and defined in a Proclamation of the Commissioner dated 7th May 1993 (Proclamation No 1 of 1993);

“this Ordinance” includes any regulations made under this Ordinance which are for the time being in force;

“processing” (in relation to fish) includes preserving or preparing fish or processing any article or substance obtained from fish, by any method whatever and for whatever purpose;

“master”, in relation to a fishing boat, means both the person appearing to be the person who is for the time being in command or in charge of the boat and any person who is for the time being in charge of fishing operations on board that fishing boat;

“sea fish” means any fish or part of any fish found in the fishing waters;

“shellfish” includes crustaceans and molluscs of any kind, and includes any (or any part of any) brood, ware, half-ware or spat of shellfish and any spawn of shellfish, and the shell, or any part of the shell, of a shellfish;

“specified area” means any area of the fishing waters for the time being the subject of an Order made under, or continuing to have effect as if made under, section 5(1);

“territorial sea” has the same meaning as it has by virtue of article 2 of the South Georgia and the South Sandwich Islands (Territorial Sea) Order 1989;

“trans-shipment licence” means a licence granted under section 6;

“trans-shipment of fish” includes the passing of fish from one fishing boat to another whether or not the fish has first been taken on board the boat from which the fish is passed;

“the 1993 Ordinance” means the Fishing (Conservation and Management) Ordinance 1993.

#### *Administration*

#### **Fishing waters**

**3.** The fishing waters of South Georgia and the South Sandwich Islands comprise —

- (a) the internal waters;
- (b) the territorial sea; and
- (c) the Maritime Zone.

#### **Director of Fisheries and Fisheries Protection Officers**

**4.—(1)** The Commissioner shall appoint a person to be the Director of Fisheries who shall administer this Ordinance and be responsible for —

- (a) the conservation of fish stocks;
- (b) the assessment of fish stocks and the collection of data, statistics and any other relevant information;
- (c) the development and management of fisheries;
- (d) the monitoring, control and surveillance of fishing and fishing-related operations;
- (e) the regulation of the conduct of fishing and fishing-related operations;
- (f) the issue, variation, suspension and revocation of licences for fishing and fishing-related operations;
- (g) the collection of fees in respect of fishing licences and trans-shipment licences;

(h) the making of such reports to the Commissioner as the latter, in his discretion, may require;

(i) other matters referred to in this Ordinance.

(2) In the performance of his duties under this Ordinance the Director of Fisheries shall be subject to the direction of the Commissioner except that in the performance of such of his duties as relate to the prosecution or non-prosecution of offences under this Ordinance he shall act in accordance with such directions as the Attorney General may give to him.

(3) This Ordinance shall be enforced by Fisheries Protection Officers acting (save as provided in subsection (2)) subject to the direction of the Director of Fisheries, and for that purpose Fisheries Protection Officers shall have the powers set out in section 12.

(4) The following persons shall be Fisheries Protection Officers, that is to say every person appointed in that behalf by the Commissioner, every police officer, customs officer, Marine Officer or Harbour Master of any harbour in South Georgia and the South Sandwich Islands, commissioned officer on any of Her Majesty's ships and persons in command or charge of any aircraft or hovercraft of the Royal Navy, the Army or the Royal Air Force.

(5) In the performance of their duties under this Ordinance the Director of Fisheries and every Fishery Protection Officer shall have regard to the provisions of the Convention but the question as to whether the Director of Fisheries or any Fishery Protection Officer has done so in any particular instance shall not be inquired into in any court.

#### *Restriction of fishing and fishing-related operations*

##### **Licensing of fishing boats**

**5.—**(1) The Commissioner may by Order provide that in any of the fishing waters lying to the north of sixty degrees south of latitude specified in the Order (a "specified area") fishing is prohibited unless it is authorised by a licence granted by the Director of Fisheries or is permitted under subsection (14).

(2) Such an Order may apply to fishing boats generally in the specified area or to fishing —

(a) for a specified description of fish;

(b) by a specified method; or

(c) during a specified season of the year or other period.

(3) Where any fishing boat is used in contravention of any prohibition imposed by an Order under this section, the master, the owner and the charterer (if any) of the fishing boat each commit an offence under this subsection and are each liable on conviction thereof to a fine not exceeding £500,000.

(4) An Order under this section may authorise the charging of a fee for licences under this section and may additionally authorise the charging of a fee in connection with any application for such a licence.

(5) Where an Order under this section authorises the charging of a fee for a licence —

(a) the Commissioner may waive or reduce that fee if he sees fit to do so in the circumstances of the particular case;

(b) any such fee may be expressed to be variable in relation to all or any of the following matters —

(i) the size of the fishing boat;

(ii) the equipment in relation to fishing affixed to or employed upon or in connection with the fishing boat;

(iii) the facilities aboard the fishing boat for the storage, freezing, processing or other treatment of fish;

(iv) the area in which fishing is authorised;

(v) the description and quantities of fish which may be taken;

(vi) the method or methods of fishing authorised to be used.

(6) An Order under this section may be amended, modified, revoked or replaced by a further Order under this section.

(7) A licence under this section may authorise fishing either unconditionally or subject to such conditions —

(a) as the Director of Fisheries may have been directed by the Commissioner to impose;

(b) as in the opinion of the Director of Fisheries may be necessary or expedient to regulate the conduct of fishing and fishing-related operations by the licensee under authority of the licence;

(c) as to the use to which the fish may be put;

(d) prohibiting or restricting the use of any equipment which might kill or harm any aquatic bird or marine mammal to be found or likely to be found in the area to which the licence relates;

(e) as to the disposal of waste, effluvia or deleterious matter by the fishing boat to which the licence relates;

(f) otherwise as in the opinion of the Director of Fisheries may be necessary or expedient to secure the fulfilment of any obligation under or objective of the Convention,

as are contained in or specified in the licence, and the conditions subject to which a licence may be granted under this section may differ between different fishing boats or fishing boats of different descriptions.

