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ST HELENA

A BILL

FOR

AN ORDINANCE

to define St Helena’s fisheries limits and to regulate fishing and related activities within these limits for purposes of the management and protection of St Helena’s fisheries resources; and for connected and incidental purposes.

Enacted by the Governor of St Helena with the advice and consent of the Legislative Council of St Helena.

PART 1 PRELIMINARY

Short title and commencement

1. (1) This Ordinance may be cited as the Fisheries Ordinance, 2021, and comes into force on a date or dates fixed by the Governor in Council by Order.

(2) An order under subsection (1) may appoint different dates for different provisions or for different purposes of the same provision, and may contain incidental or transitional provisions that appear to the Governor in Council to be necessary or expedient.

Interpretation

2. In this Ordinance—
“Automatic Identification System” or “AIS” means a system, whether comprising of A-class transponders or not, that—
(a) automatically provides appropriately equipped shore stations, other ships and aircraft with information including the ship’s identity, type, position, course, speed, navigational status and other safety related information;
(b) receives such information from similarly fitted ships;
(c) monitors and tracks ships; and

- (d) exchanges data with shore based facilities;
- “bait fish”** means fish of a type and quantity which in the circumstances is reasonably commensurate with use as bait in intended fishing activity.
- “baseline”** means the baseline established by Articles 3 and 4 of the St Helena and Dependencies (Territorial Sea) Order 1989 (S.I. 1989 No 1994) from which the breadth of the territorial waters adjacent to the Island of St Helena is measured;
- “Chief Fisheries Officer”** means the public officer appointed under section 5(1);
- “conservation and management measures”** means measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law as set out in the 1982 United Nations Convention on the Law of the Sea;
- “enforcement officer”** means the Chief Fisheries Officer and any fisheries protection officer;
- “exclusive economic zone”** means the zone established by Proclamation dated 13 July 2017 (Legal Notice 16 of 2017), which extends 200 nautical miles from the nearest points on the baseline;
- “fish”** means any marine animal or any part of any marine animal including any egg, larva, pupa or other immature stage of a marine animal;
- “fish aggregating device”** means a permanent, semi-permanent or temporary object, structure or device of any material, man made or natural which is deployed or tracked for the purpose of aggregating fish for consequent capture but does not include a buoy tethered with a single line and without other aggregator materials attached. ;
- “fisheries limits”** means the limits described in section 3(1);
- “fisheries protection officer”** means an officer appointed by the Chief Fisheries Officer under section 5(2);
- “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;
 - (c) any operation at sea in support of, or in preparation for, any activity mentioned in paragraph (a) or (b);
- “fishing vessel”** means any vessel of whatever size, and in whatever way propelled, which is for the time being adapted, used or intended to be used for fishing or is licenced under this Ordinance;
- “flag state”** means the state under whose laws a vessel is registered or licensed;
- “foreign fishing vessel”** means a fishing vessel other than—
- (a) a local fishing vessel; or
 - (b) a vessel registered elsewhere than St Helena but which is generally intended to be used for pleasure and which is engaged in recreational fishing solely for use or consumption of persons onboard;
- “handheld dip net”** means a net or mesh basket held open by a hoop either with or without a handle attached and is capable of being manually lowered to and from the water by one person;
- “land and retain”**, in relation to fish, means to take fish from the sea and fail to return it to the sea as soon as reasonably practicable;
- “local fishing vessel”** means a locally registered fishing vessel and a fishing vessel that is not registered but which is owned by a person who is locally resident in St Helena or a company registered in St Helena.
- “locally registered vessel”** means a vessel that is a St Helena Ship by virtue of section 5 of the Merchant Shipping Ordinance, 2021, and is registered in the St Helena Register of Ships;

“**locally resident**” means with reference to the Immigration Control Ordinance, 2011 a person, or dependant of a person, who has St Helenian Status, holds a Long Term Entry Permit or is in service of the Crown; “**master**” means the person for the time being in command or in charge of a vessel and, in relation to a fishing vessel, includes the person in charge of the fishing operations on board the vessel;

“**permitted fishing methods**” means methods of fishing not prohibited by section 17 of this Ordinance.

“**regional fisheries management organisation**” or “**RFMO**” means a regional, sub-regional or similar organisation with competence to establish conservation and management measures for marine living resources that the members of that organisation have placed under its responsibility as specified in Schedule 1;

“**spear fishing**” means fishing by spear gun:

“**spear gun**” includes a hand held spear or lance and a hand held device designed to mechanically discharge a spear or lance;

“**traditional rock fishing**” means fishing from the shore by pole and line, rod and reel, handline or handheld dip net and doing so other than for a commercial purpose;

“**transhipment**” means the transfer onto a recipient vessel, from another vessel, of fish catch whether in its harvested or processed form anywhere in the fishery limits but does not include such transfer at either James Bay or Rupert’s Bay if incidental to landing catch at St Helena.

“**Vessel Monitoring System (VMS)**” a system for tracking the position and operation of fishing vessels electronically, with real-time data transmission via satellite.

PART 2 FISHERIES LIMITS AND FISHING ZONES

Fisheries limits

3. (1) The St Helena fisheries limits include all waters adjacent to St Helena extending up to the seaward limits of the exclusive economic zone.

(2) The following fishing zones are established within the fisheries limits:

- (a) the inshore fishing zone, being the area of the fisheries limits extending up to a line measuring 30 nautical miles from the baseline; and
- (b) the offshore fishing zone, being the area of the fisheries limits beyond the inshore fishing zone.

PART 3 ADVISORY BOARD

Fisheries Advisory Board

4. (1) There is established a Fisheries Advisory Board which consists of—

- (a) the Chief Fisheries Officer as Chairperson; and
- (b) such other members as the Governor may appoint.

(2) The Fisheries Advisory Board must upon request and in so far as it is able provide technical advice on matters relating to—

- (a) fisheries science relevant to species surveys, catch and effort data and forecasting for the effective management of the fisheries resources and stock;
- (b) catch data and projections material for the setting of total allowable catch limits; and
- (c) other controls on fishing.

(3) The expenses of the Board are to be paid from the Consolidated Fund.

(4) The Board may determine its own rules and procedures and may consider any matter referred to it by the Chief Fisheries Officer or Governor-in-Council.

(5) The advice or recommendations by the Board are made in an advisory capacity only and do not bind the Governor in Council, Legislative Council, any relevant Council Committee, the Chief Fisheries Officer or the St Helena Government to act on those recommendations.

PART 4 FISHERIES OFFICERS AND RESPONSIBILITIES

Chief Fisheries Officer and fisheries protection officers

5. (1) The Governor must appoint by notice in the Gazette a public officer to be the Chief Fisheries Officer for purposes of the administration of this Ordinance.

(2) The Chief Fisheries Officer may appoint by notice in the Gazette fisheries protection officers who must perform their functions under the direction and supervision of the Chief Fisheries Officer and the Chief Fisheries Officer may delegate any of his or her powers and duties under this Ordinance to the fisheries protection officers.

(3) For purposes of the administration and enforcement of this Ordinance, the Chief Fisheries Officer and fisheries protection officers have the powers set out in Part 9, which powers are without prejudice to any powers exercisable by such officer otherwise than in Part 9.

