

THE BRITISH INDIAN OCEAN TERRITORY.

THE FISHERIES (CONSERVATION AND MANAGEMENT) ORDINANCE 2007

Ordinance No. 5 of 2007.

An Ordinance to consolidate, with amendments, existing provisions relating to the regulation, conservation and management of the fishing waters of the British Indian Ocean Territory and to provide for matters connected therewith or incidental thereto.

Arrangement of sections.

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Enacted by the Commissioner for the British Indian Ocean Territory

21 December 2007

Commissioner

THE BRITISH INDIAN OCEAN TERRITORY

Ordinance No. 5 of 2007

An Ordinance to consolidate, with amendments, existing provisions relating to the regulation, conservation and management of the fishing waters of the British Indian Ocean Territory and to provide for matters connected therewith or incidental thereto.

Short title and commencement. **1.** This Ordinance may be cited as the Fisheries (Conservation and Management) Ordinance 2007 and shall come into operation on such date as the Commissioner may appoint by notice which shall be published in the *Gazette*.

Interpretation. **2.** (1) In this Ordinance, unless the contrary intention appears -
"the Director" means the Director of Fisheries appointed under section 4(1);

"fish" means any marine animal (other than a bird but including shellfish), irrespective of whether it is fresh or cured, and any marine plant; and references to fish include references to any part of a fish;

"a Fisheries Protection Officer" means any person declared by section 4(5) to be such an Officer and includes the Director;

"fishing" means -

- (a) the catching or taking of fish;
- (b) any activity which can reasonably be expected to result in the catching or taking of fish;
- or
- (c) any operation at sea in support of or in preparation for any activity mentioned in paragraph (a) or paragraph (b),

and, for the avoidance of doubt, includes exploring or prospecting for the presence of fish and the collecting or taking by any means of sea cucumbers (all species of *Holothuria*) or molluscs;

"fishing boat" has the meaning assigned to that term in subsection (2);

"a fishing licence" means a licence granted under section 7;

"the fishing waters" means the fishing waters of the Territory, as defined in section 3;

"the Fisheries Conservation and Management Zone" means the zone of that name which was established by the Proclamation made by the Commissioner on 1 October 1991 (Proclamation No.1 of 1991) and

whose extent is defined in that Proclamation (as it may be amended from time to time by further such Proclamation);

"the internal waters of the Territory" means the sea-waters on the landward side of the baselines from which the territorial sea of the Territory is measured;

"a licence" means a fishing licence or a transshipment licence;

"the master", in relation to a fishing boat, includes any person for the time being in command or in charge of the boat and any person in charge of fishing operations on board the boat;

"prescribed" means prescribed by or under regulations made under section 21;

"shark" means all species of shark (elasmobranchii taxon)

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

"a transshipment licence" means a licence granted under section 10 and includes a fishing licence operating as a transshipment licence by virtue of section 10(4); and

"transshipment", in relation to fish, means the passing of the fish from one boat to another, whether or not it was first caught or taken by the boat from which it is passed.

(2) (a) In this ordinance, unless the contrary intention appears, the term "fishing boat" means, subject to paragraphs (b) and (c), any vessel of whatever size and in whatever way propelled which is for the time being employed in fishing or in the processing, storage or transport of fish or in any operations (including the transshipment of fish) ancillary to any of the foregoing; and, for the avoidance of doubt but subject as aforesaid, the term includes any vessel, of whatever size and in whatever way propelled, which is for the time being operating as an independent support vessel in support of one or more other vessels that are themselves engaged in fishing.

(b) The term "fishing boat" does not, in this Ordinance, include a vessel (such as, but not limited to, a net tender) whose principal use is in support of, and is integral to, the fishing operations of a larger vessel (being itself a fishing boat) and which, when not being so used, is normally stored on board that larger vessel as part of its fishing gear; but the term does include any vessel, whether or not normally stowed as aforesaid, which is itself employed in the catching or taking of fish.

(c) For the purposes of section 7(11), the term "fishing boat" has the meaning provided in that subsection.

(3) Unless the contrary intention appears, any provision of this ordinance, or of any regulations made under section 21, that confers

powers on a Fisheries Protection Officer or on a person acting under his direction in relation to a fishing boat that is within the fishing waters, or in relation to a person or thing connected therewith, shall be construed as conferring those powers also in relation to a fishing boat that is outside the fishing waters, or in relation to a person or thing connected therewith, in any circumstances in which, in international law, those powers may properly be exercised as an incident of the right of hot pursuit for an offence or suspected offence against any provision of this ordinance or any such regulations.

The fishing waters of the Territory.

3. The fishing waters of the Territory comprise -

- (a) the internal waters of the Territory;
- (b) the territorial sea of the Territory; and
- (c) the Fisheries Conservation and Management Zone.

Director of Fisheries and Fisheries Protection Officers.

4. (1) There shall be a Director of Fisheries for the Territory who shall be appointed by the Commissioner.

(2) The Director has charge of the administration of this Ordinance and of any regulations made under section 21 and, in particular and without prejudice to the generality of the foregoing, is responsible for -

- (a) the conservation of fish stocks;
- (b) the assessment of fish stocks and the collection of data (including statistics) and other information relevant thereto;
- (c) the development and management of fisheries;
- (d) the monitoring, surveillance and control of fishing and of operations ancillary to fishing;
- (e) the regulation of the conduct of fishing and of operations ancillary to fishing;
- (f) the grant, suspension, revocation and variation of licences under this Ordinance;
- (g) the collection of fees for licences; and
- (h) the making of such reports to the Commissioner as he may require.

(3) This Ordinance and any regulations made under section 21 shall be enforced by Fisheries Protection Officers who, for the purposes of their functions, have the powers conferred on them by this Ordinance and by or under any regulations made under section 21.

(4) In the exercise of their function Fisheries Protection Officers shall be subject to the direction of the Director:

Provided that in acting as a public prosecutor in relation to any proceeding arising under this Ordinance or under any regulations made under section 21 a Fisheries Protection Officer shall be subject to the direction of the Principal Legal Adviser.