(8) Subsection (7) has effect without prejudice to any power under section 24 to make regulations as to any matter as to which under subsection (7) conditions may be imposed.

(9) The licensing powers conferred by this section may be exercised so as to limit the number of fishing boats, or any class of fishing boats, engaged in fishing in any area, or fishing in any area for any description of fish in any manner which appears to the Director of Fisheries to be expedient or necessary for the regulation of fishing.

(10) The Director of Fisheries —

(a) may from time to time vary a licence granted under this section;

(b) may revoke or suspend such a licence if he considers it to be necessary for the regulation of fishing or to be appropriate having regard to the conduct of the licensee, and whether that conduct was within a specified area or elsewhere.

(11) Where the Director of Fisheries varies, revokes or suspends a licence he may, if he considers it appropriate in all the circumstances of the case, refund the whole or part of the fee paid in respect of that licence.

(12) If a licence condition is broken, the owner and charterer (if any) of the fishing boat named in the licence each commit an offence under this section and are each liable on conviction of that offence to a fine not exceeding £250,000.

(13) Any person who —

(a) for the purpose of obtaining a licence under this section; or

(b) in purported compliance with any condition contained in a licence requiring the provision to the Director of Fisheries or to any person on his behalf of statistical information,

furnishes information which he knows to be false or recklessly furnishes information which is false in a material particular, commits an offence under this section and is liable to a fine not exceeding £100,000 and where a person other than the owner or charterer (if any) of the fishing boat in question furnishes such false information, that owner and that charterer (if any) as well as the person who actually furnished the information shall be deemed to have furnished it and to have committed the offence and shall be liable to be dealt with in respect of unless he or they



shall prove that the person who actually furnished the information was not authorised to act on his or their behalf.

(14) Nothing in the foregoing provisions of this section or of any Order under it shall apply to fishing which is undertaken for the purpose of genuine scientific research which has been notified in advance to the Secretariat of the Commission.

### **Receiving and trans-shipping of fish and other fish-related operations**

**6.—**(1) In the subsequent provisions of this section “fish” includes fish products.

(2) The Commissioner may by Order provide that in any specified area (that is to say an area to which an Order under section 5(1) relates) or any part of any specified area described in the Order under this section any fishing-related operation is prohibited unless authorised by a licence granted by the Director of Fisheries.

(3) An Order made under this section may apply to the receiving fish generally or to the receiving of —

- (a) a specified description of fish;
- (b) fish taken by a specified method;
- (c) fish taken in an area described in the Order (and whether within the fishing waters, the area to which the Convention relates or otherwise); or
- (d) fish taken or trans-shipped during a specified period of the year or other period,

but it shall not prohibit the receiving of fish in circumstances to which subsection (11) applies and may provide for exemptions from the prohibitions contained in it.

(4) An Order made under this section may authorise the charging of a fee for any licence granted under this section and may additionally authorise the charging of a fee in connection with any application for such a licence.

(5) Where an Order under this section authorises the charging of a fee for a licence —

- (a) the Commissioner may waive or reduce that fee if he sees fit to do so in the circumstances of the particular case;
- (b) any such fee may be expressed so as to be variable in relation to all or any of the following factors —
  - (i) the size of the fishing boat;
  - (ii) the facilities aboard the fishing boat for the storage, freezing, processing or other treatment of fish;

(iii) the area in which (and whether within the fishing waters, the area in relation to which the Convention relates or otherwise) the fish were taken or the place within a specified area (that is to say an area to which section 5(1) relates) in which the fish is trans-shipped;

(iv) the periods, times or particular voyages during which the fish was caught or trans-shipped;

(v) the description and quantities of fish that may be received;

(vi) the description of the fishing boat or method by which the trans-shipped fish was caught.

(6) An Order made under this section may be amended, modified, revoked or replaced by a further Order under this section.

(7) A licence granted under this section may authorise the receiving of fish either unconditionally or subject to such conditions —

(a) as the Director of Fisheries may have been directed by the Commissioner to impose;

(b) as in the opinion of the Director of Fisheries may be necessary or expedient to regulate the receiving of fish by, or the processing or treatment of fish aboard, the receiving vessel;

(c) as to the use to which the fish received may be put;

(d) prohibiting or restricting the use of any equipment or apparatus which might kill or harm any aquatic bird or marine mammal to be found or likely to be found in or in the vicinity of any place where the receiving of fish is authorised;

(e) as to the disposal of any waste, effluvia or deleterious matter by the fishing boat to which the licence relates;

(f) otherwise as may in the opinion of the Director of Fisheries be necessary or convenient to secure the fulfilment of any obligation under or objective of the Convention.

(8) Subsection (7) has effect without prejudice to any power under section 24 to make regulations as to any matters as to which under subsection (7) conditions may be imposed.

(9) Subsection (10), (11) and (13) of section 5 apply in relation to a licence granted under this section as they do in relation to a licence granted under section 5, substituting in those subsections wherever appropriate a reference to this section to any reference to that section.

(10) Where any vessel is used in contravention of any provision imposed by an Order under this section or of any condition of any licence granted under this section, the master, the owner and

the charterer (if any) of the vessel each commit an offence under this subsection and each are liable on conviction of that offence to a fine not exceeding £500,000.

(11) Nothing in the foregoing provisions of this section or of any Order under it shall apply to any fishing-related operation which is undertaken for the purpose of genuine scientific research which has been notified in advance to the Secretariat of the Commission.

#### **Supplementary to sections 5 and 6**

7.—(1) Any Order made under section 5(1) of the 1993 Ordinance which was in force immediately before the commencement of this Ordinance shall on the commencement of this Ordinance continue in force as if it had been made under section 5(1) of this Ordinance.