Responsibilities of Chief Fisheries Officer

6. (1) The Chief Fisheries Officer is responsible for—
- (a) the overall administration of licencing for all fishing activities within St Helena's fisheries limits, subject to policy direction of the Governor in Council, including—
 - (i) the issue, variation, suspension and revocation of licences for fishing and fishing-related operations;
 - (ii) charging fees as may be prescribed in respect of fishing licences and licences for fish aggregating devices;
 - (b) the effective management and sustainable use of fisheries resources and stocks within the fisheries limits, including—
 - (i) the conservation of fisheries resources and stocks;
 - (ii) the assessment of fisheries resources, stocks and the collection of data, statistics and any other relevant information;
 - (iii) the development and management of fisheries;
 - (iv) the monitoring, control and surveillance of fishing and fishing-related operations;
 - (v) the regulation of the conduct of fishing and fishing-related operations;

- (c) reporting to the Governor in Council annually, and as and when required, as to the government's compliance with, and requirements pertinent to, its obligations to the recognised Regional Fisheries Management Organisations as may be prescribed, and making such other reports as the Governor in Council requires.

(2) The Chief Fisheries Officer may issue Codes of Practice to assist applicants in applying for licences and to direct fisheries protection officers in the execution of their duties.

PART 5 FISHING LICENCES

Prohibition on fishing without licence

7. (1) Subject to subsection (2), fishing within the fisheries limits is prohibited unless authorised by a licence granted by the Chief Fisheries Officer.

- (2) Subsection (1) does not apply to—
 - (a) traditional rock fishing; or
 - (b) spear fishing to or from the shore that does not involve use of a vessel.

Licensing of fishing

8. (1) The Chief Fisheries Officer is the licencing officer and may grant the following licences within the fishing limits of St Helena:

- (a) recreational fishing licence;
- (b) sports fishing licence;
- (c) commercial fishing licence;
- (d) exploratory fishing licence;
- (e) research fishing licence.

- (2) Licences issued by the Chief Fisheries Officer are subject to such conditions—
 - (a) as are prescribed by regulations under section 82;
 - (b) otherwise imposed by the Chief Fisheries Officer as he or she considers appropriate for the management of fisheries resources.

(3) A fishing licence may be issued for a period of up to two years, or such longer period as may be authorised by Governor in Council.

Recreational fishing licence

9. (1) A recreational licence may be granted to an individual who is at least 18 years of age.

(2) A recreational fishing licence granted under subsection (1) to the owner of a vessel authorises fishing from that vessel by the licence holder, master and passengers on the vessel, but does not authorise fishing by paying passengers or clients present on the vessel.

Sports fishing licence

10. (1) A sports fishing licence may be granted to a person who, in the case of an individual, is at least 18 years of age to authorise fishing from a specified vessel or vessels by that person and paying clients of that person.

(2) A sports fishing licence granted under subsection (1) also authorises fishing from that vessel or vessels by the master and crew of the vessel.

Commercial fishing licence

11. (1) A commercial fishing licence may be granted to a person who, in the case of an individual is 18 years of age to authorise commercial fishing from a vessel.

(2) A commercial licence granted under subsection (1) authorises fishing by the licence holder, master and crew of the vessel, whether employed or self-employed on the vessel.

(3) For purposes of the licence under this section, “**commercial fishing**” means the activity of fishing for commercial sale, trade, exchange, gain or reward of or from the catch.

Exploratory fishing licence

12. (1) An exploratory fishing licence may be granted to a person who, in the case of an individual, is at least 18 years of age to authorise fishing by permitted fishing methods for exploratory fishing.

(2) For purposes of the licence under this section, “**exploratory fishing**” means the activity of fishing to determine if commercially viable and environmentally sustainable catch quantities of the species or stock thought to be present in a particular fishing area exist and, or, to identify and determine species, multi-species or habitat impacts of such fishing, and, or whether such species or stock can be caught by permitted fishing methods.

Research fishing licence

13. (1) A research fishing licence may be granted to a person who, in the case of an individual, is at least 18 years of age by the Chief Fisheries Officer, after consultation with the Chief Environmental Officer, to fish for species not listed as protected species in Schedule 2 to the Environmental Protection Ordinance 2016 and provided such fishing is for a scientific, research or educational purpose.

(2) The Chief Fisheries Officer must not grant a licence mentioned in subsection (1) unless satisfied that anything authorised by that licence will not be detrimental to the survival of any particular fish species population or the management of the fishery overall.

(3) Fishing authorised by licence issued by the Chief Environmental Officer under section 25(1) of the Environmental Protection Ordinance, 2016, for the purposes of and in accordance with section 25(2)(a) of that Ordinance, is deemed to be authorised by a research fishing licence under this section.

Licensing: Specific provisions relating to vessels

14. (1) A licence granted to a person in respect of a vessel under this Part must specify the vessel in respect of which the licence applies and must include the names of the masters nominated for the vessel by the licence holder.

(2) If a person owns more than one vessel that he or she seeks to licence under section 10, the vessels may be included in a single licence but the owner may nominate different masters for each of these vessels.

(3) A licence granted to a corporate or statutory body must specify a nominated individual who is at least 18 years of age (a “nominee”) and is ordinarily resident in St Helena, or who is so resident for the duration of the licence, to whom liability as a licence holder for breach of the licence attaches in addition to such liability as attached to any other person under this ordinance.

Licensing: Variation, amendment and revocation

15. The Chief Fisheries Officer may vary, amend or revoke a licence granted under this Ordinance, or any conditions attached to such licence, as the Chief Fisheries Officer considers necessary or expedient for the management of fisheries resources.

Licensing: Foreign fishing vessels

16. The provisions relating to licensing under this Part apply in respect of foreign fishing vessels, but the Chief Fisheries Officer—

- (a)* may require the applicant to demonstrate that the foreign fishing vessel has provided or will provide local crewing positions for persons in the St Helena labour market; and
- (b)* may refuse to grant a licence for fishing within the fisheries limits; including if satisfied that local fishing vessels are able to meet the total allowable catch limits of the fishery.

PART 6 RESTRICTIONS ON FISHING AND RELATED OPERATIONS

Prohibited methods of fishing

- 17.** Fishing by any method other than the following is prohibited:
- (a)* fishing by handline, being line held by hand and retrieved by hand having a single hook on the line;
 - (b)* fishing by pole-and-line, being fishing with a hand held or mounted pole or rod, with or without a reel but which is otherwise retrieved manually or by reel and which consists of a single line and single hook;
 - (c)* fishing with droppers, being the fishing by handline or pole-and-line whether retrieved manually or by reel for the catching of bait fish and groundfish by the use of multiple hooks on a single line;
 - (d)* fishing by hand held dip net to catch fish in the net;
 - (e)* fishing by pot being the placing of any folding or rigid cage device or structure with one or more openings or entrances capable of capturing lobster, crab or other fish;

- (f) fishing by hand, being the capture and removal of fish from the sea by hand;
- (g) fishing by use of a spear gun.

Total allowable catch limits

18. (1) The Chief Fisheries Officer may, for purposes of managing fish resources and stocks, set total allowable catch limits by prescribing the upper limit of catch for specified species within a specified period.

(2) In determining the total allowable catch limits under subsection (1), the Chief Fisheries Officer must take into consideration the best available information, including where reasonably available; Atlantic stock data, RMFO data, local stock assessment data, observer reports and anecdotal reports from the local fishing sector.

Fishing control notices

19. (1) The Chief Fisheries Officer may, if considering it necessary for the management of the fisheries, issue fishing control notices containing any of the following:

- (a) a species moratorium prohibiting or limiting the landing and retention of a specified species of fish, or size of such fish that may be landed and retained;
- (b) a temporal prohibition prohibiting the landing or retention of fish, or a specified species, between given times or seasons;
- (c) a spatial prohibition prohibiting fishing in designated areas;
- (d) a fishing method prohibition prohibiting any specified method of fishing.