(5) The following persons shall be Fisheries Protection Officers:

- (a) every person appointed as such by Commissioner;
- (b) every Peace Officer;
- (c) every person for the time being appointed to be an Imports and Exports Control Officer for the purposes of the Imports and Exports Control Ordinance 1984;
- (d) all commissioned officers of Her Majesty's ships; and
- (e) any person for the time being in command or in charge of any aircraft or hovercraft of the Royal Navy, the Army or the Royal Air Force.

Prohibited
fishing and
fishing
methods.

5. (1) Any person who within the fishing waters or within the Territory-

- (a) uses or permits to be used any explosive, poison or other noxious substance for the purpose of killing, stunning or disabling fish with a view to its being caught or taken or to rendering it more easily caught or taken; or
- (b) carries or has in his possession or control any explosive, poison or other noxious substance which is intended for any of the purposes mentioned in paragraph (a); or
- (c) collects, takes by any means, or has in his possession any sea cucumber (which expression includes all species of Holothuria) or mollusc;

is guilty of an offence; and where a contravention of this subsection is committed on or from a fishing boat, the owner, master and charterer of the boat is each guilty of an offence.

(2) Any explosive, poison or other noxious substance which is found on board any fishing boat in the fishing waters shall be presumed, unless the contrary is proved, to be intended for a purpose mentioned in subsection (1)(a).

(3) Any person who lands, tranships, sells, buys, receives or is found in possession of fish which has been caught or taken by the use of an explosive, poison or other noxious substance in contravention of subsection (1)(a) and who, at the time when he did so or was so found, knew or had reasonable cause to believe it to have been so caught or taken is guilty of an offence; and where a contravention of this subsection is committed on or from a fishing boat or by any

member of the crew of a fishing boat, the master, the owner and the charterer of the boat is each guilty of an offence.

(4) In any proceedings for an offence under subsection (3) a certificate signed by a Fisheries Protection Officer stating the cause or manner of the death of, or of any injury suffered by, any fish shall be accepted as prima facie evidence of that matter, and any certificate purporting to be so signed shall be received in evidence as such unless credible evidence to the contrary is adduced.

(5) A person who is convicted of an offence under this section is liable to imprisonment for 6 months, or a fine of £50,000 or to both such imprisonment and fine.

Possession of prohibited fishing gear.

6. (1)(a) Any person who uses any prohibited fishing gear for fishing within the fishing waters is guilty of an offence.

(b) Any person who is found in possession other than on a fishing boat of any prohibited fishing gear, whether or not with the intention to use it within the fishing waters, is guilty of an offence.

(2) The master, the owner and the charterer of any fishing boat on which there is found, within the fishing waters, any prohibited fishing gear is each guilty of an offence.

(3) In this section "prohibited fishing gear" means -

(a) any net whose mesh size is smaller than the prescribed minimum size for nets of that type;

(b) any other type of fishing gear which does not conform to the standards prescribed for that type of gear;

(c) any fishing gear which is prohibited by regulations made under section 21.

(d) any net which, for the purpose of fishing, is set or operated otherwise than by a fishing boat unless it is so set or operated in accordance with a permit issued by the Commissioner's Representative or a Fisheries Protection Officer;

(e) any trap, including (without prejudice to the generality of that term) any pot, barrier or fence;

(f) any gear for grappling or wounding, including (without prejudice to the generality of those terms) any harpoon, spear or arrow;

(g) in relation to fishing otherwise than by a fishing boat, any line unless the use of that line satisfies the conditions specified (in relation to fishing by a fishing boat) in paragraphs (a) to (d) of section 7(10);

(h) any diving equipment or underwater swimming equipment unless the person in possession of that equipment has a permit to use it issued by the Commissioner; and

(i) any wire trace line.

(4) A permit issued for the purposes of sub-sections (3)(d) or (h) may be unconditional or may be made subject to such conditions as the Commissioner or the officer issuing it thinks fit.

(5) The Director of Fisheries may impose, or authorise the imposition of, fees for the issue of permits for the purpose of subsection (3)(d) and, without prejudice to the generality of section 43 of the Interpretation and General Provisions Ordinance 1993, different fees may be imposed for different permits or for different categories of permits.

(6) Sub-section (3)(d) does not apply to the use of nets for fishing under arrangements, approved for the purposes of this paragraph, made by the Morale, Welfare and Recreation organisation of the United States Forces ("MWR") and if all of the following conditions are satisfied: -

- (a) the nets used are hand-held cast nets;
- (b) they are used only for fishing for bait fish; and
- (c) they are used only in the waters of Diego Garcia and its environs and are not used in areas of actively growing coral.

(7) Arrangements made by MWR are approved for the purposes of sub-section (6) if they provide, to the satisfaction of the Director of Fisheries, for MWR to collect, and to make available to any Fisheries Protection officer on request and to the Director at such intervals as may from time to time be notified to MWR by or on behalf of the Director, accurate data (in such form as may be so notified to MWR) giving the following information: -

- (a) the total catch, in weight, of the major species of fish caught on each occasion when nets are used as specified in sub-section (6);
- (b) the number of nets so used on each such occasion; and
- (c) the locations in which nets are so used on each such occasion.

(8) Where, in any proceedings for an offence under sub-section (2), it is proved that prohibited fishing gear was found on a fishing boat within the fishing waters, the onus of proof that no person had used or intended to use that gear for fishing within the fishing waters shall lie on the accused person.

(9) (a) A person who is convicted of an offence under sub-sections 1(a) or 2 is liable to a fine of £50,000.

(b) A person who is convicted of an offence under sub-sections 1(b) is liable to a fine of £5,000.

Fishing
Licences.

7. (1) Fishing within the fishing waters is prohibited unless carried out in accordance with a licence (a "fishing licence") granted by the Director under this section.

(2)(i) Where sub-section (1) is contravened by fishing by a fishing boat, the master, the owner and charterer of the boat is each guilty of an offence and is liable, on conviction, to a fine of £500,000.

(ii) Where sub-section (1) is contravened by a person fishing other than by a fishing boat such person shall be liable upon conviction to a fine of £5,000.

(3) (i) Every fishing licence for fishing by a fishing boat shall be granted in respect of a single fishing boat specified in it and may be granted to the master, the owner or the charterer of the boat.

(ii) Every fishing licence for fishing other than by a fishing boat shall be granted in respect of the person specified in it.

(iii) No fishing licence may permit fishing for marine mammals.