(2) Any licence granted under section 5 or 6 of the 1993 Ordinance and which was in force immediately before the commencement of this Ordinance shall on the commencement of this Ordinance continue in force as if it had been granted under section 5 or 6 of this Ordinance subject to the same terms and conditions (if any) to which it was subject immediately before the commencement of this Ordinance.

(3) With effect from the commencement of this Ordinance, and until they are revoked by an Order under section 6, the Fisheries (Trans-shipment and Export) Regulations 1990, in so far as they make provision which could be made by an Order under section 6, shall continue to have effect as if they had been made as an Order under this section and except as hereinbefore provided, in so far as they make provision which could be made as regulations under section 24 of this Ordinance, they shall continue to have effect as if they had been made under that section.

#### **Report prior to entry**

8.—(1) Not less than twelve hours and no more than twenty-four hours before it enters a specified area, and whether intending to fish therein or to exercise the right of free passage through the waters lying within that specified area, every fishing boat shall call by radio to the Marine Officer Grytviken or such other person or establishment as the Director of Fisheries may have approved for the purpose and provide the following information —

- (a) the name and port and country of registry of the fishing boat and its international radio call sign;
- (b) the estimated time and date of entry into the specified area and the co-ordinates of the point of entry and, in the case of a fishing boat intending to exercise the right of free passage through the specified area, the estimated time, date of its departure from the fishing waters and the co-ordinates of its intended point of departure;
- (c) in the case of a fishing boat intending to fish in the specified area pursuant to a fishing licence granted under this Ordinance, the reference number or other sufficient details of the licence; and
- (d) in any case, the quantity of fish, according to species, aboard the fishing boat.

(2) Fish reported pursuant to subsection (1) to be on board a fishing boat shall, in the absence of proof of circumstances tending to indicate that the report was materially false, be presumed to have been caught outside a specified area but, subject to that, if any fish is found on a fishing boat within the fishing waters, that fish shall be presumed, unless the contrary is proved, to have been taken within a specified area.

(3) If the requirements of subsection (1) of this section are contravened in respect of a fishing boat, the master, owner and the charterer (if any) of the fishing boat each commit an offence and each is liable on conviction of that offence to a fine not exceeding £100,000.

### **Fishing waters outside specified areas**

9.—(1) In relation to such parts of the fishing waters as are not for the time being the subject of an Order under subsection 5(1) (that is to say, are not for the time being part of a specified area, with the effect that no licence under this Ordinance is required in relation to the undertaking of fishing or any fishing-related operations in them), the Commissioner may take or concur or assist in the taking of such measures for the conservation, increase or improvement of marine living resources therein as may be required so as to give effect to the Convention or so as to meet any obligation under, or objective of, the Convention.

(2) Nothing in subsection (1) shall be construed so as to permit the Commissioner to do, concur or assist in doing anything which, if subsection (1) had not been enacted, would be invalid or unlawful under the laws of South Georgia and the South Sandwich Islands.

(3) The Commissioner may exercise in such manner as he considers necessary or expedient to give effect to any obligation under, or objective of, the Convention such of his powers under section 24 to make regulations as are not solely related to the licensing of fishing boats and other vessels.

## **PART II**

### **PROVISIONS APPLYING IN OR IN RELATION TO SPECIFIED AREAS OF THE FISHING WATERS**

#### *Introductory*

#### **Application and interpretation of this Part**

10.—(1) The provisions of this Part (that is to say, this section and sections 11 to 17 of this Ordinance) apply only in respect of —

(a) every area which is a specified area that is to say, an area of the fishing waters in respect of which an Order under section 5(1) is for the time being in force (in the subsequent provisions of this Part called “a specified area”);

(b) fishing and fishing-related operations within a specified area; and

(c) fishing boats licensed to fish within a specified area under section 5 and vessels licensed to receive fish within a specified area under section 6.

(2) In this Part, “fish”, where the context so admits, includes fish products.

#### *Powers of Fishery Protection Officers*

#### **Powers of Fishery Protection Officers: introductory provisions**

**11.—**(1) For the purposes of enforcing and administering the provisions of this Part or any regulations under section 24 so far as such regulations apply to any matter to which by virtue of section 10(1) the provisions of this Part apply, Fishery Protection Officers have the powers conferred upon them by section 12(1) and they also have those powers so far as they may be necessary or expedient for the enforcement or administration of any Order under section 5 or under section 6 for the time being in force.

(2) So far as is in accord with international law and practice, the powers referred to in subsection (1) may be exercised outside, as well as within, South Georgia and the South Sandwich Islands and the fishery waters and irrespective of whether the vessel in question is for the time being engaged in fishing or fishing-related operations.

(3) In exercising the powers conferred by section 12(1), a Fisheries Protection Officer may —

(a) use such force as may reasonably be necessary; and

(b) engage the assistance of any person who may have been assigned to assist him in the exercise of those powers, provided that in such a case the Fisheries Protection Officer shall, subject to subsection (4), be liable for anything done by any such person if he would be liable had he himself done it.

(4) A Fisheries Protection Officer shall not be liable to any civil or criminal proceedings for any thing done in the purported exercise of any of the powers conferred upon him by this Part, if the court is satisfied that the thing was done in good faith and that there were reasonable grounds for doing it.