(2) A fishing control notice issued under subsection (1) may have effect immediately upon being made but must, as soon as reasonably practicable be published in the Gazette and in one or more newspapers circulating on St Helena and the Chief Fisheries Officer must serve a copy of such notice to all affected licence holders.

Licensed deployment of fish aggregating device

20. (1) A person may not place or keep any fish aggregating device in the fishery limits except in accordance with a licence from the Chief Fisheries Officer. For the purposes of this subsection to keep a fish aggregating device in the fisheries limits after the term of any relevant licence granted shall be to keep the fish aggregating device without a licence.

(2) An application for a licence as required by subsection (1) must be made to the Chief Fisheries Officer specifying the intended location, the nature and construction of the fish aggregating device and must be accompanied by the prescribed fee.

(3) The Chief Fisheries Officer, acting in his or her discretion, may grant a licence for the deployment of an anchored fish aggregating device and may impose such conditions which the Chief Fisheries Officer considers necessary or expedient for the management of fisheries resources, or for the management of maritime traffic or the marine environment, and having regard to any Fish Aggregating Device Management Plan as may be prescribed.

(4) The Chief Fisheries Officer, acting in his or her discretion, may vary, suspend or revoke a licence, and or conditions of such licence, granted under subsection (3).

(5) A licence granted to an applicant under subsection (3) to place an anchored fish aggregating device at a specified location applies in respect of any replacement of such device at that specified location provided any such replacement, or part replacement, is of like size, material and construction as that which is licenced.

(6) A fish aggregating device placed in the fishery limits must at all times be equipped, marked and identified as prescribed by regulations.

PART 7 RESTRICTIONS RELATING TO SPEAR FISHING AND FISHING WITH SCUBA EQUIPMENT

Interpretation

21. In this Part—

“**closed season**” means the period between and inclusive of 1st January and 31st March in any year;

“**prohibited area**” includes all of the areas determined by the Governor in Council under section 22;

“**scuba equipment**” includes any self-contained underwater breathing apparatus other than a snorkel;

Prohibited or restricted areas

22. The Governor in Council may by order determine prohibited areas for the purposes of this Part.

Control of fishing with scuba equipment and of possession and use of spear guns

23. (1) Except in accordance with an approval granted under section 24, no person may—

(a) fish by hand while equipped with scuba equipment;

(b) while equipped with scuba equipment, use or have in possession a spear gun on or in the fisheries limits;

(c) in, on or within 20 metres of any tidal water or upon any beach or foreshore or while swimming or while in any vessel, use or have in possession a spear gun during a closed season;

(d) at any time use or have in possession a spear gun in a prohibited area.

(2) If a spear gun is found upon any vessel, every person aboard the vessel is deemed, unless the contrary is proved, to have been in possession at all relevant times of the spear gun.

Chief Fisheries Officer may approve research

24. (1) The Chief Fisheries Officer may grant approval, to an applicant, to carry on activities which otherwise would be in contravention of section 23, if satisfied that such approval is desirable for scientific purposes and would facilitate the collection of marine specimens in furtherance of such purpose.

(2) A person who is granted an approval under this section must, if so required as a condition of the approval, submit to the Chief Fisheries Officer a report setting out the number and types of all marine specimens that are collected.

PART 8 TRANSHIPMENT

Transshipment

25. (1) The transshipment within the fishery limits-of fish catch other than bait fish is prohibited

PART 9 ENFORCEMENT

Interpretation of Part

26. (1) In this Part—
“**enforcement officer**” means the Chief Fisheries Officer and any fisheries protection officer;
“**item**” has the meaning given by section 31(10);
“**marine installation**” means any artificial island, installation or structure (other than a vessel);
“**premises**” has the meaning given by section 28(4);
“**relevant activity**” means any activity in respect of which an enforcement officer has functions under this Ordinance;
“**relevant offence**” means any offence in respect of which an enforcement officer has functions.
“**the relevant premises**” , in relation to an enforcement officer exercising a power of inspection conferred by section 27, 28 or 29, means the vessel, marine installation, premises or vehicle in relation to which the power is being exercised.

(2) In this Part any reference to a vessel includes a reference to—
(a) any ship or boat or any other description of vessel used in navigation;
(b) any hovercraft, submersible craft or other floating craft; and
(c) any aircraft,
but does not include a reference to anything that permanently rests on, or is permanently attached to, the sea bed.

(3) The powers conferred on an enforcement officer by any section in this Part are without prejudice to any powers exercisable by the officer apart from that section.

(4) An enforcement officer may require any person on board a vessel or marine installation to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of any power conferred by this section.

Power to board and inspect vessels and marine installations

27. (1) For the purposes of carrying out any function under this Ordinance, an enforcement officer may at any time board and inspect a vessel or marine installation, but subject to section 30.

(2) For the purposes of exercising the power conferred by subsection (1), an enforcement officer may require a vessel or marine installation to stop, or to do anything else to—

- (a)* facilitate the boarding of that or any other vessel or marine installation; or
- (b)* enable the officer, and any person accompanying the officer, to disembark from the vessel or installation.

(3) An enforcement officer may require any person on board a vessel or marine installation to afford such facilities and assistance with respect to matters under that person's control as an enforcement officer considers would facilitate the exercise of any power conferred by this section.

Power to enter and inspect premises

28. (1) For the purposes of carrying out any function under the Ordinance, an enforcement officer may enter and inspect any premises, but subject to section 30.

(2) An enforcement officer may only exercise the power conferred by this section at a reasonable time, unless it appears to the officer that there are grounds for suspecting that the purpose of entering the premises may be frustrated if the officer seeks to enter at a reasonable time.

(3) An enforcement officer may require a person in or on the premises to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of the power conferred by this section.

(4) In this section “**premises**” includes land, but does not include any vehicle, vessel or marine installation.

Power to enter and inspect vehicles

29. (1) Subject to section 30, for the purposes of carrying out any function under the Ordinance, an enforcement officer may at any time—

- (a)* enter and inspect a vehicle;
- (b)* stop and detain a vehicle for the purposes of entering and inspecting it.

(2) Where—

- (a)* an enforcement officer has stopped a vehicle under this section; and
- (b)* the officer considers that it would be impracticable to inspect the vehicle in the place where it has stopped, the officer may require the vehicle to be taken to such place as the officer directs to enable the vehicle to be inspected.

(3) An enforcement officer may require—

- (a)* any person travelling in a vehicle; or

(b) the registered owner of a vehicle, to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of any power conferred by this section.

(4) The powers conferred by this section may be exercised in any place, whether or not it is a place to which the public has access.

(5) In this section “**vehicle**” does not include a vessel.

Powers relating to dwellings

30. (1) An enforcement officer may not by virtue of section 27, 28 or 29 enter any dwelling unless a magistrate has issued a warrant authorising the officer to enter the dwelling.

(2) A magistrate may only issue such a warrant if, on an application by the officer, the magistrate is satisfied—

- (a) that the officer has reasonable grounds for believing that there is material in the dwelling which, for the purposes of carrying out any function under the Ordinance, the officer wishes to inspect, examine or seize; and
- (b) that any of the following conditions is satisfied:
 - (i) that it is not practicable to communicate with any person who is entitled to grant entry to the dwelling or access to the material;
 - (ii) that entry to the dwelling is unlikely to be granted unless a warrant is produced;
 - (iii) that the purpose of entry may be frustrated or seriously prejudiced unless an enforcement officer arriving at the dwelling can secure immediate entry to it.