(4) The authority to fish in the fishing waters that is conferred by a fishing licence may be unlimited or may be limited by reference to such matters as the Director thinks fit, including (but not confined to)-

(a) the area within which fishing is authorised;

(b) the period, times or particular voyages during which fishing is authorised;

(c) the descriptions, quantities, sizes and presentation of the fish that may be caught or taken or, conversely, that may not be caught or taken, whether as by-catch or otherwise; and

(d) the method of fishing and the type or construction of the fishing gear to be used.

(5) Within any limitation imposed under subsection (4) and subject to any regulations made under section 21, a fishing licence may be unconditional or may be made subject to such conditions as the Director thinks fit, including (but not confined to) conditions as to -

(a) the landing of any fish caught or taken;

(b) the use to which any fish caught or taken may be put;

(c) the marking of the licensed fishing boat in accordance with accepted international practice, or as directed by a Fisheries Protection Officer, including the display of its assigned international radio call sign;

(d) the installation on the licensed fishing boat of any equipment specified in the condition, including equipment for monitoring the position or operation of the boat;

(e) the records of fishing operations to be kept on board the licensed fishing boat;

(f) the records of fish caught to be kept and maintained by a person licensed to fish other than by a fishing boat.

(6) (i) Where a condition to which a fishing licence is subject is contravened in respect of fishing by a fishing boat, the master, the owner and the charterer of the fishing boat in respect of which the licence was granted is each guilty of an offence and is liable, on conviction, to a fine of £200,000.

(ii) Where a condition to which a fishing licence is subject is contravened by a person fishing otherwise than by a fishing boat such person shall be liable upon conviction, to a fine of £5,000.

(7) Fees may be charged for fishing licences in accordance with regulations made under section 21.

(8) The master, the owner or the charterer of a fishing boat in respect of which he intends to apply for a fishing licence and each person applying for a licence to fish other than by a fishing boat shall, before so applying, supply to the Director such information as the Director may require or as may be prescribed by or under regulations made under section 21; and a person who, for the purpose of obtaining a fishing licence or in purported compliance with any such requirement or prescription, supplies information which he knows to be false or misleading in any material particular or recklessly supplies information which is so false or misleading is guilty of an offence and is liable, on conviction, to a fine of £50,000.

(9) The Director may at any time suspend or revoke a fishing licence or vary it in any respect; but no part of any fee that was charged for the licence shall, in any such case, be refunded unless the Director considers that it is appropriate, in all the circumstances of the case, to make such a refund.

(10) Subsection (1) does not apply to fishing, by persons who are lawfully present in the Territory, including but not limited to United States personnel and United Kingdom personnel lawfully present in Diego Garcia, if the following conditions are satisfied: -

(a) the fishing is, or is to be, for a reasonable amount for personal consumption within 3 days by the person fishing, and not for sale, barter or other profit;

(b) the fishing is, or is to be, carried out by an attended line (whether or not with a rod);

(c) there is, or there is to be, at any one time no more than two such lines in use under the control of any one person, each line having no more than three hooks attached to it (or such

other lesser number of hooks as may, for that occasion, have been specified to that person by a Fisheries Protection Officer);

(d) the fishing is not, or is not to be, carried out in any area of the Territory which is specified, by a notice signed by the Commissioner and published in the Gazette, to be an excepted area for the purposes of this subsection; and

(e) any shark or other large game fish caught while fishing is released live into the fishing waters, save that "game fish" for these purposes does not include species of Tuna and Wahu whenever such fish are intended for the personal consumption of the person fishing and result from fishing in accordance with the other provisions of section 7(10).

(11)(a) The exception to subsection (1) that is provided by subsection (10) does not apply to any fishing carried out by a fishing boat (other than one based in and operating out of Diego Garcia in circumstances where the persons fishing from that boat have paid, or have contracted to pay, for the right to do so or to be on board the boat); and any boat that is being used in such circumstances is deemed to be a fishing boat for the purposes of that subsection.

(b) No fish caught by fishing in accordance with the provisions of subsection 10 may be frozen, and the burden of proving that frozen fish was not caught within the fishing waters of the Territory or was caught from a licensed fishing boat shall lie on the person in possession of such frozen fish.

(12) (a) Subsection (1) does not apply to fishing, by persons who are lawfully present in the Territory, if such fishing is part of a fishing tournament, the limitations and conditions for which have been arranged or approved in writing by the Commissioner's Representative not less than seven days before the tournament.

(b) No such tournament may last more than one day.

(13) The foregoing provisions of this section are without prejudice to -

(a) any prohibition, restriction, condition or requirement imposed by or under a regulation made under section 21; and

(b) any other law for the time being in force in the Territory with respect to the protection and preservation of wildlife or with respect to the conservation of the natural resources of the Territory or with respect to the regulation of activities within the waters of the Territory or with respect to visitors and visiting vessels.

Notification of fish on board fishing boats.

8. (1) The master of a fishing boat that has fish on board shall -

(a) before the boat enters the fishing waters; and

(b) before the boat leaves an area of the fishing waters in which it is licensed to fish,

notify a Fisheries Protection Officer of the quantities, sizes, descriptions and presentation of the fish on board.

(2) A master who, without reasonable excuse, contravenes subsection (1) or who, in pursuance of that subsection, gives a notification which he knows to be false or misleading is guilty of an offence and is liable, on conviction, to a fine of £50,000.

(3) The giving of a notification under this section is not a defence to a prosecution for an offence under section 17(8).

Stowage of gear.

9. (1) At any time when a fishing boat is in any area of the fishing waters and either -

(a) it is not authorised by a fishing licence to fish in that area; or

(b) it is so authorised to fish only for certain descriptions of fish in that area,

its fishing gear, or so much of it as is not required for the fishing which it is authorised to carry out, shall be stowed in such manner as is prescribed or, if no manner is prescribed, in such manner that it is not readily available for use for fishing.

(2) If subsection (1) is contravened, the master of the fishing boat in question is guilty of an offence and is liable, on conviction, to a fine of £100,000.

Transshipment.

10. (1) The transshipment of fish from a fishing boat within the fishing waters or the transport from the territorial sea of the Territory or the internal waters of the Territory by any fishing boat of fish transhipped from another fishing boat is prohibited unless it is carried out in accordance with a licence (a "transshipment licence") granted by the Director under this section in respect of every fishing boat concerned.