#### **Powers referred to in section 11 and provisions related to those powers**

**12.—**(1) The powers referred to in section 11(1) are —

(a) a power to stop any fishing boat or any other vessel which it reasonably appears to him has been or may have been engaged in any fishing or fishing-related operation in a specified area;

(b) a power to require any such fishing boat or other vessel to do anything else which may facilitate the boarding of that boat or vessel;

(c) a power to board any such fishing boat or other vessel accompanied by such person or persons as may have been assigned to assist him or as he may engage to accompany him;

(d) a power to require the attendance of the master and other persons aboard any such fishing boat or other vessel;

(e) a power to make any examination and inquiry which appears to him to be necessary for any of the purposes mentioned in section 11(1) and, in particular —

(i) to examine any fish aboard the fishing boat or other vessel concerned and the equipment thereof, including the fishing gear and any other equipment related to, or possibly related to, any fishing or fishing-related operations and for that purpose to require any person aboard the fishing boat or other vessel concerned to do anything which appears to him to be necessary for facilitating the examination;

(ii) to require any such persons on board the fishing boat or other vessel concerned to produce any document relating thereto, to its fishing or fishing-related operations or to the persons on board which is in that person's custody or possession and to take copies of any such document;

(iii) for the purpose of ascertaining whether the master, owner or charterer (if any) of the fishing boat or other vessel concerned, has or may have committed an offence under this Ordinance, a power to search the fishing boat or other vessel concerned for any such documents and to require any person on board to do anything which appears to him to be necessary for facilitating the search;

(iv) where the fishing boat or other vessel is one in relation to which he has reason to suspect that an offence under this Ordinance has been committed, a power to seize and detain any document for use as evidence in proceedings for that offence,

but nothing in subparagraph (iv) shall permit any document required, or appearing to be required, by the law of the fishing boat's or vessel's State of registry to be carried on board it to be seized and detained except where the fishing boat or vessel is detained in a port;

(f) where it appears to a Fisheries Protection Officer that an offence of a kind mentioned in paragraph (e)(iv) has been committed, the following powers —

(i) to require the master and any person under the master's command to take the fishing boat or other vessel to any place nominated by the Fisheries Protection Officer in South Georgia and the South Sandwich Islands or in the Falkland Islands;

(ii) to detain or require the master to detain the fishing boat or other vessel in that place;

(iii) to take steps, or require any person aboard the fishing boat or other vessel, and having regard always to the safety of the fishing boat or other vessel, to immobilise it so as to prevent it being taken or navigated other than as he or another Fisheries Protection

Officer may permit and until such time as it may be released by him or another Fisheries Protection Officer or by a court;

(iv) to seize and detain any fishing gear, instruments or appliances which appear to him to have been, or may have been used in the commission of the offence and until such time as the same are released by him or by another Fisheries Protection Officer or by order of a court;

(v) to seize and detain any fish which appear to him to have been taken as a result of such offence and until such time as the same are released by him or by another Fisheries Protection Officer or by order of a court.

(2) It shall not be an excuse or reason for any person to refuse to answer, or fail to answer, any question, or to refuse to do so, fail to do so or to prevent another person from doing anything required by a Fisheries Protection Officer in the exercise of his powers under subsection (1) that to answer that question or to do that thing might or would tend to incriminate that person or any other person.

(3) Any information, document or other thing obtained by a Fisheries Protection Officer by the lawful exercise of his powers under subsection (1) shall not be excluded from admissibility in evidence in any proceedings in relation to an offence under this Ordinance on the ground that it was unfairly obtained.

(4) Any person who on any fishing boat or other vessel —

(a) fails without reasonable excuse to comply with any requirement imposed, or to answer any question asked, by a Fisheries Protection Officer in the exercise of his powers under subsection (1);

(b) prevents, obstructs or attempts to prevent or obstruct, any other person from complying with any such requirement or answering any such question;

(c) assaults any Fisheries Protection Officer, or any person engaged to assist him, while that Officer is exercising any of those powers,

commits an offence under this subsection and is liable on conviction of that offence to a fine not exceeding £50,000.

(5) For the purposes of paragraph (a) of subsection (4), an excuse is not reasonable if it is an excuse or reason of a kind referred to in subsection (2).

#### *Release of things seized or detained*

#### **Release of fishing boat, other vessel or thing if no proceedings are instituted**

**13.—**(1) Where a fishing boat, fish, other vessel or thing has been seized or detained under any power conferred by section 12(1), a Fisheries Protection Officer may at any time release it if no

proceedings have been commenced in relation to any offence in respect of which that fishing boat, fish, other vessel or thing could lawfully have been seized or detained under any power conferred by section 12(1).

(2) In any case where —

(a) a fishing boat, fish, other vessel or thing has been seized or detained under a power conferred by section 12(1); and

(b) no proceedings in respect of such an offence have been commenced within fourteen days of the arrival of that fishing boat or other vessel at a place in South Georgia and the South Sandwich Islands or in the Falkland Islands to which it has, in accordance with section 12(1)(f)(i) been required to proceed or, in the case of any fish or other thing, within fourteen days of its arrival in South Georgia and the South Sandwich Islands or the Falkland Islands, or at any earlier time at which the Director of Fisheries is satisfied that no such offence has been committed,

the Director of Fisheries shall release the fishing boat, fish, other vessel or thing.

(3) Where a fishing boat, fish, other vessel or thing has been seized or detained by a Fisheries Protection Officer under a power conferred by section 12(1) and —

(a) has been brought to a place in South Georgia and the South Sandwich Islands or to a place in the Falkland Islands; and

(b) no proceedings in relation to an offence in respect of which the power could have been exercised have been commenced within fourteen days of the arrival of the fishing boat, fish, other vessel or thing at a place in South Georgia and the South Sandwich Islands or in the Falkland Islands,

a court may on the application of the master, owner, charterer (if any) or of any other person appearing to it to have a sufficient interest in the matter, order that the fishing boat, fish, other vessel or thing seized be released, whereupon it shall immediately be released.

(4) In subsection (3), “a court” means a court having jurisdiction under section 19(1) to try and determine proceedings in respect of an offence under this Ordinance.