Powers of search, examination, etc

31. (1) Where an enforcement officer is exercising a power of inspection conferred by section 27, 28 or 29, the officer may—

- (a) search the relevant premises for any item;
- (b) examine anything that is in or on the relevant premises.

(2) Where an enforcement officer reasonably believes that a person is or has been carrying on a relevant activity, the officer may—

- (a) search or examine anything which appears to be in the person's possession or control;
- (b) stop and detain the person for the purposes of such a search or examination.

(3) An enforcement officer may carry out any measurement or test of anything which the officer has power under this section to examine.

(4) The power conferred by subsection (3) includes power to take a sample from any live animal or plant.

(5) For the purpose of exercising any power conferred by this section, an enforcement officer may, so far as is reasonably necessary for that purpose, break open any container or other locked thing.

(6) Where an enforcement officer is exercising a power of inspection conferred by section 27, 28 or 29, the officer may require any person in or on the relevant premises to afford

such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of any power conferred by this section.

(7) Where an enforcement officer reasonably believes that a person is or has been carrying on a relevant activity, the officer may require that person to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise in relation to that person of any power conferred by this section.

(8) Nothing in this section confers any power to search a person.

(9) The reference in subsection (1) to anything that is in or on the relevant premises includes a reference to—

- (a) anything that is attached to or otherwise forms part of the relevant premises; and
- (b) anything that is controlled from the relevant premises.

(10) In this section—

“**animal**” includes any egg, larva, pupa, or other immature stage of an animal;

“**item**” includes—

- (a) any document or record (in whatever form it is held);
- (b) any animal or plant;

“**sample**” means a sample of blood, tissue or other biological material.

Power to require production of documents, etc

32. (1) This section applies where an enforcement officer is exercising a power of inspection under section 27, 28 or 29.

(2) The officer may require any person in or on the relevant premises to produce any document or record that is in the person's possession or control.

(3) A reference in this section to the production of a document includes a reference to the production of—

- (a) a hard copy of information recorded otherwise than in hard copy form; or
- (b) information in a form from which a hard copy can be readily obtained.

(4) For the purposes of this section—

- (a) information is recorded in hard copy form if it is recorded in a paper copy or similar form capable of being read (and references to hard copy have a corresponding meaning);
- (b) information can be read only if—
 - (i) it can be read with the naked eye; or
 - (ii) to the extent that it consists of images (for example photographs, pictures, maps, plans or drawings), it can be seen with the naked eye.

Powers of seizure, etc

33. (1) An enforcement officer who is exercising a power of inspection conferred by section 27, 28 or 29 may—

- (a) seize and detain or remove any item found on the relevant premises;
- (b) take copies of or extracts from any document or record found on the relevant

premises.

(2) Where an enforcement officer reasonably believes that a person is or has been carrying on a relevant activity, the officer may seize and detain or remove any item which appears to be in the person's possession or control.

(3) An enforcement officer to whom any document or record has been produced in accordance with a requirement imposed under section 32 may—

- (a) seize and detain or remove that document or record;
- (b) take copies of or extracts from that document or record.

(4) The powers conferred by this section may only be exercised—

- (a) for the purposes of determining whether a relevant offence has been committed; or
- (b) in relation to an item which an enforcement officer reasonably believes to be evidence of the commission of a relevant offence.

(5) Subject to subsection (6), an enforcement officer who is exercising a power of inspection conferred by section 27, 28 or 29 may not remove from the relevant premises any item which is required by law to be kept on the relevant premises.

(6) An enforcement officer may remove such an item from a vessel while it is being detained in a port.

(7) Nothing in this section confers power on an enforcement officer to seize an item which the officer has reasonable grounds for believing to be an item subject to legal privilege.

Further provision about seizure

34. (1) Where—

(a) any items which an enforcement officer wishes to seize and remove are in a container; and

(b) the officer reasonably considers that it would facilitate the seizure and removal of the items if they remained in the container for that purpose,

any power to seize and remove the items conferred by section 33 includes power to seize and remove the container.

(2) Where—

(a) any items which an enforcement officer wishes to seize and remove are not in a container; and

(b) the officer reasonably considers that it would facilitate the seizure and removal of the items if they were placed in a container suitable for that purpose,

the officer may require the items to be placed into such a container.

(3) If, in the opinion of an enforcement officer, it is not for the time being practicable for the officer to seize and remove any item, the officer may require—

(a) the person from whom the item is being seized; or

(b) where the officer is exercising a power of inspection conferred by section 27, 28 or 29, any person in or on the relevant premises,

to secure that the item is not removed or otherwise interfered with until such time as the officer may seize and remove it.

(4) Where an enforcement officer is exercising a power of inspection conferred by section 27, 28 or 29, the officer may require any person in or on the relevant premises to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of any power conferred by section 33 or this section.

(5) Where an enforcement officer reasonably believes that a person is or has been carrying on a relevant activity, the officer may require that person to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise in relation to that person of any power conferred by section 33 or this section.

Retention of seized items

35. (1) This section applies to any item seized in the exercise of a power conferred by section 33.

(2) The item may be retained so long as is necessary in all the circumstances and in particular—

- (a) for use as evidence at a trial for a relevant offence; or
- (b) for forensic examination or for investigation in connection with a relevant offence.

(3) No item may be retained for either of the purposes mentioned in subsection (2) if a photograph or a copy would be sufficient for that purpose.

Power to record evidence of offences

36. (1) An enforcement officer may use any device for the purpose of taking visual images of anything which the officer believes is evidence of the commission of a relevant offence.

(2) The power conferred by this section is exercisable in relation to—

- (a) anything that is in or on;
- (b) anything that is attached to or otherwise forms part of; or
- (c) anything that is controlled from,

any vessel, marine installation, premises or vehicle.

(3) The officer may require any person in or on the vessel, marine installation, premises or vehicle to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of the power conferred by this section.

Power to require name and address

37. Where an enforcement officer reasonably believes that a person has committed a relevant offence, the officer may require the person to provide the person's name, date of birth and address.

Power to require production of licence, etc

38. (1) Where an enforcement officer reasonably believes—
(a) that a person is or has been carrying on a relevant activity; and
(b) that the person requires a licence or other authority to carry on that activity,
the officer may require the person to produce that licence or other authority.

(2) If the person is unable to produce the licence or other authority when required to do so, the person must produce it at such place, and within such period of time, as the officer may specify.

Power to require attendance of certain persons

39. (1) This section applies where an enforcement officer has—
(a) boarded a vessel or marine installation; or
(b) entered any premises.

(2) For the purposes of carrying out any function under the Ordinance, the officer may require the attendance of—

- (a) the person who is for the time being in charge of the vessel or marine installation;
- (b) any other person who is on board the vessel or marine installation;
- (c) the owner or occupier of the premises;
- (d) any person who is on the premises.

Power to direct vessel or marine installation to port

40. (1) This section applies where—
(a) an enforcement officer considers that it would not be reasonably practicable for the officer to exercise a power which the officer wishes to exercise in relation to a vessel or marine installation without detaining the vessel or marine installation in a port; or
(b) an enforcement officer reasonably believes that—
(i) a vessel or marine installation is itself evidence of the commission of a relevant offence; and
(ii) the only reasonably practicable way to preserve that evidence is to detain the vessel or marine installation in a port.

(2) The officer may—

- (a) take, or arrange for another person to take, the vessel or marine installation and its crew to the port which appears to the officer to be the nearest convenient port; or
- (b) require the person who is for the time being in charge of the vessel or marine installation to take it and its crew to that port.