(2) Where subsection (1) is contravened, the master, the owner and the charterer of each boat which took part in the contravention is each guilty of an offence and is liable, on conviction, to a fine of £500,000.

(3) Every transshipment licence shall be granted in respect of a single fishing boat specified in it and may be granted to the owner or the charterer of the boat.

(4) If (but only if) it purports to do so, a fishing licence may also operate as a transshipment licence and may accordingly include, in addition to conditions or other provisions relating to fishing by the fishing boat specified in it, such conditions or other provisions relating to the transshipment or transport of fish as are authorised by this section.

(5) The authority to carry out the transshipment or transport of fish that is conferred by a transshipment licence may be unlimited or may be limited by reference to such matters as the Director thinks fit, including (but not confined to) -

(a) the area within which fish may be transhipped;

(b) the periods or times within which fish may be transhipped or may be transported by a fishing boat authorised by the licence to do so;

(c) the descriptions and quantities of fish that may be transported by a fishing boat authorised by the licence to do so; and

(d) the number of times that fish may be transported by a fishing boat authorised by the licence to do so.

(6) Within any limitation imposed under subsection (5) and subject to any regulations made under section 21, a transhipment licence may be unconditional or may be made subject to such conditions as the Director thinks fit, including (but not confined to) conditions as to the treatment of transhipped fish on board the fishing boat to which it has been passed.

(7) Where a condition to which a transhipment licence is subject is contravened, the master, the owner and the charterer of the fishing boat in respect of which the licence was granted is each guilty of an offence and is liable, on conviction, to a fine of £100,000.

(8) Fees may be charged for transhipment licences in accordance with regulations made under section 21.

(9) The Director may require the master, the owner or the charterer of a fishing boat in respect of which a transhipment licence has been granted, or any person who is for the time being designated to the Director, under regulations made under section 21, as the agent of the owner or charterer in respect of that boat, to provide him with such information, relevant to the licence or to the operation of the boat, as he may direct; and any person to whom such a requirement is addressed who fails without reasonable excuse to comply with it is guilty of an offence and is liable, on conviction, to a fine of £20,000.

(10) Any person who, for the purpose of obtaining a transhipment licence or in purported compliance with a requirement under subsection (9), provides information which he knows is false or misleading in any material particular or recklessly supplies information which is so false or misleading is guilty of an offence and is liable, on conviction, to a fine of £50,000.

(11) The Director may at any time suspend or revoke a transhipment licence or vary it in any respect; but no part of the fee that was charged for the licence shall, in any such case, be refunded unless the Director considers that it is appropriate, in all the circumstances of the case, to make such a refund.

Exercise of
Director's
powers.

11. (1) The powers vested in the Director by this Ordinance or by or under regulations made under section 21 may, subject to any such regulations and subject to subsection (3), be exercised by him in his absolute discretion to such extent, in such manner and in such cases as he considers necessary or expedient for the regulation of fishing or of the transhipment of fish, for the conservation or management of

fisheries or for the economic benefit of the Territory.

(2) Without prejudice to the generality of subsection (1) but subject as provided in that subsection, the Director may, in exercising his powers as aforesaid, make different provision or impose different requirements (including provision or requirements as to fees) for different boats or boats of different descriptions and may impose different limitations on or attach different conditions to licences granted in respect of different boats or boats of different description, and he may in particular exercise his powers as aforesaid for the purpose of limiting the number of boats, or boats of any particular description, that may engage in fishing, transshipping fish or transporting fish within the fishing waters; and the references in this subsection to the description of a boat include references to the country in which is registered.

(3) In the exercise of his powers and duties under this Ordinance or under any regulations made under section 21, the Director shall be subject to the direction of the Commissioner, who, in giving him any such direction, shall enjoy the same discretion as is vested by this section in the Director:

Provided that in acting as a public prosecutor in relation to any proceedings arising under this Ordinance or under any regulations made under section 21 the Director shall be subject to the direction of the Principal Legal Adviser.

(4) The exercise of the Director's power to grant licences shall be sufficiently signified if signified under the hand of a person authorised by the Director in writing to signify on his behalf.

General
enforcement
powers of
Fisheries
Protection
Officers.

12. (1) For the purpose of enforcing the provisions of this Ordinance and of any regulations made under section 21, a Fisheries Protection Officer and any person acting under his direction may exercise the following powers with respect to any person whom he believes to have committed an offence in contravention of any provision of this Ordinance, and with respect to any fishing boat within the fishing waters or with respect to any boat within the fishing waters which he believes to be, or to have been, employed as a fishing boat within those waters: -

- (a) he may stop the boat;
- (b) he may require such person, or in respect of a boat the master of the fishing boat to cease fishing and take back on board the boat's fishing gear;
- (c) he may require such a master to facilitate the boarding of the boat by all appropriate means;
- (d) he may go on board the boat and take with him such other persons as he may require to assist him in the exercise of his powers;
- (e) he may require any person (including the master or any member of the crew of a boat) to produce, and he may

examine and take copies of, any document relating to the person, the boat or to any person that is in that person's possession or control, including (without prejudice to the generality of the foregoing) any certificate of registry, licence, official logbook, official paper, article of agreement, passport, or record of fish caught or taken;

(f) he may muster the crew of the boat;

(g) he may require the master of the boat to appear and give an explanation of any matter that he may put to the master concerning the boat or concerning any such person or any such document as is mentioned in paragraph (e);

(h) he may make any search, examination or enquiry which he considers necessary to establish whether there has been an contravention of any provision of this Ordinance or of any regulations made under section 21;

(i) he may take, or require the master to take, the boat (together with the crew and any other person on board) to such place within the Territory as he may appoint for the purpose of enabling any such search, examination or enquiry to be carried out;

(j) where he suspects any person or master or member of the crew of a fishing boat of having committed an offence under this Ordinance or under any regulations made under section 21, he may, without warrant, summons or other process, take the suspected offender and take, or require the master to take, the boat (together with the crew and any other person on board) to such place within the Territory as he may appoint, and he shall then bring the suspected offender before a competent court; and, subject to section 13 and to any order made by the court, he may cause the suspected offender, the master, the crew and any other such person as aforesaid, and also the boat, to be detained in the Territory until the suspected offence has been adjudicated upon;