#### **Security for and release of fishing boat, fish other vessel or thing by court**

**14.—**(1) Where proceedings in respect of an offence under this Ordinance have been commenced against any person, but have not been determined, the court in which such proceedings have been commenced may on the application of the master, owner or charterer (if any) of a fishing boat, fish, other vessel or thing seized or detained under a power conferred by section 12(1) or of any other person appearing to the court to have a sufficient interest in the thing in question, exercise the powers conferred upon that court by this section.



(2) The court may order the release of any fishing boat, fish, other vessel or thing so seized on being satisfied —

(a) that the applicant has given adequate security to the Crown in a sum appearing to the court to equal or exceed the relevant sum;

(b) that a person or persons approved by the court have executed and delivered to the court a bond or bonds in a suitable form, conditioned in accordance with subsection (4), and in an amount appearing to the court to equal or exceed the relevant sum; or

(c) that there are special circumstances justifying the court proceeding under this paragraph, that a bond or bonds in a suitable form, conditioned in accordance with subsection (4), but in an amount appearing to the court to be less than the relevant sum,

and in this subsection “relevant sum” means the aggregate of —

(i) the maximum fine the court has power to impose in the event it convicts the owner, or as the case may be the charterer of the fishing boat;

(ii) (in the case only of an alleged offence under section 5(3) of (12)) the sum appearing to the court to be the value free on board Grytviken or Stanley (as the court sees fit) of all fish aboard the fishing boat immediately after the time of the alleged offence; and

(iii) the maximum amount it appears to the court that might reasonably be awarded to the Crown in respect of costs and expenses pursuant to section 19(2).

(3) The Director of Fisheries shall be the respondent in respect of any application under this section and shall be entitled to be heard in relation to thereto.

(4) The conditions of the bond or bonds referred to in subsection (2)(b) and (c) shall be that if —

(a) the defendant to the proceedings is not convicted or the charge or information is not proceeded with; or

(b) the defendant, on having been convicted and sentenced, pays in full within 14 days, or such greater period as the court may allow at the time of sentencing the defendant, the fine and all other sums he is ordered by the court to pay to the Crown,

then the bond shall be of no further effect and is discharged, but otherwise shall remain in full force and effect, and may be enforced accordingly.

#### *Miscellaneous offences relating to specified areas*

##### **Unstowed fishing gear**

**15.—(1)** A fishing boat or other vessel shall not within a specified area carry unstowed aboard it any fishing net, line or other device directly employed in the taking of fish which it is not

authorised by the licence under that section to use in that specified area or, as the case may be, the part of the specified area in question —

(a) if it is not licensed under section 5 to fish within that specified area; or

(b) if it is licensed under section 5 to fish within that specified area; and

(i) it is not licensed to fish within the part of the specified area in which it for the time being happens to be, or

(ii) it is not authorised by that licence, to use a net, line or other device directly employed in the taking of fish of any particular type, dimensions or specification mentioned in the licence.

(2) Where subsection (1) is contravened, the master, owner or charterer (if any) of the fishing boat or other vessel each commit an offence and each of them is liable on conviction of that offence to a fine not exceeding £100,000.

(3) In subsection (1) “unstowed” means not stored or secured in such a manner as to be not readily capable of use within a reasonable period of time, and in any proceedings for an offence under subsection (2) it shall be for the defendant to prove that the thing in question was not unstowed.

### **Reports on departure**

**16.—**(1) Before departing from a specified area (or in the case of a fishing boat authorised by a licence under section 5 to fish only in part of a specified area, before proceeding from that part) the master, owner or charterer (if any) of a fishing boat licensed under section 5 shall notify the Director of Fisheries in accordance with subsection (3).

(2) If subsection (1) is contravened the master, owner or charterer (if any) of the fishing boat each commits an offence and each of them is liable on conviction of that offence to a fine not exceeding £100,000.

(3) The notification required by subsection (1) is a notification by such means as the Director of Fisheries may approve made as nearly as possible immediately before departure of the following or such of the following as he may require —

(a) the name, port of registry, international radio call sign and fishing licence number of that fishing boat;

(b) the quantity of fish aboard the fishing boat in relation to every species, and if any fish of any species then aboard that fishing boat was taken outside a specified area or a part of a specified area in which the fishing boat was licensed by licence under section 5 to fish, a statement in relation to each species of the quantity of it which was taken under authority of the licence and of the quantity of it which was not;

(c) if any fish of any species was, while the fishing boat was within a specified area trans-shipped to any other vessel or in any other manner disposed of particulars —

(i) of the name, port of registry, and international radio call sign of any vessel to which any fish was trans-shipped;

(ii) of the date or dates of the trans-shipping and the place at which it occurred;

(iii) in relation to each species so trans-shipped, of the quantity trans-shipped on every occasion and, in relation to each occasion, the quantity of that species trans-shipped which was taken under authority of the fishing licence and the quantity of that species of it which was not;

(d) as to whether or not it is expected that the fishing boat will return to fish under the authority of the same fishing licence;

(e) as to the expected next port of call of the fishing boat and its expected date of arrival thereat;

(f) as to the place or places it is expected that the fishing boat will discharge or trans-ship the fish aboard any other fishing boat or other vessel;

(g) if the fishing boat has discharged any fish other than by trans-shipping, particulars —

(i) of the date or dates of the discharge and the place at which it occurred;

(ii) in relation to each species so discharged, of the quantity discharged on every occasion and, in relation to each occasion, the quantity of that species discharged which was taken under authority of the fishing licence and of the quantity of that species which was not; and

(iii) in relation to each species so discharged, of the reasons for the discharge on each occasion.

(4) Before proceeding from any place in a specified area at which it is authorised by a licence under section 6 to receive fish, the master, owner or charterer (if any) of the vessel shall notify the Director of Fisheries in accordance with subsection (6).