(3) When the vessel or marine installation has been taken to a port, the officer may—

- (a) detain it there; or
- (b) require the person for the time being in charge of it to do so.

(4) An enforcement officer who detains any vessel or marine installation under this section must serve a notice on the person who is for the time being in charge of it.

(5) The notice must state that the vessel or marine installation is to be detained until the notice is withdrawn.

(6) A notice served under subsection (4) may be withdrawn by service of a further notice signed by an enforcement officer.

Assistance etc

41. (1) To assist in carrying out any function under the Ordinance, an enforcement officer may bring—

- (a) any other person;
- (b) any equipment or materials.

(2) A person who is brought by an enforcement officer to provide assistance may exercise any powers conferred by this Ordinance which the officer may exercise, but only under the supervision or direction of the officer.

Power to use reasonable force

42. (1) An enforcement officer may use reasonable force, if necessary, in the exercise of any power conferred by this Ordinance.

(2) A person assisting an enforcement officer under section 41 may use reasonable force, if necessary, in the exercise of any power conferred by this Ordinance.

Power to require information relating to certain substances and objects

43. (1) For the purposes of carrying out any function under the Ordinance, an enforcement officer may require a person—

- (a) to give details of any substances or objects on board a vehicle, vessel, aircraft or marine structure;
- (b) to give information concerning any substances or objects lost from a vehicle, vessel, aircraft or marine structure.

(2) Subject to subsection (3), a statement made by a person in response to a requirement made under this section may not be used against the person in criminal proceedings in which the person is charged with an offence.

(3) Subsection (2) does not apply to any offence relating to perjury or providing false information.

Power to inspect and seize objects at sea

44. (1) For the purposes of carrying out any function under the Ordinance, an enforcement officer who has the power conferred by this section—

- (a) may inspect any object in the sea which the officer believes has been or is being used for or in connection with fishing; and
- (b) may lift an object out of the sea for the purposes of inspecting it under this section.

(2) An enforcement officer who has inspected an object under this section may seize the object.

(3) The power conferred by subsection (2) may only be exercised—

- (a) for the purposes of determining whether a relevant offence has been committed; or
- (b) in relation to an object which an enforcement officer reasonably believes to be evidence of the commission of a relevant offence.

(4) If, having inspected an object under this section, the officer decides not to seize it under subsection (2), the officer must, if it is reasonably practicable to do so, replace the object in the location where it was found.

(5) If it is not reasonably practicable to replace the object in accordance with subsection (4), the officer may seize the object until such time as it may be collected by its owner.

- (6) Any power conferred by this section to seize an object includes power to seize—
- (a) anything that is attached to the object;
 - (b) anything that is contained within the object.

(7) Any reference in this section to replacing an object includes, in the case of fishing gear, a reference to resetting the gear in the same way in which it was placed in the sea.

(8) The powers conferred on an enforcement officer by this section are without prejudice to any powers exercisable by the officer apart from this section.

Reports of inspections under section 44

45. (1) This section applies where an enforcement officer inspects any object under section 44.

(2) The enforcement officer must prepare a report in relation to the inspection.

- (3) The report must state—
- (a) the date and time of the inspection;
 - (b) the identity of the officer who carried out the inspection;
 - (c) how the officer may be contacted.

- (4) In the case of an object seized under section 44(2) or (5), the report must also state—
- (a) what has been seized;
 - (b) the reasons for its seizure;
 - (c) any further action that it is proposed will be taken in relation to the object.

(5) Where the object has not been seized under section 44(2) or (5), the enforcement officer must—

- (a) if it is reasonably practicable to do so, attach a copy of the report to the object; or
- (b) if it is not reasonably practicable to attach a copy of the report to the object, the officer must serve a copy of the report on every person who appears to the officer to be the owner, or one of the owners, of the object.

(6) In a case where the enforcement officer, after taking reasonable steps to do so, is unable to identify any person as owning the object, the officer must take such steps as the officer thinks fit to bring the contents of the report to the attention of persons likely to be interested in it.

- (7) Where the object has been seized under section 44(2) and—
 - (a) the Chief Fisheries Officer has decided not to take proceedings in respect of any offence in relation to which the object was seized; or
 - (b) any proceedings taken in respect of such an offence have concluded,

the Chief Fisheries Officer must, if it has not already done so, serve a copy of the report on every person who appears to the Chief Fisheries Officer to be the owner, or one of the owners, of the object.

(8) Where the object has been seized under section 44(5), the Chief Fisheries Officer must serve a copy of the report on every person who appears to the Chief Fisheries Officer to be the owner, or one of the owners, of the object at the same time as it serves a notice of collection on that person under section 47.

(9) In a case where the Chief Fisheries Officer, after taking reasonable steps to do so, is unable to identify any person as owning the object—

- (a) any reference in this section to a requirement for the Chief Fisheries Officer to serve a copy of a report on such a person is to be read as a reference to a requirement to take such steps as the Chief Fisheries Officer thinks fit to bring the contents of the report to the attention of persons likely to be interested in it; and
- (b) the reference in subsection (8) to serving a notice of collection under section 47 is to be read as a reference to taking the steps referred to in section 47(5).

Retention of objects seized under section 44(2)

46. (1) Any object seized by an enforcement officer under section 44(2) may be retained by the Chief Fisheries Officer.

(2) If either of the grounds of release in subsection (3) applies, the Chief Fisheries Officer must, as soon as is reasonably practicable, make the object available for collection.

- (3) The grounds of release referred to in subsection (2) are—
 - (a) that the Chief Fisheries Officer has decided not to take proceedings in respect of any offence in relation to which the object was seized;
 - (b) that any proceedings taken in respect of such an offence have concluded without any order for forfeiture having been made.

(4) Subsection (2) does not apply if the object is liable to forfeiture under section 55 or 56.

(5) Any reference in this section to an object seized under section 44(2) includes a reference to anything seized by virtue of section 44(6).

Disposal of objects seized under section 44

- 47. (1) This section applies to—
 - (a) any object seized under section 44(2) which the Chief Fisheries Officer—
 - (i) no longer wishes to retain for any purpose; or
 - (ii) is required to make available for collection by virtue of section 46;
 - (b) any object seized under section 44(5).

- (2) In this section, a “notice of collection” is a notice stating that—
- (a) the object specified in the notice is available to be collected from the location so specified; and
 - (b) if the object is not collected before the end of the period of three months beginning with the date specified in the notice, the Chief Fisheries Officer will dispose of the object.

(3) The Chief Fisheries Officer must serve a notice of collection on every person who appears to the Chief Fisheries Officer to be the owner, or one of the owners, of the object.

(4) The Chief Fisheries Officer may take any other steps it thinks fit to notify every such person that the object is available to be collected.

(5) If the Chief Fisheries Officer, after taking reasonable steps to do so, is unable to identify any person as owning the object in order to serve a notice of collection, the Chief Fisheries Officer must take such steps as it thinks fit to bring the information contained in the notice of collection to the attention of persons likely to be interested in it.

(6) If the Chief Fisheries Officer complies with subsection (3) or subsection (5), as the case may be, the Chief Fisheries Officer may, at the end of the period mentioned in subsection (2)(b), dispose of the object in whatever way it thinks fit.

(7) Any reference in this section to an object seized under section 44(2) or 44(5) includes a reference to anything seized by virtue of section 44(6).