(k) in the case of a boat which, in the exercise of his powers under this Ordinance or under any regulations made under section 21, he has taken or caused to be taken to any place in the Territory or has caused to be detained in the Territory or has seized, he may take such steps as he considers necessary, while having regard to the safety of the boat, to immobilise it for the purpose of preventing it from departing from that place before the completion of the search, examination or enquiry for which it was taken there or, as the case may be, before it is released from detention or seizure under the provisions of this Ordinance or by order of a court;

(l) in any case where he suspects that an offence under section 6(1), 6(2), 7(2), section 7(6), section 10(2) or section 10(7) has been committed, he may -

(i) seize any fishing gear, equipment or boat which he believes to have been involved in the commission of that

offence;

(ii) seize the equipment and fishing and other gear of any such person or boat, and also any instruments, appliances, stores and cargo;

(iii) seize any fish which he believes to have been caught or taken or transhipped or transported in the commission of that offence or any fish products produced from any such fish; and

(iv) seize, or take copies of, any documents which he believes to be relevant to that offence.

(2) In relation to any action which, under paragraph (i) or paragraph (j) of subsection (1), a Fisheries Protection Officer may take, or may require to be taken, in respect of a fishing boat, the references in that paragraph to the boat include references to its fishing or other gear, to its instruments and appliances, to its stores and cargo and to any fish or fish products on board it.

(3) In exercising the powers conferred on him by subsection (1), a Fisheries Protection Officer or any person acting under his direction may use such force as is reasonably necessary.

(4) The powers conferred by this section may be exercised irrespective of whether any person or fishing boat in respect of which, or in respect of whose operations or suspected operations, they fall to be exercised is, at the time when they fall to be exercised, engaged in fishing or in operations ancillary to fishing.

(5) Upon any person, including, but not limited to the master or a member of the crew of a fishing boat, refusing or failing to comply with any order or direction given by a Fisheries Protection Officer in the exercise of his powers under this or any other section of this Ordinance or obstructing such an officer in relation to the exercise of his said powers, and upon such officer reporting such refusal, failure or obstruction to the Director, any licence held by such person, or held by some other person in respect of the fishing boat of which such person is master or a member of the crew shall forthwith be revoked, and the holder of such licence shall not be entitled to any refund of fees paid in respect of such a revoked licence.

Disposal of
detained or
seized boats,
etc.

13. (1) Where, in exercise of a power conferred by section 12 or by any regulation made under section 21 or in pursuance of a requirement imposed in the exercise of such a power, a boat is seized or is taken to a place within the Territory and there detained, then, if no proceedings for an offence under this ordinance or under such regulations, being an offence alleged to have been committed in connection with that boat, have been instituted within 14 days after the boat is brought to Diego Garcia following the seizure or, as the case may be, within 14 days after the arrival of the boat at that place and if the master, the owner or the charterer or the agent of the owner or the charterer so demands, the boat, together with any person on board it and any thing seized with it or on board it at the time when it was seized or was so taken, shall be released.

(2) Where any thing is seized under section 12(1)(i)(ii), (iii) or (iv) and the boat concerned (that is to say, the boat from which it was seized or to which the court is satisfied that it belongs) is not itself either seized under section 12(1)(i) or taken by a Fisheries Protection Officer or a person acting under his direction to a place within the Territory under section 12(1)(j), then, unless the master of that boat has, within the specified period, taken his boat to the appointed place within the Territory in pursuance of a requirement laid on him under section 12(1)(j) or, if he is not subject to such a requirement, unless he has, within the specified period, otherwise taken it to Diego Garcia or such other place within the Territory as a Fisheries Protection Officer or a person acting as aforesaid may appoint and has there reported its arrival to a Fisheries Protection Officer, the thing seized may, subject to the following provisions of this section, be ordered by a court to be forfeited to the Crown and shall then be disposed of as the Commissioner may direct.

(3) A court may not make an order for forfeiture under subsection (2) save on application made by or with the authority of the Principal Legal Adviser.

(4) Where any thing has been seized in the circumstances referred to in subsection (2) and, within the specified period, the fishing boat concerned has been taken to a place within the Territory as specified in that subsection, then, if no proceedings in respect of the suspected offence in connection with which the seizure was made have been instituted within 14 days after the arrival of the boat at that place and if the master, the owner or the charterer of the boat or the agent of the owner or the charterer so demands, the thing shall be released.

(5) In this section "the specified period" means the period of 14 days after the seizure of the thing in question or such longer period as a court may allow in any particular case.

(6) Notwithstanding any other provision of this Ordinance, where any perishable goods (that is to say, fish or fish products or other goods which are subject to decay unless kept in storage facilities specially designed or adapted for that purpose) have been seized under any provision of this Ordinance and -

(a) before the elapse of any period after which, under any provision of this Ordinance, those goods must, on demand, be released; or

(b) before any such demand is made; or

(c) before the conclusion of any proceedings pending which those goods are being held,

a court is satisfied that, because of the deteriorating condition of the goods, it is no longer practicable to keep them, the court may order them to be destroyed or otherwise disposed of; and no compensation therefor shall be payable to the owner of the goods or to any other person claiming an interest in them.

Security for
release of
seized or
detained boat,
etc.

14. (1) Where a fishing boat is seized or detained under this Ordinance or under any regulations made under section 21 in connection with a suspected offence under this Ordinance or under any such regulations and proceedings for that offence are instituted against the master, the owner or the charterer of the boat or the agent of the owner or the charterer, the master, the owner or the charterer may, at any time before the conclusion of those proceedings, apply to the court which is, or will be, seised of the proceedings for the release of the boat on the provision of security in accordance with this section.

(2) If, on an application under subsection (1), the court is satisfied that adequate security has been given to the Crown as specified in subsection (3), it may order the release of the boat.

(3) The security which is to be given to the Crown for the purposes of subsection (2) is security for the aggregate of -

(a) the maximum fine that may be imposed on the defendant for the offence with which he is charged;

(b) a sum representing the value (as estimated by the court) of anything that may in due course be ordered under section 17(3) to be forfeited to the Crown; and

(c) such sum by way of costs and expenses as the court estimates may in due course be ordered by the court to be paid to the Crown under section 17(6),

or for such lesser aggregate sum as the prosecution agrees to and the court approves.

