

FALKLAND ISLANDS
THE FISHERIES (CONSERVATION AND MANAGEMENT)

ORDINANCE 1986

(No. 11 of 1986)

Arrangement of Sections

Section

1. Citation and commencement.
2. Interpretation.
3. Fishing waters.
4. Fishing prohibited without a licence.
5. Notification of fish on board by fishing boats entering fishing waters.
6. Stowage of gear.
7. Transhipment and export of fish prohibited without a licence.
8. Manner of exercising of licensing powers.
9. Director of Fisheries and Fisheries Protection Officers.
10. General powers of fisheries protection officers.
11. Release of boat or thing if no proceedings instituted.
12. Security for release of fishing boat.
13. Indemnity.
14. Obstruction of Fisheries Protection Officers.
15. Offences, penalties and proceedings.
16. Jurisdiction of Summary and Magistrates Court.
17. Forfeiture of licence.
18. Administrative penalties for minor offences.
19. Detention or forfeiture of fishing boat on failure to pay or secure fine.

20. Regulations.

21. Restriction of application of Fisheries Ordinance Cap 27 and saving.

THE FISHERIES (CONSERVATION AND MANAGEMENT) 1986

An Ordinance to make provision for the regulation, conservation and management of the fisheries of the Falkland Islands and matters incidental thereto.

ENACTED by the Legislature of the Colony of the Falkland Islands as follows: -

SEC.1. Citation and commencement.

This Ordinance may be cited as the Fisheries (Conservation and Management) Ordinance 1986 and shall come into force on such day as the Governor shall appoint by Order published in the Gazette and the Governor may appoint different days for the coming into force of different provisions.

SEC.2. Interpretation.

In this Ordinance unless the context otherwise requires: -

"Director of Fisheries" means the Director of Fisheries appointed under Section 9(1) and includes any Deputy Director of Fisheries appointed under that provision;

"export licence" means a licence so described provided for in Section 7;

"fish" means any marine animal not being a mammal or bird, whether fresh or cured including shellfish and any part of such animal and includes salmon, migratory trout and fish meal;

"land store" means a building or facility on land in the Falkland Islands designed and constructed for the purpose of the storage of fish or if not so designed and constructed, actually used or intended to be used for the storage of fish;

"operational transshipment of fish" means the transfer of fish during the course of any activity described in paragraphs (a) and (b) of the definition appearing in this section of "fishing" from a fishing boat engaged in such activity and licensed under section 4 to another fishing boat which is licensed under section 4 of this Ordinance to carry out fishing; and included in this definition is any transfer of fish from the nets or other devices for taking fish employed by a fishing boat engaged in the activities mentioned in this definition to another fishing boat engaged in those activities and which is not a "transport vessel" as defined in this section;

"primary transshipment of fish" means any transshipment of fish whereby other than by way of operational transshipment of fish, fish is first transferred within the fishing waters from a fishing boat, to -

(a) another fishing boat (and whether or not that fishing boat is licensed under section 4); or

(b) a land store;

and "secondary transshipment of fish" means any transshipment of fish which is not -

(i) an operational transshipment of fish, or

(ii) a primary transshipment of fish;

"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.

"Fisheries Protection Officer" means the Director of Fisheries and any of the Fisheries Protection Officers provided for in Section 9(3) and (4) or any person authorised by a Fisheries Protection Officer for the purposes of this Ordinance;

"fishing" means -

(a) the catching or taking of fish; and

(b) any other operation or activity likely as a direct result thereof to result in the catching or taking of fish or intended as a direct result thereof to result in the catching or taking of fish;

"fishing boat" means any vessel of whatever size, and in whatever way propelled, which is for the time being employed in fishing operations or for the processing, storage or carriage of fish or of any operations (including transshipment of fish) ancillary thereto;

"fishing licence" means a licence provided for under Section 4;

"fishing waters" means the fishing waters of the Falkland Islands provided for in Section 3;

"interim fishery conservation and management zone" means the zone of that name established by and described in the Proclamation by the Governor of the twenty ninth day of October 1986;

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

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

"transshipment licence" means a licence so described provided for in Section 7;

"transshipment of fish" includes the passing of fish from one fishing boat to another or to a land store whether or not the fish has first been taken on board the boat from which the fish is passed.