Power to seize fish for purposes of forfeiture

48. (1) An enforcement officer who has the power conferred by this section may seize and detain or remove any fish in respect of which the officer reasonably believes a relevant offence has been committed.

(2) The power conferred by this section may only be exercised for the purposes of securing that, in the event of a conviction for a relevant offence, the court may exercise any relevant power of forfeiture in relation to fish in respect of which the offence was committed.

(3) Where—

- (a) any fish which an enforcement officer wishes to seize and remove are in a container; and
- (b) the officer reasonably considers that it would facilitate the seizure and removal of the fish if they remained in the container for that purpose,

any power to seize and remove the fish includes power to seize and remove the container.

(4) Where—

- (a) any fish which an enforcement officer wishes to seize and remove are not in a container; and
- (b) the officer reasonably considers that it would facilitate the seizure and removal of the fish if they were placed in a container suitable for that purpose,

the officer may require the fish to be placed into such a container.

(5) If, in the opinion of an enforcement officer, it is not for the time being practicable

for the officer to seize and remove any fish, the officer may require—

- (a) the person from whom the fish are being seized; or
- (b) where the officer is exercising a power of inspection conferred by section 27, 28 or 29, any person in or on the relevant premises,

to secure that the fish are not removed or otherwise interfered with until such time as the officer may seize and remove them.

(6) Where an enforcement officer is exercising a power of inspection conferred by section 27, 28 or 29, the officer may require any person in or on the relevant premises to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of any power conferred by this section.

(7) Where an enforcement officer reasonably believes that a person is or has been carrying on a relevant activity, the officer may require that person to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise in relation to that person of any power conferred by this section.

(8) In this section—

“relevant power of forfeiture” means any power of a court to order the forfeiture of any fish in respect of which an offence has been committed;

“the relevant premises”, in relation to an enforcement officer exercising a power of inspection conferred by section 27, 28 or 29, means the vessel, marine installation, premises or vehicle in relation to which the power is being exercised.

Power to seize fishing gear for purposes of forfeiture

49. (1) An enforcement officer who has the power conferred by this section may seize and detain or remove any fishing gear which the officer reasonably believes has been used in the commission of a relevant offence.

(2) The power conferred by this section may only be exercised for the purposes of securing that, in the event of a conviction for a relevant offence, the court may exercise any relevant power of forfeiture in relation to fishing gear used in the commission of the offence.

(3) If, in the opinion of an enforcement officer, it is not for the time being practicable for the officer to seize and remove any fishing gear, the officer may require—

- (a) the person from whom the fishing gear is being seized; or
- (b) where the officer is exercising a power of inspection conferred by section 27, 28 or 29, any person in or on the relevant premises,

to secure that the fishing gear is not removed or otherwise interfered with until such time as the officer may seize and remove it.

(4) Where an enforcement officer is exercising a power of inspection conferred by section 27, 28 or 29, the officer may require any person in or on the relevant premises to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of any power conferred by this section.

(5) Where an enforcement officer reasonably believes that a person is or has been carrying on a relevant activity, the officer may require that person to afford such facilities and assistance with respect to matters under that person's control as the officer considers would

facilitate the exercise in relation to that person of any power conferred by this section.

(6) In this section—

“relevant power of forfeiture” means any power of a court to order the forfeiture of any fishing gear used in the commission of an offence;

“the relevant premises”, in relation to an enforcement officer exercising a power of inspection conferred by section 27, 28 or 29, means the vessel, marine installation, premises or vehicle in relation to which the power is being exercised.

Procedure in relation to seizure under section 48 or 49

50. (1) An enforcement officer who seizes any property under section 48 or 49 must, if it is reasonably practicable to do so, serve a notice on each of the following persons—

- (a) every person who appears to the officer to have been the owner, or one of the owners, of the property at the time of its seizure;
- (b) in the case of property seized from a vessel, the master, owner and charterer (if any) of the vessel at that time;
- (c) in the case of property seized from premises, every person who appears to the officer to have been an occupier of the premises at that time;
- (d) in any other case, the person (if any) from whom the property was seized.

(2) The notice must state—

- (a) what has been seized;
- (b) the reason for its seizure;
- (c) the offence which the officer believes has been committed;
- (d) any further action that it is proposed will be taken;
- (e) that, unless the property is liable to forfeiture under section 55 or 56, it is to be detained until such time as it is released or its forfeiture is ordered by the court.

(3) Subsections (4) and (5) apply in a case where the property was seized following an inspection carried out in exercise of the power conferred by section 44.

(4) The officer must serve a copy of the report referred to in section 45 on every person falling within subsection (1)(a) at the same time as the officer serves a notice on that person under this section.

(5) In a case where the officer, after taking reasonable steps to do so, is unable to identify any person as owning the property—

- (a) any reference in this section to a requirement to serve a notice on that person is to be read as a reference to a requirement to take such steps as the officer thinks fit to bring the contents of the notice to the attention of persons likely to be interested in it; and
- (b) the reference in subsection (4) to serving a copy of the report referred to in section 45 is to be read as a reference to taking the steps referred to in section 45(9)(a).

Retention of property seized under section 47 or 49

51. (1) Any property seized by an enforcement officer under section 47 or 49 may be retained by the Chief Fisheries Officer.

(2) If either of the grounds for release in subsection (3) applies, the Chief Fisheries

Officer must, as soon as is reasonably practicable, make the property available for collection.

- (3) The grounds for release referred to in subsection (2) are—
 - (a) that the Chief Fisheries Officer has decided not to take proceedings in respect of any offence in relation to which the property was seized;
 - (b) that any proceedings taken in respect of such an offence have concluded without any order for forfeiture having been made.

(4) But subsection (2) does not apply if the property is liable to forfeiture under section 55 or 56.

Bonds for release of seized fish or gear

52. (1) This section applies to any property which is being retained by the Chief Fisheries Officer under section 51.

(2) The Chief Fisheries Officer may enter into an agreement with any person falling within subsection (3) for security for the property to be given to the Chief Fisheries Officer by way of bond in return for the release of the property.

- (3) The persons referred to in subsection (2) are—
 - (a) the owner, or any of the owners, of the property;
 - (b) in the case of property seized from a vessel, the owner or charterer, or any of the owners or charterers, of the vessel.

- (4) Any bond given under this section is to be—
 - (a) for such amount as may be agreed; or
 - (b) in the event of a failure to agree an amount, for such amount as may be determined by the court.

(5) A person who gives a bond under this section must comply with such conditions as to the giving of the bond as the Chief Fisheries Officer may determine.

(6) If either of the grounds for release mentioned in subsection (7) applies, then any bond given under this section must be returned as soon as possible.

- (7) The grounds for release referred to in subsection (6) are—
 - (a) that the Chief Fisheries Officer has decided not to take proceedings in respect of any offence in relation to which the property was seized;
 - (b) that any proceedings taken in respect of such an offence have concluded without any order for forfeiture having been made.

(8) Any power which a court has to order the forfeiture of any fish or any fishing gear may instead be exercised in relation to any bond given under this section as security for that fish or fishing gear.

Power of Chief Fisheries Officer to sell seized fish in its possession

53. (1) Any fish which are being retained by the Chief Fisheries Officer under section 51 may be sold by the Chief Fisheries Officer.

(2) Any power which a court has to order the forfeiture of any fish may instead be exercised in relation to the proceeds of any sale of the fish under this section.

(3) Subject to subsection (6), the proceeds of any sale under this section may be retained by the Chief Fisheries Officer until such time as—

- (a) a court exercises any power it has to order the forfeiture of the proceeds; or
- (b) either of the grounds for release mentioned in subsection (4) applies.