(5) If subsection (4) is contravened the master, owner or charterer (if any) of the vessel each commits an offence and each of them is liable on conviction of that offence to a fine not exceeding £100,000.

(6) The notification required by subsection (4) is a notification by such means as the Director of Fisheries may approve made as nearly as possible before departure of the following or such of the following as he may require —

(a) the name, port of registry, international radio call sign and trans-shipment licence number of the vessel;

(b) the quantity of fish aboard the vessel in relation to every species and, if any fish of any species then aboard was received outside a specified area, a statement in relation to each species of the quantity of it which was received under the authority of the trans-shipment licence and the quantity of it which was not;

(c) in relation to fish of any species received under the authority of the trans-shipment licence—

(i) the quantity of it received from any fishing boat from which it was received;

(ii) the date or dates on which and the place at which it was received;

(iii) the name, international radio call sign and port of registry of the fishing boat from which it was received;

(d) whether or not it is expected that the vessel will return to receive fish under the authority of the same trans-shipment licence;

(e) the expected next port of call of the vessel and its expected date of arrival at that port;

(f) the place or places at which it is expected that the vessel will discharge or trans-ship the fish aboard the vessel.

(7) The proceeding provisions of this section have effect without prejudice to —

(a) any obligation under the conditions of any licence granted under section 5 or section 6;

(b) any obligation under any regulations made under section 24 requiring documents or other records to be kept as to any matter to which any provision of this section relates and to deliver those documents or records or copies of them to the Director of Fisheries or to such person as he directs.

(8) Where a person contravenes any provision of this section and has also contravened or thereafter contravenes any obligation under any other provision in such a manner as to constitute an offence, he may be convicted and punished both in respect of an offence under this section and of an offence in relation to any such obligation.

### **Supplementary to sections 8 and 16**

**17.—**(1) For the sake of avoidance of doubt it is hereby declared that where a fishing boat has temporarily departed from a specified area or part thereof or, in the case of a vessel licensed to carry on any fishing-related operation, from the place it was authorised to carry on that operation, and thereafter returns to undertake further operations under the same licence, the provisions of section 8 and 16 apply to it on each occasion of entry or departure of that vessel.

(2) If any person, in purported compliance with any obligation under section 14 and 15, provides any information which to his knowledge is false or misleading or is incomplete, or recklessly as to its truth, falsehood, misleading nature or incompleteness, the master, owner and charterer (if any) of the fishing boat or other vessel each commit an offence and each of them is liable on conviction of that offence to a fine not exceeding £100,000.

PART III  
GENERAL

*Provisions as to offences*

**Further provisions as to offences**

**18.—**(1) Subject to section 8(2) (fish in certain circumstances to be presumed to have been caught outside a specified area), unless the contrary is proved any fish found on board a fishing boat shall for the purposes of this Ordinance be presumed to have been taken —

(a) within an area of the fishing waters in respect of which a licence under section 5 is required; or

(b) where a licence has been granted under section 5 restricting fishing to a part of such an area and the fishing boat is outside that area, within the vicinity in which the fishing boat is found.

(2) Unless the contrary is proved, any fish found on board a fishing boat of a species in respect of which that fishing boat is not authorised by a licence under section 5 to take shall be deemed to have been taken within a specified area, but it shall be a defence in relation to an offence to which this subsection relates for the defendant to prove that the fish taken, if taken within a specified area, were taken inadvertently at a time when the fishing boat was seeking to take fish of a species it was authorised by such a licence to take.

(3) In any proceedings for an offence under this Ordinance, a certificate purporting to be signed by the Director of Fisheries or any officer authorised by him for that purpose to the effect that on a date specified in the certificate —

(a) that the fishing boat or other vessel was not licensed under section 5 or (as the case may be) section 6; or

(b) that the defendant or any other named person was not the holder of the licence; or

(c) that by such a licence, the fishing boat or other vessel was not licensed to take fish in a particular place or of a particular species or (as the case may be) to receive fish or fish product in a particular place,

shall, unless the contrary be proved, be sufficient evidence of the matter stated in the certificate.

(4) Where the owner or charterer of a fishing vessel is prosecuted in relation to an offence under this Ordinance, it is not a defence for him to show that the offence —

(a) was committed without his knowledge; or

(b) contrary to any instructions he may have given to any person.

(5) If, in any proceedings for an offence under section 5(3) it is proved beyond reasonable doubt that at a time relevant to the commission of the offence —

(a) fishing gear belonging to the vessel in question —

(i) was in use;

(ii) had recently been in use; or

(iii) was apparently about to be put into use;

(b) fish which occur in the specified area in question —

(i) were being processed aboard the vessel; or

(ii) had recently been processed aboard the vessel;

(c) fishing gear from the vessel was in the water, or

(d) fish which occur in a specified area (or the products of such fish) was stowed on board,

the court in deciding whether or not the offence has been committed shall give such weight as it considers proper to any of the foregoing which is so proved.

(6) An attempt to commit an offence under this Ordinance constitutes an offence under this subsection and is punishable in respect of all persons who could have been prosecuted in respect of the offence which was attempted in the same manner as if that offence had been completed.

(7) Notwithstanding any provision or rule of law to the contrary a prosecution in respect of an offence under this Ordinance may be commenced at any time within twelve years of the date on which that offence appears to have been committed.

(8) Where any offence under this Ordinance or under regulations made under section 24 committed by an owner or charterer of a fishing boat or other vessel is proved to have been committed with the consent or approval of any director, manager, secretary or other officer of the body corporate (or, in the case of a body corporate existing under the laws of an overseas jurisdiction, with the consent or approval of any person occupying in relation to it a position similar in function to that of director, manager or secretary) he, as well as the body corporate, shall be deemed to have committed that offence and shall be liable to be proceeded against and punished accordingly.