(4) If, on an application under subsection (1), the court is not satisfied as mentioned in subsection (2), it may order the release of the boat on the execution by one or more suitable persons approved by it of a bond, in the prescribed form (or in such form as it may specially approve) and conditioned in accordance with subsection (5), in an amount corresponding to the aggregate of the sums specified in paragraphs (a), (b) and (c) of subsection (3) or in such lesser amount as the prosecution agrees to and the court may fix having regard to any special circumstances of the case; but the order for release shall not have effect until the bond is executed to the satisfaction of the court.

(5) The condition of a bond executed for the purposes of subsection (4) shall be that if -

(a) at the conclusion of the proceedings, the defendant is not convicted of the offence with which he was charged; or

(b) having been convicted of that offence, he pays in full and within 14 days (or such longer period as the court may, on application by him, allow) the fine imposed on him by the court, the sum specified in subsection (3)(b) (or such lesser sum as the court may allow, having regard to such order for

forfeiture as has in fact been made) and the amount of any costs and expenses ordered by the court to be paid to the Crown,

the bond shall then be of no effect, but that it shall otherwise, on the expiry of the said 14 days (or such longer period as aforesaid), be of full effect and enforceable.

(6) Without prejudice to any remedy available for the enforcement of any fine imposed, or any other order made, by the court, the sum for which a bond is executed for the purposes of this section is, when the bond has become enforceable, due to the Crown as a civil debt owed by the person, or owed jointly and severally by the persons, who executed the bond, and is recoverable as such.

(7) In this section references to the release of a boat that has been seized or detained include references to the release of any person on board it and any thing seized with it or on board it at the time when it was seized or detained.

Fisheries
Protection
Officers'
immunity from
process.

15. No civil suit or criminal process shall be brought against any Fisheries Protection officer, or against any person acting under the direction of a Fisheries Protection Officer, in respect of any act performed by him, in good faith and with reasonable cause, in the exercise or purported exercise of his functions under this Ordinance or under any regulations made under section 21.

Obstruction of
Fisheries
Protection
Officers.

16. Without prejudice to any other provision in that behalf contained in this Ordinance or in any regulations made under section 21, any person who wilfully obstructs a Fisheries Protection Officer, or any person acting under the direction of a Fisheries Protection Officer, in the exercise of his functions under this ordinance or under such regulation or who, without reasonable cause (the onus of proof of which lies on him), refuses or neglects to comply with any order, direction or requirement lawfully given to him or laid on him by a Fisheries Protection Officer, or by any person acting as aforesaid, or to answer any question reasonably put to him by a Fisheries Protection Officer, or by any person acting as aforesaid, or who prevents another person from so complying or so answering is guilty of an offence and is liable, on conviction, to a fine of £100,000.

Offences,
penalties,
evidence and
proceedings,
etc.

17. (1) Any person who commits a contravention of any provision of this Ordinance or of any regulations made under section 21 (being a contravention which is not, by any such provision other than this subsection, specifically declared to be an offence) commits an offence under this subsection and is liable, on conviction, to a fine of £100,000.

(2) Without prejudice to section 319 of the Penal Code, any person who attempts to commit an offence under this Ordinance or under any regulations made under section 21 commits an offence under this subsection and is liable, on conviction, to the same fine as if he had committed the attempted offence.

(3) Without prejudice to any provision of this Ordinance authorising the imposition of a fine in any such case, where a person

is convicted of any offence under this ordinance or under any regulations made under section 21 (being an offence in respect of the use or operation of a fishing boat), the court may, in addition to imposing a fine but subject to subsection (4), order that any fishing or other gear, or instruments or appliances, on board the boat (whether or not used in the commission of the offence), and any fish or fish products on board the boat (whether or not the offence related thereto), shall be forfeited to the Crown; and anything so forfeited shall then be disposed of as the Commissioner may direct.

(4) A court may not make an order for forfeiture under subsection (3) save on application made by or with the authority of the Principal Legal Adviser.

(5) Notwithstanding any provision of law limiting the time within which proceedings may be commenced, proceedings for an offence under this Ordinance or under any regulations made under section 21 may be commenced at any time after the commission of that offence.

(6) Notwithstanding section 194(1) of the Criminal Procedure Code 1986, the Magistrates' Court, on convicting any person of an offence under this Ordinance or under any regulations made under section 21, has jurisdiction to impose on him any fine to which he is liable under this Ordinance or under those regulations for that offence; and notwithstanding section 226(1) of that Code, any court may, in such a case, order that person to pay to the Crown such costs and expenses incurred by the Crown in preparation for or otherwise in connection with the proceedings as it thinks proper (including the expenses incurred, whether before or after the commencement of the proceedings, in the exercise of any of the powers vested in a Fisheries Protection Officer).

(7) Every Fisheries Protection Officer shall be *ex officio* a public prosecutor in proceedings for offences under this Ordinance or under any regulations made under section 21.

(8) Without prejudice to any liability for an offence under section 7(2) or under section 10, the master of a fishing boat on which there is found fish that has been caught or taken within the fishing waters otherwise than in accordance with a fishing licence or that has been transhipped to the boat within the fishing waters otherwise than in accordance with a transhipment licence is guilty of an offence and is liable, on conviction, to a fine of £200,000; and in any proceedings in any such case, whether for an offence under this subsection or for an offence under section 7(2) or section 10 or under regulations made under section 21, it shall be sufficient for the prosecution to prove that the fish was found on the boat and the onus of proving -

(a) that the fish was not caught or taken within the fishing waters; or, alternatively,

(b) that it was caught or taken in accordance with a fishing licence; or, alternatively,

(c) that it was transhipped to that boat outside the fishing waters or in accordance with a transhipment licence,

shall then lie on the accused.

(9) A certificate signed by the Director or by any person authorised by him to sign such a certificate -

(a) as to whether or not, at any material time specified in the certificate, a fishing boat so specified was licensed under this Ordinance; or

(b) as to the nature of any such licence; or

(c) as to any limitations imposed on, or conditions attached to, any such licence;

(d) as to who was the person to whom any such licence was granted,

shall, if tendered in evidence in any proceedings under this Ordinance or under any regulations made under section 21, be sufficient evidence of that matter unless the contrary is proved.