(4) The grounds for release referred to in subsection (3) are—

- (a) that the Chief Fisheries Officer has decided not to take proceedings in respect of any offence in relation to which the fish were seized;
- (b) that any proceedings taken in respect of such an offence have concluded without any order for forfeiture having been made.

(5) If either of the grounds for release mentioned in subsection (4) applies, the Chief Fisheries Officer must, as soon as is reasonably practicable, release the proceeds of sale to any person who appears to the Chief Fisheries Officer to have been the owner, or one of the owners, of the fish at the time of the seizure of the fish.

(6) If the proceeds of sale are still in the Chief Fisheries Officer's possession after the end of the period of six months beginning with the date on which the fish were sold, the Chief Fisheries Officer may if he or she thinks fit retain the proceeds for the person to whom they are required to be released. The Chief Fisheries Officer may exercise its power under this subsection to retain and apply the proceeds of sale only if it is not practicable at the time when the power is exercised to dispose of the proceeds by releasing them immediately to the person to whom they are required to be released.

(7) Before selling the fish, the Chief Fisheries Officer must give the owner of the fish a reasonable opportunity to make representations as to the manner in which the fish are sold.

(8) If—

- (a) the owner of the fish requests that the fish be sold at a particular auction or by a method of sale other than auction, or to a particular business or individual; and
- (b) the Chief Fisheries Officer does not consider that it would be unreasonable to comply with that request,

the Chief Fisheries Officer must comply with the request when selling the fish.

(9) The Chief Fisheries Officer may deduct any reasonable expenses it has incurred in selling any fish under this section from the proceeds of the sale.

(10) In a case where there is more than one owner of the fish, subsection (8) applies only if the request is made by or on behalf of all of them.

Disposal of property seized under section 48 or 49

54. (1) This section applies to any property seized under section 48 or 49 which the Chief Fisheries Officer—

- (a) no longer wishes to retain for any purpose; or
- (b) is required to make available for collection by virtue of section 51.

- (2) In this section a “notice of collection” is a notice stating that—
 - (a) the property specified in the notice is available to be collected from the location so specified; and
 - (b) if the property is not collected before the end of the period of three months beginning with the date specified in the notice, the Chief Fisheries Officer will dispose of the property.

(3) The Chief Fisheries Officer must serve a notice of collection on every person who appears to the Chief Fisheries Officer to be the owner, or one of the owners, of the property.

(4) The Chief Fisheries Officer may take any other steps it considers appropriate to notify every such person that the property is available to be collected.

(5) If the Chief Fisheries Officer, after taking reasonable steps to do so, is unable to identify any person as owning the property, the Chief Fisheries Officer must—

- (a) if it is reasonably practicable to do so, serve a notice of collection on every person who is an appropriate person for the purposes of this subsection; and
- (b) take such steps as it thinks fit to bring the information contained in the notice of collection to the attention of persons likely to be interested in it.

(6) For the purposes of subsection (5), the following persons are “appropriate persons”—

- (a) in the case of property seized from a vessel, the master, owner and charterer (if any) of the vessel at the time of the seizure of the property;
- (b) in the case of property seized from premises, every person who appears to the Chief Fisheries Officer to have been an occupier of the premises at that time;
- (c) in any other case, the person (if any) from whom the property was seized.

(7) If the Chief Fisheries Officer complies with subsection (3) or subsection (5), as the case may be, the Chief Fisheries Officer may, at the end of the period mentioned in subsection (2)(b), dispose of the property in whatever way it thinks fit.

Forfeiture etc of prohibited items

55. (1) Any item to which this section applies is liable to forfeiture under this section if the use of that item for fishing would in any circumstances constitute an offence.

(2) This section applies to any item seized on board a vessel or from the sea by an enforcement officer in the exercise of any power conferred by this Ordinance.

(3) Any item forfeited under this section is to be forfeited to the Chief Fisheries Officer and may be disposed of by the Chief Fisheries Officer in any manner it thinks fit.

Forfeiture etc of fish failing to meet size requirements

56. (1) Any fish to which this section applies are liable to forfeiture under this section if, by virtue of the fish failing to meet requirements as to size, an offence has been committed in respect of the fish.

(2) This section applies to fish seized by an enforcement officer in the exercise of any power conferred by this Ordinance.

(3) Any fish forfeited under this section are to be forfeited to the Chief Fisheries Officer and may be disposed of by the Chief Fisheries Officer in any manner it thinks fit.

Further provision about forfeiture under section 55 or 56

57. The Governor in Council may by regulations under section 82 make provision in relation to the forfeiture of property liable to forfeiture under section 55 or 56.

Forfeiture by court following conviction

58. (1) This section applies where a court by or before which a person is convicted of an offence under the fisheries legislation orders the forfeiture of any fish or any fishing gear in respect of that offence.

(2) The court must order that the property to be forfeited is to be taken into the possession of the person or body by whom proceedings for the offence were brought.

(3) The property may be disposed of as that person or body thinks fit.

(4) Any proceeds arising from the disposal of the property may be retained by the person or body.

(5) The court may order any person convicted of the offence to pay any costs reasonably incurred by any person or body in storing the property that is to be forfeited.

(6) In this section—
“the fisheries legislation” means any enactments relating to fishing.

Power to detain vessels in connection with court proceedings

59. (1) This section applies where—

(a) an enforcement officer has reasonable grounds for suspecting that a relevant offence has been committed by the master, owner or charterer of a vessel; and

(b) the officer reasonably believes that—

(i) if proceedings are taken against the person for the offence, there is a real risk that the person will not attend court unless the vessel is detained under this section; or

(ii) if the person is convicted of the offence and the court by or before which the person is convicted imposes a fine on that person, it is likely that the court will order the vessel to be detained.

(2) Where this section applies, an enforcement officer who has the power conferred by this section may—

(a) take, or arrange for another person to take, the vessel and its crew to the port which appears to the officer to be the nearest convenient port; or

(b) require any person who is for the time being in charge of the vessel to take it and its crew to that port.

- (3) When a vessel has been taken to a port in pursuance of this section, the officer may—
- (a) detain it there; or
 - (b) require the person for the time being in charge of it to do so.

(4) An enforcement officer who detains any vessel under this section must, if it is reasonably practicable to do so, serve a notice on—

- (a) the owner of the vessel;
- (b) the charterer (if any) of the vessel; and
- (c) the person who is for the time being in charge of the vessel.

(5) The notice must state—

- (a) the reasons for detaining the vessel;
- (b) the circumstances in which the vessel may be released.

Release of vessels detained under section 59

60. (1) This section applies where a vessel is being detained under section 59.

(2) The vessel ceases to be detained under that section if one of the following things occurs—

- (a) the notice of detention is withdrawn;
- (b) the court orders the release of the vessel under section 61;
- (c) any proceedings taken against the master, owner or charterer of the vessel have concluded;
- (d) the court referred to in section 59(1)(b)(ii) exercises any power it has to order the vessel to be detained.

(3) A notice of detention may be withdrawn by service of a further notice signed by an appropriate enforcement officer.

(4) In subsection (3) the reference to an appropriate enforcement officer is a reference to any enforcement officer acting on behalf of the same Chief Fisheries Officer as the enforcement officer who served the notice of detention, and includes a reference to that officer.

(5) If any of the grounds for release mentioned in subsection (6) applies, then any notice of detention must be withdrawn as soon as possible.