"transport vessel" means a vessel designed and constructed or in fact used for the transport of fish not caught or taken by that vessel and whether or not -

- (a) other fish are caught or taken by that vessel;
- (b) it is intended that fish received by that vessel shall subsequently be transhipped to another vessel or to a land store;
- (c) any process is intended to be carried out aboard that vessel - upon or in relation to fish transferred to that vessel;

SEC.3. Fishing waters.

The fishing waters of the Falkland Islands comprise -

- (a) the internal waters;
- (b) the territorial sea;
- (c) the Interim Fishery Conservation and Management Zone; and
- (d) any other marine waters over which exclusive rights of fishing or fisheries management are claimed by proclamation, law or convention for the time being in force in the Falkland Islands.

SEC.4. Fishing profibited without a licence.

1. Fishing by a fishing boat in the fishing waters is prohibited unless authorised by a licence granted under this Ordinance.
2. Where any fishing boat is used in contravention of subsection (1) the master, the owner and the charterer shall each be guilty of an offence.

PENALTY - a fine not exceeding the maximum of level 12 (£ 250,000) on the standard scale.

3. A fee may be charged for a licence.
4. A fishing licence shall be granted to the master, owner or charterer in respect of a specified fishing boat and may authorise fishing generally or may confer limited authority by reference to, in particular -
 - (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 fish which may be taken; or
 - (d) the method of fishing.
5. A fishing licence may authorise fishing either unconditionally or subject to such conditions

as appear to the Director of Fisheries to be necessary or expedient for the regulation of sea fishing, the conservation or management of fisheries in the fishing waters or for the economic benefit of the Falkland Islands and in particular a licence may contain (without prejudice to the generality of the foregoing) conditions as to -

- (a) the landing of fish taken under the authority of the licence;
- (b) the use to which the fish taken may be put;
- (c) the marking of the licensed fishing boat including the display of its assigned international radio call sign;
- (d) the records of fishing operations which shall be kept on board the licensed fishing boat;
- (e) the navigation equipment and charts to be carried on board the licensed fishing boat; and
- (f) the place or places where the licensed fishing boat may carry out transhipment of fish;

and if a licence condition is broken the master, the owner and the charterer of the fishing boat concerned in such breach shall each be guilty of an offence.

PENALTY - a fine not exceeding the maximum of level 9 (£ 25,000) on the standard scale.

6. It shall be an offence for a master to allow to remain on board a fishing boat within the fishing waters fish which has not been taken under the authority of and in accordance with a fishing licence.

Provided that it shall be a defence to a prosecution for an offence arising under this subsection if the person charged satisfies the court that the fish was not taken, caught or captured in the fishing waters.

PENALTY - a fine not exceeding the maximum of level 11 (£ 100,000) on the standard scale.

7. The Director of Fisheries, in granting a fishing licence, may require the master, the owner and the charterer of the fishing boat specified in the licence to provide him with such statistical information (including information in relation to any period before the commencement of this Ordinance) as he may direct, and a person who fails without reasonable excuse to comply with such a requirement or provides information which he knows to be false or recklessly furnishes information which is false shall be guilty of an offence.

PENALTY - a fine not exceeding the maximum of level 9 (£ 250,000) on the standard scale.

8. A fishing licence may be -

- (a) varied from time to time, and
- (b) revoked or suspended,

if this appears to the Director of Fisheries to be necessary or expedient for the regulation of sea fishing, the conservation or management of fisheries in the fishing waters or for the economic benefit of the Falkland Islands.

9. No exercise by the Director of Fisheries of the power contained in subsection (8) shall be liable to be challenged, reviewed, quashed or called in question in any court on the ground that the conditions for the exercise of the power by him had not arisen or had ceased.