(10) Any certificate which purports to be such a certificate as is mentioned in subsection (9) shall, in any such proceeding as aforesaid, be received in evidence as such, without proof of signature or of authorisation to sign, unless credible evidence to the contrary is adduced; and a facsimile copy of such a certificate shall be received in evidence as if it were the original certificate.

Revocation of
licences of
repeated
offenders.

18. (1) Where any person has once been convicted of any offence to which this section applies and is, within the period of five years following the date of that conviction, convicted of the like or any other such offence committed after that date, then, subject to subsection (3), any licence which he then holds is thereupon revoked and he shall, for the period of three years following the date of that subsequent conviction, be disqualified from being granted any further licence.

(2) Where a licence is revoked in accordance with subsection (1), no part of any fee that was charged for the licence shall be refunded unless the Director considers that it is appropriate, in all the circumstances of the case, to make such a refund.

(3) If any person whose licence is revoked in accordance with subsection (1) applies to the Director within 30 days of the conviction by virtue of which it is revoked or within such longer period as the Director may allow, the Director, in his discretion and having regard to all the circumstances of the case, may restore the licence, with effect from such date and with such variations and subject to such conditions as he thinks fit, and may remove, or reduce the duration of, or vary in such other respect as he thinks fit, the disqualification imposed by that subsection.

(4) The offences to which this section applies are any offences under this Ordinance (or under any Ordinance repealed by this

Ordinance) or under any regulations made (or deemed to be made) under section 21.

Fixed penalty notices and procedure

19. (1) Where, on any occasion, a Fisheries Protection Officer finds a person who he has reason to believe is committing or has on that occasion committed an offence under this Ordinance or under any regulations made under section 21, he may give that person a fixed penalty notice in respect of that offence.

(2) In this section "fixed penalty notice" means a notice offering the opportunity of the discharge of any liability to be convicted of the offence to which the notice relates by payment of a fixed penalty in accordance with this section.

(3) A fixed penalty notice must –

- (a) give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence;
- (b) be issued from an authorised sequentially numbered official pad of notices in the form prescribed in the schedule;
- (c) state the amount of the fixed penalty;
- (d) state that the fixed penalty may be paid forthwith to the Fisheries Protection Officer,

and a copy of the provisions of this section shall be attached to the notice.

(4) The fixed penalty for an offence is -

- (a) £5000 for an offence relating to fishing from a fishing boat and £200 for an offence relating to a person fishing other than from a fishing boat or relating to a person fishing from a fishing boat based in and operating out of Diego Garcia in circumstances where the persons fishing from that boat have paid, or have contracted to pay, for the right to do so or to be on board the boat; or
- (b) one-half of the maximum fine to which a person committing the offence would be liable on conviction of that offence by the Magistrates' Court,

whichever is the less.

(5) Where a fixed penalty notice has been given to a person no proceedings may be brought against him for the offence if he has forthwith paid the penalty to the Fisheries Protection Officer.

(6) A Fisheries Protection Officer shall issue to the recipient an official receipt for every payment made to him in respect of a fixed penalty and every Fisheries Protection Officer shall account to the Commissioner for each fixed penalty notice form and receipt form issued to him and for all payments received by him.

(7) For the avoidance of doubt, nothing in this section obliges an officer to issue a fixed penalty notice when he decides that the alleged offender should be prosecuted for the alleged offence.

(8) Where the fixed penalty notice relates to the unlawful

possession of prohibited fishing gear, in addition to the payment of the penalty, the recipient shall surrender to the officer the prohibited fishing gear for destruction.

Non-payment of fines, etc: detention and forfeiture of boat.

20. (1) When any fine is imposed on the master, the owner or the charterer of a fishing boat for an offence under this Ordinance or under any regulations made under section 21, or where any sum is ordered by a court to be paid by him to the Crown by way of costs or expenses incurred in connection with the proceedings for that offence, then, if no security therefor has been given, or bond for the payment thereof has been executed, under section 14, or if the court considers that any such security or bond is inadequate to secure the payment of the sums due from him in consequence of his conviction (including the value of anything ordered to be forfeited to the Crown that is not already being detained under this Ordinance), it may order that, in default of payment forthwith of all such sums, he shall give security (or additional security) therefor to the satisfaction of the court; and, subject to subsection (2), his fishing boat may then be detained (or continue to be detained) in such place within the Territory as the court may order until all such sums are paid (and anything ordered to be forfeited but not already detained has been surrendered to the court) or until security is given as aforesaid.

(2) If any such fine as is referred to in subsection (1) or any such sum by way of costs and expenses as is there referred to remains unpaid for more than 30 days (or such longer period as the court may allow) after it was imposed or was ordered to be paid, the court may, subject to subsection (3), order that the fishing boat concerned shall be forfeited to the Crown; and it shall then be disposed of as the Commissioner may direct.

(3) A court may not make an order for forfeiture under subsection (2) save on application made by or with the authority of the Principal Legal Adviser.

(4) An order for the forfeiture of a fishing boat under this section may extend to such of its fishing and other gear, its instruments and appliances, its stores and cargo and any fish and fish products on board it as the court may direct.

Regulations.

21. (1) The Commissioner may make such regulations as he considers necessary for the purposes of this Ordinance.

(2) Without prejudice to the generality of subsection (1), regulations made by the Commissioner may provide for or may authorise the Director to provide for or to determine -

(a) anything which is to be, or which may be, prescribed under this Ordinance;

(b) the forms to be used for the purposes of this Ordinance;

(c) all questions relating to the procedures for applying for licences;

(d) all questions relating to the procedures for granting licences;

(e) the conditions subject to which licences are to be, or may be, granted;

(f) the fees to be charged for licences and the method of computing such fees;

(g) the equipment to be carried on board fishing boats;

(h) the reports and notifications to be made, and the records and logs to be kept, in respect of fishing boats or in respect of fishing or otherwise for the purposes of this ordinance or for the purposes of any regulations made under this section (and the procedures relating thereto);

(i) the designation, by applicants for licences or by licensees, of authorised agents, and the authority to be attributed to, and the obligations and liabilities to be assumed by or imposed on, such agents;

(j) the place or places where persons who are to be designated as authorised agents may reside or have their place of business;

(k) the execution, by applicants for licences or by licensees or by other persons, of bonds (or the provision by them of other forms of security) for securing compliance with obligations arising under a licence or otherwise arising under the provisions of this Ordinance or of any regulations made under this section;

(l) the placing on board fishing boats of Fisheries Protection Officers or of observers, and the facilities and conditions to be accorded to them while on board;

(m) the conferment on Fisheries Protection Officers, or persons acting under their direction, of such powers, additional or supplementary to those conferred by this Ordinance, as the Commissioner considers necessary or expedient for the regulation of fishing boats or of fishing or otherwise for the purposes of this Ordinance or for the purposes of any regulations made under this section.