### **Jurisdiction of Summary and Magistrate's Courts**

**19.—**(1) All penalties, offences and proceedings under this Ordinance or any regulation may be recovered, prosecuted and taken before any court of summary jurisdiction in South Georgia and the South Sandwich Islands or, pursuant to the provisions of the Falkland Islands Courts (Overseas Jurisdiction) Order 1989, the Magistrate's Court of the Falkland Islands, and those courts have jurisdiction to try and determine any offence under this Ordinance or any regulation made thereunder.

(2) In respect of such offences and notwithstanding any provision of law to the contrary, any court before which, pursuant to subsection (1), any such offence is tried has jurisdiction to impose any fine provided for under this Ordinance and may award to the Crown such costs and expenses (including expenses incurred in exercise of any power under section 12(1) and expenses incurred in relation to the prosecution of any such offence) as may appear to it to be proper.

#### **Forfeiture of licence**

**20.** Every person who is convicted of an offence under this Ordinance or any regulation made under this Ordinance and is again convicted of such an offence shall, in addition to any other penalty, forfeit any licence granted under this Ordinance and any fees paid for that licence.

#### **Administrative penalties for minor offences**

**21.—**(1) Where the Commissioner has reasonable cause to believe that —

- (a) an offence against this Ordinance has been committed by any person in respect of any fishing boat;
- (b) the offence is of a minor nature; and
- (c) having regard to the previous conduct of the fishing boat and the person concerned it would be appropriate to impose a penalty under this section;

he may, unless the Attorney General has given a direction which has not been withdrawn to the Director of Fisheries that a prosecution in respect of the offence shall be brought, cause a notice in writing in accordance with subsection (2) to be served on that person.

(2) A notice under subsection (1) shall specify —

- (a) the date and nature of the offence;
- (b) a summary of the facts on which the allegation that an offence has been committed is based (being a sufficient summary fully and fairly to inform the person of the allegation against him); and
- (c) any other matters (not being previous convictions) that the Commissioner considers relevant to the imposition of a penalty;

and shall be endorsed with a statement setting out the provisions of this section.

(3) Any person on whom a notice under subsection (1) is served may, within 28 days after such service, by notice in writing in the prescribed form served on the Commissioner require that proceedings in respect of the alleged offence shall be dealt with by a court having jurisdiction to try and determine that offence, in which case the following shall apply —

(a) no further proceedings shall be taken under this section by the Commissioner; and

(b) nothing in this section shall be construed to prevent the subsequent laying of any information charge in respect of the alleged offence, or the conviction of the person of the offence by that court, or the imposition of any penalty or forfeiture under this Ordinance upon such conviction.

(4) Any person on whom a notice under subsection (1) is served who does not require that proceedings in respect of the alleged offence shall be dealt with by a court may by notice in writing served on the Commissioner —

(a) admit the offence; and

(b) bring to the attention of the Commissioner any matters he wishes the Commissioner to take into account in imposing any penalty under this section.

(5) Where a person on whom a notice under subsection (1) is served does not within 28 days after the notice is served on him —

(a) require that proceedings in respect of the alleged offence shall be dealt with by a court; or

(b) admit the offence;

he shall on the expiration of that period be deemed to have admitted the offence.

(6) Where under this section a person admits or is deemed to have admitted an offence the Commissioner may, after taking into account any submissions made by that person under subsection (4), impose a monetary penalty on that person in respect of the offence not exceeding in amount one third of the maximum fine to which the person would be liable if he were convicted of the offence by a court.

(7) An admission or deemed admission of an offence and the imposition of a penalty under this section shall not count as a conviction of an offence for the purposes of section 20.

(8) Where the Commissioner imposes a penalty on a person under this section in respect of an offence the Commissioner shall cause a notice in writing in the prescribed form of the particulars of the penalty to be served on the person.

(9) A person on whom a penalty is imposed under this section shall pay the amount of the penalty to the Crown within 28 days after the notice of the penalty is served on him in accordance with subsection (8).



(10) A penalty imposed under this section shall be recoverable by the Crown from the person on whom it has been imposed in the same manner as a fine is recoverable on conviction for an offence and without prejudice to the foregoing may be recovered in any manner in which a civil debt to the Crown from that person may be recovered.

(11) Notwithstanding any other provision of this Ordinance or of any other enactment, where an offence has been admitted or is deemed to have been admitted under this section no information or charge may be laid in respect of the offence against any person by whom it is admitted or is deemed to have been admitted.

(12) Nothing in this section shall apply —

(a) in respect of any offence or alleged offence under section 5(3) or 6(10); or

(b) in respect of any offence or alleged offence in respect of which any information or charge has already been laid.

**Provisions as to amounts of fine which may be imposed and other orders to be made by a court on conviction**

**22.—**(1) Before ordering an individual to pay a fine after convicting him of an offence under this Ordinance, the court shall inquire into and take into account the means of the individual to pay that fine within a reasonable time, but in respect of a person, other than an individual, convicted of an offence under this Ordinance, the court shall order that person to pay such fine (not being greater than the maximum it is permitted to impose in respect of the offence) as the court considers just and proper in all the circumstances of the case.

(2) Where the owner or charterer of a fishing boat is convicted of an offence under section 5(3) the court shall, in addition to any fine or other sum it orders to be paid, make an order of one or other of the kinds mentioned in subsections (3) and (4) of this section and in so doing shall take into account any representations made by or on behalf of the prosecution as to which of those orders it should make.

(3) An order under this subsection is an order that all the fish concerned in the offence be forthwith forfeit to the Crown.

(4) An order under this subsection is an order that the convicted person do within seven days pay to the Crown a sum appearing to the court to be the value free on board at Grytviken or Stanley (depending on the place of conviction) of all fish appearing to the court to have been concerned in the offence.