10. If a fishing licence is varied, revoked or suspended the Director of Fisheries may, if he considers it appropriate in all the circumstances of the case, refund the whole or part of any fee charged for the licence.

11. A fishing licence may be endorsed with a statement that the licence shall also operate as a licence for transshipment of fish or export by the fishing boat to which the fishing licence relates and, if so endorsed, the fishing licence -

(a) shall be deemed to constitute a transshipment and export licence granted under section 7(4) of this Ordinance;

(b) may contain such authorisations, limitations or conditions as may lawfully be imposed or inserted in a licence granted under section 7(4) by that subsection or by section 7(5) of this Ordinance;

(c) may be granted subject to payment of such additional fee or fees as would be payable in respect of a licence granted under section 7(4) or section 7(5) of this Ordinance;

(d) notwithstanding paragraph (a) of this subsection shall, unless otherwise specifically stated in the endorsement, authorise only transshipment of fish from the fishing boat to which the fishing licence relates and not the receiving of fish by that fishing boat from any other fishing boat;

(e) shall not operate so as to excuse from the requirements of section 7 of this Ordinance any fishing boat receiving fish from the fishing boat to which the fishing licence so endorsed relates.

Subsections (7), (8), (9), (10) and (11) of section 7 shall apply to the fishing licence insofar as it constitutes also a transshipment licence or export licence to the same extent as they apply to a transshipment licence or export licence applied for and granted under section 7.

SEC.5. Notification of fish on board by fishing boats entering fishing waters.

1. The master of a fishing boat that has fish on board shall

(a) prior to entry of the boat into the fishing waters, or

(b) prior to the boat leaving an area of the fishing waters in which the master, owner or charterer of that boat is licensed to fish,

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

PENALTY - a fine not exceeding the maximum of level 11 (£ 100,000) on the standard scale.

2. The giving of a notification under subsection (1) shall not of itself constitute a defence to a prosecution for an offence under Section 4(6).

SEC.6. Stowage of gear.

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

(a) it is prohibited by Section 4 from fishing in that area; or

(b) it is permitted by fishing licence to fish only for certain descriptions of fish in that area.

then its fishing gear, or so much of the gear as is not required for permitted fishing, shall be stowed in such manner that it is not readily available for use for fishing or in such manner as may be prescribed.

2. If this section is contravened in the case of any fishing boat -

(a) the master of the boat shall be liable on conviction to a fine; and

(b) the court may on convicting him order the forfeiture of any fish or fishing gear found in the boat or taken or used by any person from the boat.

PENALTY - a fine not exceeding the maximum of level 12 (£ 250,000) on the standard scale.

SEC.7. Transhipment and export of fish prohibited without a licence.

1. This section applies to -

(a) a primary transhipment of fish from a fishing boat to another fishing boat or to a land store

(b) the transport aboard any vessel or aircraft or any fish from the fishing waters or the Falkland Islands to any other place not within the fishing waters or the Falkland Islands, and any transhipment of fish to which this section applies and the removal or transport (in this section called "export") of any fish from the fishing waters or from the Falkland Islands subject to section 4(ii) of this Ordinance is unlawful unless it is authorised by, and carried out in accordance with a transhipment licence or export licence granted under subsection (4) of this section;

2. If -

(a) a fishing boat (whether or not it is a transport vessel);

(b) an aircraft; or

(c) a land store,

as the case may be, is used for the transshipping or export of fish contrary to subsection (1) -

(i) the owner, any charterer and the master of any fishing boat from which the fish is transferred contrary to subsection (1);

(ii) the owner, any charterer and the master of any fishing boat by which the fish is received contrary to subsection (1);

(iii) the owner, any charterer and the master of any fishing boat upon which fish is exported contrary to subsection (1);

(iv) the owner, any charterer and the person in command of any aircraft on which the fish is exported;

(v) the owner, lessee and any occupier of any land store at which the fish is received,

as the case may be, commits an offence:

(aa) it shall be a defence in any prosecution for an offence under this subsection for the defendant to prove that the fish concerned in the alleged offence was not taken, caught or captured in the fishing waters;