(3) Regulations made under this section may make different provision for (and the Director, in exercising an authority conferred by such regulations to make provision for any matter or to determine any matter, may make different provision for or a different determination in respect of) different parts of the fishing waters or different boats or boats of different descriptions (including descriptions which differ by reference to the countries in which the boats are registered) or different licences or different descriptions of licences.

(4) Regulations made under this section may provide that the contravention of any provision thereof shall constitute an offence, and

may prescribe, as the penalty for any such offence, a fine not exceeding £100,000.

Saving for laws regulating access to Territory, etc.

22. For the avoidance of doubt, nothing in this Ordinance shall be construed as in any way derogating from the provisions of the British Indian Ocean Territory (Immigration) Order 2004, the British Indian Ocean Territory Waters (Regulation of Activities) Ordinance 1997, or the Visitors and Visiting Vessels Ordinance 2006.

Repeal and savings.

23. (1) The Fisheries (Conservation and Management) Ordinance 1998 ("the 1998 Ordinance") is repealed.

(2) Without prejudice to section 21(1) or section 22(2) of the Interpretation and General Provisions Ordinance 1993, the repeal of the 1998 Ordinance does not affect the continuing operation, according to its tenor, of any licence granted or other instrument made under or for the purposes of that ordinance; and any such instrument shall thereafter be deemed to have been granted or made under the relevant enabling provision of this Ordinance or, as the case may require, for the purposes of this Ordinance, and any reference therein to a particular provision of the 1998 Ordinance shall thereafter be construed as if it were a reference to the corresponding provision of this Ordinance.

(3) Notwithstanding subsection (1) and without prejudice to subsection 21(1) of the Interpretation and General Provisions Ordinance 1993, proceedings may be instituted after the commencement of this Ordinance for an offence alleged to have been committed before that commencement under any provision repealed by subsection (1), and any such proceedings shall be dealt with for all purposes as if this ordinance had not been enacted and the repealed provision remained in force; and any proceedings that were instituted before the commencement of this ordinance by virtue of any provision repealed by subsection (1) may be continued thereafter and may likewise be dealt with for all purposes as if this Ordinance had not been enacted and the repealed provision remained in force.

Fixed Penalty
Notice form

THE SCHEDULE



BRITISH INDIAN OCEAN TERRITORY

**Section 19 The Fisheries (Conservation and Management)
Ordinance 2007**

FIXED PENALTY NOTICE

Notice official number

1. **To**(Here set out name and details of recipient)

2. **Circumstances constituting offence.**

It is alleged that you have committed an offence under section
.....of the Fisheries (Conservation and Management) Ordinance
2007/regulation of the Fishing Regulations 2007.

The circumstances alleged to constitute that offence are as follows:
(Here set out sufficient particulars of the offence alleged, including date and
approximate time, to give the recipient reasonable information about what he is
alleged to have done)

3. You have the opportunity to discharge any liability to be
convicted of the above offence if you immediately pay the fixed
penalty which is specified in paragraph 4 below to the Officer who
gave you this notice. If you fail to do so you may be detained and
prosecuted for the offence.

4. **Fixed penalty (insert £5000/£200 or half the maximum penalty for
offence, whichever is the least amount)**

.....
.....
(Date of Notice)

.....
.....
(Signature and name of officer
issuing notice)

**Section 19 The Fisheries (Conservation and Management)
Ordinance 2007.**

Fixed penalty
notices and
procedure

19. (1) Where, on any occasion, a Fisheries Protection Officer finds a person who he has reason to believe is committing or has on that occasion committed an offence under this Ordinance or under any regulations made under section 21, he may give that person a fixed penalty notice in respect of that offence.

(2) In this section "fixed penalty notice" means a notice offering the opportunity of the discharge of any liability to be convicted of the offence to which the notice relates by payment of a fixed penalty in accordance with this section.

(3) A fixed penalty notice must –

- (a) give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence;
- (b) be issued from an authorised sequentially numbered official pad of notices in the form prescribed in the schedule;
- (c) state the amount of the fixed penalty;
- (d) state that the fixed penalty may be paid forthwith to the Fisheries Protection Officer,

and a copy of the provisions of this section shall be attached to the notice.

(4) The fixed penalty for an offence is-

- (a) £5000 for an offence relating to fishing from a fishing boat, and £200 for an offence relating to a person fishing other than from a fishing boat or relating to a person fishing from a fishing boat based in and operating out of Diego Garcia in circumstances where the persons fishing from that boat have paid, or have contracted to pay, for the right to do so or to be on board the boat; or
- (b) one-half of the maximum fine to which a person committing the offence would be liable on conviction of that offence by the Magistrates' Court,

whichever is the less.

(5) Where a fixed penalty notice has been given to a person (in this section referred to as "the recipient") under section 53, no proceedings may be brought against him for the offence if he has forthwith paid the penalty to the Fisheries Protection Officer.

(6) A Fisheries Protection Officer shall issue to the recipient an official receipt for every payment made to him in respect of a fixed penalty and every Fisheries Protection Officer shall account to the Commissioner for each fixed penalty notice form and receipt form issued to him and for all payments received by him.

(7) For the avoidance of doubt, nothing in this section obliges an officer to issue a fixed penalty notice when he decides that the alleged offender should be prosecuted for the alleged offence.

(8) Where the fixed penalty notice relates to the unlawful possession of prohibited fishing gear, in addition to the payment of the penalty, the recipient shall surrender to the officer the prohibited fishing gear for destruction.