**Detention or forfeiture of fishing boats on failure to pay or secure fine**

**23.—**(1) Where a court has ordered the master, owner or charterer of any fishing boat in respect of an offence under this Ordinance or any regulation made under this Ordinance to pay a fine or

costs and expenses or the value of the catch aboard the vessel or any part of that catch, the court shall, if no security has been given to the Crown for payment thereof or it considers that insufficient security has been given to the Crown, order that in default of payment forthwith the person so order shall give security for payment of the amount due, and the court shall further order the detention in such place within its jurisdiction as the court shall name of the fishing boat concerned, its equipment and the catch aboard it, until security to the satisfaction of the court is given or all sums hereinbefore referred to are paid, whichever shall first occur.

(2) Where a person is convicted of an offence under section 5(3) or (12) or section 6(10) and is ordered to pay a fine and that fine is not paid or security given within 7 days of the date of the order of the court, or such longer period as the court may have determined at the time the fine was imposed, the court shall, on the application of the Crown and unless sufficient cause is shown to the contrary, order that the fishing boat concerned in that offence and its equipment concerned in the commission of it, together with the catch aboard that fishing boat in so far as that catch has not already been forfeited under section 22(2) or such of the foregoing as are the subject of the application by the Crown, shall be forfeited to the Crown. On making an order under this subsection, the court shall revoke or vary any order under subsection (1) previously made in such manner as is in the circumstances it believes to be appropriate.

(3) On an order of forfeiture being made pursuant to subsection (2), the property to which it relates shall forthwith vest in the Crown free from encumbrances and may be disposed of in such a manner as the Commissioner, acting in his discretion, may direct.

(4) No appeal shall lie to any court against an order under subsection (2).

### **Regulations**

**24.—**(1) The Commissioner may make regulations for the better carrying into effect of the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of subsection (1) of this section, such regulations may provide for —

- (a) anything which is to be, or may be, prescribed under this Ordinance;
- (b) the forms to be used for the purposes of this Ordinance;
- (c) the persons to whom and the manner in which applications may be made;
- (d) the procedures to be followed by applicants for licences;
- (e) terms and conditions that shall apply to licences issued under this Ordinance;
- (f) the protection of the marine environment within the fishing waters and of any living thing to be found therein;
- (g) the equipment to be carried on board fishing boats;

(h) the reports to be made and statistics to be kept and submitted for the purposes of this Ordinance;

(i) any matters in relation to which under section 5 of section 6 a condition may be imposed on the grant of a licence thereunder;

(j) the designation by applicants for licences and licensees of authorised agents in South Georgia and the South Sandwich Islands or in the Falkland Islands in respect of fishing and fishing-related operations and otherwise for the purposes of this Ordinance;

(k) the provision by applicants for licences or licensees of bonds or other forms of security for securing their compliance with the obligations under the terms and conditions of their licences or their compliance with the provisions of this Ordinance;

(l) the placing of Fisheries Protection Officers and official observers on fishing boats and the terms for their presence thereon;

(m) a fine of such amount as may be prescribed therein in respect of any offence under any such regulations (but so that no such fine shall exceed £100,000 and, subject to that limitation, so that different fines may be prescribed in relation to different offences);

(n) any other purpose related to any obligation under, or objective of, the Convention.

(3) Regulations made under this section may make different provisions for different parts of the fishing waters, different specified areas, different parts of the year, different types and sizes of fishing boats or any one or more of the foregoing.

### **Service of proceedings and notices**

**25.—**(1) Where an agent for the licensee under a licence is named in that licence —

(a) any summons to the owner, charterer or master of the fishing boat or other vessel to which such licence relates to attend before any court to answer to that summons shall be deemed to be duly served if it is shown that the summons was delivered to or received by that agent;

(b) any administrative penalty notice under section 21(1) shall be deemed to have been duly served on the owner, charterer or master of the boat (as the case may be) if it is shown that it was delivered to or received by that agent;

(c) the agent may, on behalf of the owner, charterer or master of the boat, give to the Commissioner any notice or notification which the owner, charterer or master of the boat could give under any provisions of this Ordinance; and

(d) any notice which the Director of Fisheries is empowered under this Ordinance or any regulations made under section 24 to give or serve upon the owner, charterer or master of the

boat shall be deemed to have been duly given to or served upon that person if it is shown that it was delivered to or received by the agent.

(2) Subsection (1) has effect whether the summons or notice is delivered, served or given to the agent in South Georgia and the South Sandwich Islands, the Falkland Islands or elsewhere.

### **Repeal and saving**

**26.—**(1) The Fisheries (Conservation and Management) Ordinance 1993 is hereby repealed.

(2) Notwithstanding the repeal effected by subsection (1) —

(a) any notice, form, order, rule, regulation or direction prescribed, made, issued or given under the 1993 Ordinance shall continue in force as if it had been prescribed, made, issued, or given under this Ordinance, and may be repealed, revoked, varied or amended accordingly;

(b) any Order or regulation made under any provision of the 1993 Ordinance in effect immediately before the commencement of this Ordinance shall after such commencement continue in force as if it had been made under the corresponding provisions of this Ordinance; and

(c) any offence under any provision of the 1993 Ordinance committed before the commencement of this Ordinance may be prosecuted and punished under the provisions of the 1993 Ordinance as if it had not been repealed, but no greater punishment may be imposed in respect of any such offence than is permitted by the corresponding provisions of this Ordinance.

(3) Nothing in subsection (2) shall be construed as excluding the operation of any provisions of the Interpretation and General Clauses Ordinance 1977 of the Falkland Islands (in its application to South Georgia and the South Sandwich Islands) which are not inconsistent with that subsection.

Enacted this thirtieth day of June 2000

R T Jarvis  
*Acting Commissioner*