(bb) it shall be a defence for the owner of any fishing boat or aircraft concerned in the alleged offence to prove -

(i) that at the time of the alleged offence the fishing boat or aircraft was chartered to another person; and

(ii) that he did not know of the transshipment or export taking place, or if he did know of it, that he could not reasonably have prevented it taking place;

(cc) it shall be a defence in any prosecution for an offence under this subsection for the owner of any land store concerned in the alleged offence to prove -

(i) that at the time of the alleged offence, the land store in question was leased to or occupied by another person; and

(ii) that he did not know that the transshipment was taking place, or if he did know of it, that he could not reasonably have prevented it taking place.

PENALTY - a fine not exceeding the maximum of level 12 (£ 250,000) on the standard scale.

3. A fee may be charged for a transshipment licence or an export licence.

4. Licences to which this section relates may be granted -

(a) in the case of a transshipment licence -

(i) to the owner or charterer of a specified fishing boat from which fish is to be transferred;

(ii) to the owner or charterer of a fishing boat by which fish is to be received; and

(iii) to the owner, lessee or occupier of a land store by which fish is to be received; and

(b) in the case of an export licence -

(i) to the owner or charterer of a specified fishing boat on board which the fish is to be exported,

(ii) to the owner or charterer of a specified aircraft on board which the fish is to be exported,

and any such licence may -

(aa) authorise the licensee to tranship or export any fish at any time during the period specified in the licence;

(bb) authorise the licensee to tranship or export fish at any time during the period specified in the licence but contain a limitation in relation to the species or the aggregate weight or quantity of fish of any species or the weight or quantity of species of the kind mentioned in the licence, the transport or export of which the licence authorises;

(cc) in the case of a transshipment licence limit the area within which fish or fish of a particular species may be transhipped under the authority of the licence;

(dd) limit the periods or times during which fish may be transhipped or exported during the currency of the licence;

(ee) in the case of a transshipment licence require notice of the length and kind specified in the licence to be given to the Director of Fisheries before any transshipment of fish is made from or to the fishing boat or to a land store;

(ff) in the case of a transshipment licence, require that no transshipment shall take place unless Fisheries Protection Officer is on board the fishing boat to which the licence relates or, in the case of a land store to which the licence relates, unless a Fisheries Protection Officer is present at that land store;

(gg) in the case of a transshipment licence, limit the number of transshipments which may be undertaken under authority of the licence;

(hh) in the case of an export licence, limit the number of times that the fishing boat or aircraft specified in the licence may export fish; and

(ii) contain such other limitations or conditions as the Director of Fisheries may consider necessary or expedient for the regulation of the transshipment or export of fish.

5. Without prejudice to the generality of paragraph (ii) of subsection (4), conditions under that paragraph may include conditions as to -

(a) treatment on board a fishing boat whether or not it is a transport vessel or as a land store receiving fish of the fish received by that fishing boat or by that land store; and

(b) (in respect of a land store) the security of a land store licensed to receive fish;

6. Any person who, without the consent of the Director of Fisheries, removes or receives any fish from a land store other than under the authority of an export licence and for the purpose of export of the fish under that licence, commits an offence under this subsection:

Provided that the Director of Fisheries shall not refuse his consent to the removal of reasonable quantities of fish by the licensee from a land store for the purpose of the sale or disposal of that fish for consumption by persons resident in the Falkland Islands.

PENALTY - a fine not exceeding the maximum of level 9 (£ 25,000) on the standard scale.

7. The Director of Fisheries may require the master, the owner and the charterer of the fishing boat or, in the case of an aircraft, the owner or charterer of the aircraft, named in a transshipment licence or an export licence and, in the case of a land store named in a transshipment licence, the owner, lessee or occupier of that land store, and any agent named in any such licence to provide him with such statistical information as he may direct, and any person who fails without reasonable excuse to comply with such a requirement shall be guilty of an offence.

PENALTY - £ 15,000.

8. Any person who -

(a) for the purpose of obtaining a transshipment licence or an export licence; or

(b) in purported compliance with subsection (7),

provides information which he knows to be false or recklessly furnishes information which is false shall be guilty of an offence.

PENALTY - £ 20,000.

9. A transshipment licence or an export licence -

(a) may be varied from time to time, and

(b) may be revoked or suspended,

if it appears to the Director of Fisheries to be necessary or expedient for the regulation of transshipment or export or for the economic benefit of the Falkland Islands.

10. No exercise by the Director of Fisheries of the power contained in subsection (9) shall be liable to be challenged, reviewed, quashed or called in question in any court on the ground that the conditions for the exercise of the power by him had not arisen or had ceased.

11. If a transshipment licence or an export licence is varied, revoked or suspended the Director of Fisheries may, if he considers it appropriate in all the circumstances of the case, refund the whole or part of any fee charged for the licence.

SEC.8. Manner of exercise of licensing powers.

The licensing powers conferred by this Ordinance may be exercised so as to limit the number of fishing boats, or of any description of boat (including boats or any description of boats registered in a specified country) engaged in fishing, transshipping or transporting fish to such an extent as appears to the Director of Fisheries necessary or expedient for the regulation of fishing, transshipment and export, the conservation or management of fisheries or for the economic benefit of the Falkland Islands.

SEC.9. Director of Fisheries and Fisheries Protection Officers.

1. The Governor shall appoint a public officer to the Director of Fisheries and may appoint another public officer to be the Deputy Director of Fisheries. The Deputy Director of Fisheries may, subject to any directions of the Governor to the contrary, exercise any power and discharge any responsibility conferred upon the Director of Fisheries by this Ordinance or by any Order made thereunder. The Director of Fisheries responsibilities under this Ordinance include

- (a) the conservation of fish stocks;
- (b) the assessment of fish stocks and the collection of statistics;
- (c) the development and management of fisheries;
- (d) the monitoring, control and surveillance of fishing operations;
- (e) the regulation of the conduct of fishing operations and operations ancillary thereto;
- (f) the issue, variation suspension and revocation of licences for fishing, transshipment, export and ancillary operations;
- (g) the collection of fees in respect of licences;
- (h) the making of such reports to the Governor as the latter, acting 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 Governor acting in his discretion.

3. This Ordinance and regulations made hereunder shall be enforced by Fisheries Protection Officers acting subject to the direction of the Director of Fisheries, and for that purpose Fisheries Protection Officers shall have the powers set out in Section 10.

4. The following persons shall be Fisheries Protection Officers, that is to say every person appointed in that behalf by the Governor, every member of the Falkland Islands Police Force, commissioned officers of 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 or of the Falkland Islands Government.

SEC.10. General powers of fisheries protection officers.

1. For the purpose of enforcing this Ordinance or of any regulation made hereunder a Fisheries Protection Officer or any person authorised by him may exercise the following powers with respect to any fishing boat within the fishing waters: -

(a) he may stop the boat;

(b) he may require the master to cease fishing and take back on board the boat's fishing gear;

(c) he may require the 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 the master, the crew or any of them to produce and he may examine and take copies of any certificate of registry, licence, official logbook, official paper, article of agreement, record of fish caught, and any other document relating to the boat or to the crew or any member thereof, or to any person on board the boat, which is in their respective possession or control on board the boat;

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

(g) he may require the master to appear and to give any explanation concerning the boat and any crew, or any person on board the boat, and any document mentioned in paragraph (e);

(h) he may make any search, examination or enquiry which he considers necessary to find out whether any provision of this Ordinance or any regulation made hereunder has been contravened;

(i) he may take or require the master to take the boat to any place, port or harbour in the Falkland Islands for the purpose of the carrying out of any search, examination or enquiry;

(j) in the case of any person who appears to him to have committed any offence against this Ordinance or any regulation made hereunder, he may, without summons, warrant or other process, take the suspected offender and take or require the master of the boat to take the boat in respect of which it appears to him there has been an offence together with the crew thereof to a port or harbour in the Falkland Islands, and bring him or them before a competent court and detain him and them and the boat in the Falkland Islands until the alleged offence has been adjudicated upon;

(k) he may, having regard to the safety of the boat, take steps to immobilise any fishing boat seized, taken or detained in accordance with this section for the purpose of preventing the boat being taken by any person prior to the release of the boat under Section 12 or by the Court;

(l) in the case of any offence against Section 4(2) or (5) or Section 7(2) or (6), he may seize any boat (together with its equipment, stores and cargo) which he believes has been used in the commission of such offence or in respect of which he believes such offence has been committed;

(m) he may seize any fishing gear, instruments or appliances which he believes have been used in the commission of such offence;

(n) he may seize any fish which he believes have been taken or fish products produced in the commission of such offence;

(o) he may seize or take copies of any documents which he believes are relevant to any such offence.

2. In exercising the powers referred to in subsection (1) a Fisheries Protection Officer may use such force as may be reasonably necessary.

3. The powers contained in this section may be exercised in respect of a fishing boat irrespective of whether the boat is at the time of such exercise engaged in fishing or any activities in any way related to fishing.

SEC.11. Release of boat or thing if no proceedings instituted.

Where a fishing boat or any other thing has been taken seized or detained in accordance with Section 10 the Director of Fisheries shall on demand release the boat or other thing to the master, owner, charterer or agent if no proceedings are instituted within 14 days of the arrival of the boat or thing in a port or harbour.

SEC.12. Security for release of fishing boat.

1. Where a fishing boat is taken, seized or detained under this Ordinance or any regulation made hereunder and an information or charge is laid against the master, the owner or the charterer of the boat in respect of the offence for which the boat has been detained, the master, the owner or the charterer or the agent of the owner or charterer of the boat may at any time before the determination of the information or charge apply to the Court by which the

information or charge will be determined for the release of the boat on the provision of security in accordance with this section.

2. On hearing the application the Court shall either -

(a) being satisfied that adequate security has been given to the Crown in respect of the aggregate of the maximum penalty to which the defendant may be liable and the costs and expenses that the Crown may recover under Section 16(2), order the release of the fishing boat; or

(b) order the release of the fishing boat on the execution by any suitable person or persons approved by the Court for the purpose of a bond in favour of Her Majesty the Queen in the prescribed form and conditioned in accordance with subsection (4) in an amount not less than the aggregate of the maximum penalty to which the defendant may be liable and the costs and expenses that the Crown may recover under Section 16(2).

3. Notwithstanding subsection (2) the Court may, where it is satisfied that there are special circumstances to justify it in doing so, order that the bond shall be in a specified amount that is less than the amount required by that subsection.

4. The condition of the bond shall be that if -

(a) the defendant is found not guilty of the information or charge; or

(b) the defendant on being convicted of the information or charge pays in full within 14 days after he is convicted the amount of the fine imposed by the Court, and the amount of all costs and expenses due by him to the Crown under Section 16(2),

then the bond shall be of no effect, but that otherwise the bond shall remain in full force and effect.

5. The amount specified in the bond shall be recoverable in full, in any Court of competent jurisdiction, as a debt due to Her Majesty the Queen jointly and severally by the person or persons by whom the bond is given, unless the person or persons prove the due performance of the condition on which the bond is defeasible.

6. In this section "fishing boat" includes all equipment on board or used by the boat, and also includes all fish that has been seized from the boat under this Ordinance or any regulation made hereunder and is detained on board the boat in the custody of the Crown.

SEC.13. Indemnity.

No civil or criminal action shall lie against a Fisheries Protection Officer in respect of any act done or omitted to be done by him in good faith in the purported exercise of his powers under this Ordinance or any regulations made hereunder if there shall have been reasonable cause for such action or omission.

SEC.14. Obstruction of Fisheries Protection Officers.

If any person obstructs a Fisheries Protection Officer when acting in the exercise of his powers under this Ordinance or any regulation made hereunder, or refuses or neglects to comply with any order, requisition or direction lawfully made or given by, or to answer any question reasonably asked by, a Fisheries Protection Officer in pursuance of this Ordinance, or prevents or attempts to prevent another person from complying with such orders, requisitions or directions or from answering such questions, such person shall be guilty of an offence.

PENALTY - £ 50,000

SEC.15. Offences, penalties and proceedings.

1. Any person who

(a) when lawfully required under this Ordinance or any regulation made hereunder to make notification or give information gives false or misleading information or in an application under this Ordinance or any regulation made hereunder makes a statement or furnishes information which is false or misleading in any particular; or

(b) contravenes any provision of this Ordinance or any regulation made hereunder where no offence is specifically provided commits an offence.

2. Any person who commits an offence against this Ordinance or any regulation made hereunder, for which no other penalty is specifically provided, shall be liable to a fine not exceeding the maximum of level 9 (£ 25,000) on the standard scale.

3. Where a person is convicted of any offence against this Ordinance or any regulation made hereunder the court may, in addition to any other penalty it may impose, order that any fishing gear, instruments or appliances used in the commission of such offence, and any fish on board a fishing boat shall be forfeited to the Crown and if so forfeited shall be disposed of in such manner as the Governor, acting in his discretion, may direct.

4. For the purposes of any proceedings under this Ordinance any fish found on board a fishing boat shall be presumed to have been caught

(a) within the fishing waters and

(b) within the vicinity of the boat at the time the fish was so found where the licence to fish, specifying the boat, restricts fishing to a particular area

unless the contrary is proved.

5. An attempt to commit an offence under this Ordinance shall itself constitute an offence and may be dealt with in like manner as if the attempted offence had been committed.

6. Any master who tranships, receives on board a fishing boat, transports or in any other manner deals with fish caught or transhipped in contravention of this Ordinance shall be guilty of an offence.

7. Any person who aids, abets, counsels or procures an offence under this Ordinance or conspires to commit such an offence shall be guilty of the offence so aided, abetted, counselled or procured or conspired to be committed.

8. Notwithstanding any law providing for the limitation of time within which proceedings may be commenced any proceeding in respect of an offence against this Ordinance or any regulation made hereunder may be commenced at any time after the commission of the offence.

9. Subject to the powers of the Attorney-General provided for in the Constitution all prosecutions and proceedings in respect of offences under this Ordinance or any regulation made hereunder may be commenced and taken in the name of the Director of Fisheries and he or any Fisheries Protection Officer may conduct such prosecutions and proceedings before the Court.

10. 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) a fishing boat specified in that certificate was not licensed under this Ordinance; or

(b) the defendant or any other named person was not the holder of a licence under this Ordinance;

shall in the absence of proof to the contrary be sufficient evidence of the matter stated in the certificate.

SEC.16. Jurisdiction of Summary and Magistrates Court.

1. All penalties, offences and proceedings under this Ordinance or any regulation made hereunder may be recovered, prosecuted and taken before the Summary Court or the Magistrates Court.

2. In respect of offences charged under this Ordinance or any regulation made hereunder, and notwithstanding the provisions of the Administration of Justice Ordinance Cap 3, the Summary Court and the Magistrates Court are hereby given extended jurisdiction to impose any fine provided for under this Ordinance or any regulation made hereunder and may award to the Crown such costs and expenses (including expenses incurred in exercise of the power under Section 10(1)(j) and (k)) incurred in relation to the prosecution of such charges as may appear to it to be proper.

SEC.17. Forfeiture of licence.

1. Every person who is convicted of an offence against this Ordinance or any regulation made hereunder and is again convicted of an offence against this Ordinance or any regulation made hereunder shall, in addition to any other penalty, forfeit any licence granted under this Ordinance and any fees paid for that licence and shall be incapable, for a period of three years

from the day of conviction, of holding any such licence under this Ordinance.

2. Notwithstanding subsection (1) the Governor may in the circumstances of any particular case and upon application being made to him by the person concerned within 30 days from date of conviction or such extended period as the Governor may allow direct that the provisions of that subsection are not to apply to any particular licence otherwise forfeit.

SEC.18. Administrative penalties for minor offences.

1. Where the Governor has reasonable cause to believe that -

(a) an offence against this Ordinance or any regulation made hereunder has been committed by any person in respect of any fishing boat;

(b) the offence is of a minor nature;

(c) having regard to the previous conduct of the boat and the person concerned it would be appropriate to impose a penalty under this section;

he may cause a notice in writing in accordance with subsection (2) in the prescribed or 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 Governor 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 Governor require that proceedings in respect of the alleged offence shall be dealt with by the court, in which case the following shall apply:-

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

(b) nothing in this section shall be construed to prevent the subsequent laying of any information or charge in respect of the alleged offence, or the conviction of the person of the offence by the 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 the court may by notice in writing served on the Governor -

(a) admit the offence; and

(b) make submission to the Governor as to the matters he wishes the Governor 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 the 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 Governor 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 one third of the maximum monetary penalty to which the person would be liable if he were convicted of the offence by the court.

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

8. 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 (7).

9. Without prejudice to the requirement of subsection (8), 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.

10. 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.

11. Nothing in this section shall apply -

(a) in respect of any offence or alleged offence under Section 4(2); or

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

SEC.19. Detention or forfeiture of fishing boat on failure to pay or secure fine.

1. If any fine or amount of costs is adjudged to be due by the master, owner or charterer of any fishing boat in respect of a contravention of any provision of this Ordinance or any regulation made hereunder, the court may, if no security or it considers that insufficient security has been given to the Crown, order that in default of payment forthwith the defendant shall give security for payment of the amount due, and if such security to the satisfaction of the court is not given, the court may order the detention of the fishing boat concerned with the contravention, and such fishing boat may accordingly be detained in the Falkland Islands until the amount due is paid or until sufficient security shall be given to the satisfaction of the court.

2. If a fine is not paid or security given within 30 days of the date of the order of the court, or such longer period as the court may determine, the court may order that in the case of any offence against Section 4(2) or (5) or Section 7(2) or (5) any boat and its equipment used in the commission of such offence shall be forfeited to the Crown and if so forfeited shall be disposed of in such manner as the Governor, acting in his discretion, may direct.

SEC.20. Regulations.

1. The Governor may by Order in Council make Regulations for the better carrying into effect of the purposes of this Ordinance.

2. In particular and without prejudice to the generality of the foregoing 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 fees to be paid in respect of licences;

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

(h) the reports to be made for the purposes of this Ordinance;

(i) the designation by applicants for licences and licensees of authorised agents in the Falkland

Islands in respect of fishing boat operations and otherwise for the purposes of this Ordinance;

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

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

(l) a penalty not exceeding fifty thousand pounds for contravention of any of such regulations.

3. Regulations made under this section may make different provisions for different parts of the fishing waters.

4. Nothing in this section shall be construed so as to require the fees terms and conditions of licences granted for exploratory or scientific purposes (within the meaning given to that by regulation 3 of the Fishing Licences (Applications and Fees) Regulations Order 1987) to be prescribed by Regulations made under this section and any such licence may be granted for such fee (if any) and upon such terms and conditions as may, in respect of the particular licence, have been approved by the Governor.

SEC.21. Restriction of application of Fisheries Ordinance Cap 27 and saving.

1. Except as expressed in subsection (2) of this section, the Fisheries Ordinance Cap 27 shall not, after the commencement of this Ordinance, apply to those parts of the fishing waters as do not fall within the territorial waters or internal waters of the Falkland Islands..

2. Regulations made before the commencement of this Ordinance under section 3 of the Fisheries Ordinance shall, , notwithstanding subsection (1) of this section, continue to apply to the whole of the fishing waters except insofar as they may be inconsistent with this Ordinance or any regulations made under this Ordinance.

Passed by the Legislature of the Colony of the Falkland Islands this 12th day of November 1986.

P.T.king

Clerk of Councils

This imprinted impression has been carefully compared by me with the Bill which has passed the Legislative Council, and is found by me to be a true and correctly printed copy of the said Bill.

P.T.king

Clerk of Councils