(6) The grounds for release referred to in subsection (5) are—

- (a) that the Chief Fisheries Officer has decided not to take proceedings against the master, owner or charterer of the vessel;
- (b) that there are no grounds for believing that any person referred to in paragraph (a) against whom proceedings have been, or may be, taken will fail to attend court;
- (c) that there are no grounds for believing that the court referred to in section 59(1)(b)(ii) will order the vessel to be detained.

(7) In this section “*notice of detention*” means a notice served under section 59(4).

Power of court to order release of vessels

61. (1) This section applies where a vessel is being detained under section 59.

(2) If, on an application made to a magistrates' court by the owner or charterer, or any of the owners or charterers, of the vessel, the court is satisfied that—

- (a)* the continued detention of the vessel under section 59 is not necessary to secure that the master, owner or charterer of the vessel will attend court; or
- (b)* there are no grounds for believing that the court referred to in section 59(1)(b)(ii) will order the vessel to be detained,

the court may order that the vessel be released.

Bonds for release of vessels

62. (1) Where a vessel is being detained under section 59, the Chief Fisheries Officer may enter into an agreement with the owner or charterer, or any of the owners or charterers, of the vessel for security for the vessel to be given to the Chief Fisheries Officer by way of bond in return for the withdrawal of the notice of detention.

(2) Any bond given under this section is to be—

- (a)* for such amount as may be agreed; or
- (b)* in the event of a failure to agree an amount, for such amount as may be determined by the court.

(3) A person who gives a bond under this section must comply with such conditions as to the giving of the bond as the Chief Fisheries Officer may determine.

(4) If any of the grounds for release mentioned in subsection (5) applies, then any bond given under this section must be returned as soon as possible.

(5) The grounds for release referred to in subsection (4) are—

- (a)* that the Chief Fisheries Officer has decided not to take proceedings against the master, owner or charterer of the vessel;
- (b)* that there are no grounds for believing that any person referred to in paragraph (a) against whom proceedings have been, or may be, taken will fail to attend court;
- (c)* that there are no grounds for believing that the court referred to in section 59(1)(b)(ii) would, in the absence of the bond, have ordered the vessel to be detained;
- (d)* that any proceedings taken against the master, owner or charterer of the vessel have concluded without any fine having been imposed.

(6) Where a court imposes a fine on the master, owner or charterer of the vessel, the court may order any sum of money given as a bond under this section to be used towards the payment of the fine. If the fine is less than the amount of the bond, any sum not required to be used in payment of the fine must be returned to the person who gave the bond as soon as possible.

(7) In this section “**notice of detention**” means a notice served under section 59(4).

Power of court to order repayment of bonds

63. (1) This section applies where a notice of detention served under section 59(4) in respect of a vessel has been withdrawn in return for a bond given as security for the vessel under section 62.

(2) If, on an application to the magistrates' court in St Helena by the person who gave the bond, the court is satisfied that—

- (a) the continued detention of the bond under section 62 is not necessary to secure that the master, owner or charterer of the vessel will attend court; or
- (b) there are no grounds for believing that the court referred to in section 59(1)(b)(ii) would, in the absence of the bond, have ordered the vessel to be detained,

the court may order that the bond be returned to the person who gave it.

Power to require production of certain equipment

64. (1) An enforcement officer who has the power conferred by this section may require any person on board a vessel to produce any equipment falling within subsection (2).

(2) The equipment referred to in subsection (1) is any automatic recording equipment or transmitting equipment used in accordance with a condition included in a licence.

Service of notices, etc

65. (1) Any notice or other thing that is required to be served on or given to a person under any provision of this Part, or by section 19(2) may be served on or given to the person only by one of the following methods—

- (a) personal delivery;
- (b) addressing it to the person and leaving it at the appropriate address;
- (c) addressing it to the person and sending it to that address by post;
- (d) electronic mail to the email address provided by the person to the Chief Fisheries Officer as an address for service.

(2) The “**appropriate address**”, in relation to—

- (a) the owner of a vessel that is registered in any country or territory, means the address given by that register as the address of the owner of the vessel; or
- (b) in relation to any other person, means—
 - (i) in the case of a body corporate, its registered or principal office in St Helena;
 - (ii) in the case of a firm, the principal office of the partnership;
 - (iii) in the case of an unincorporated body or association, the principal office of the body or association;
 - (iv) in any other case, the person's usual or last known place of residence in St Helena or last known place of business in St Helena.

(3) In the case of—

- (a) a company registered outside St Helena;
- (b) a firm carrying on business outside St Helena; or
- (c) an unincorporated body or association with offices outside St Helena,

the references in subsection (2)(b) to its principal office include references to its principal office within St Helena (if any).

Conclusion of proceedings

66. (1) This section applies for determining when any proceedings have concluded for the purposes of this Part.

(2) Where proceedings are terminated by an appealable decision, they are not to be regarded as concluded—

- (a) until the end of the ordinary time for appeal against the decision, if no appeal in respect of the decision is brought within that time; or
- (b) if an appeal in respect of the decision is brought within that time, until the conclusion of the appeal.

(3) Subsection (2) applies for determining, for the purposes of paragraph (b) thereof, when proceedings on an appeal are concluded as it applies for determining when the original proceedings are concluded.

(4) Any reference in subsection (2) to a decision which terminates proceedings includes a reference to a verdict, sentence, finding or order that puts an end to the proceedings.

(5) An appealable decision is a decision of a description against which an appeal will lie, whether by way of case stated or otherwise and whether with or without permission.

(6) Any reference in this section to an appeal includes a reference to an application for permission to appeal.

Duty to provide evidence of authority

67. (1) Before exercising any power conferred by this Part, an enforcement officer must, if requested to do so, produce evidence that the officer is authorised to exercise that power.

(2) An enforcement officer may exercise a power conferred by this Part only if the officer complies with the duty imposed by subsection (1).

(3) If, at the time the request is made, the officer does not consider it practicable to produce the evidence referred to in subsection (1), that subsection does not apply until such time as the officer considers it practicable to comply with the request.

Duty to state name and purpose, etc

68. (1) Before exercising any power conferred by this Part, an enforcement officer must, if requested to do so, give the information in subsection (3).

(2) Before exercising any power conferred by this Part, any person assisting an enforcement officer by virtue of section 41 must, if requested to do so, give the information in subsection (3)(b) and (c).

- (3) The information is—
- (a) the person's name;
 - (b) the power the person is proposing to exercise;
 - (c) the grounds for proposing to do so.

(4) A person may exercise a power conferred by this Part only if the person complies with the duty imposed by subsection (1) or the duty imposed by subsection (2) (as the case may be).

(5) If, at the time the request is made, the person does not consider it practicable to give the information referred to in subsection (1) or the information referred to in subsection (2) (as the case may be), that subsection does not apply until such time as the person considers it practicable to comply with the request.

Liability of enforcement officers etc

69. (1) A person within subsection (2) is not to be liable in any civil or criminal proceedings for anything done (or omitted to be done) in, or in connection with, the discharge or purported discharge of the person's functions under this Ordinance.

- (2) The persons are—
- (a) any enforcement officer;
 - (b) any person assisting an enforcement officer by virtue of section 41.
- (3) Subsection (1) does not apply—
- (a) if the act or omission is shown to have been in bad faith; or
 - (b) if there were no reasonable grounds for the act or omission.

PART 10 APPEALS

Appeals against refusal of licence or permission or conditions

70. (1) A person aggrieved by a decision of the Chief Fisheries Officer or any person acting under authority of the Chief Fisheries Officer to refuse a licence or permission, or to attach a condition to a licence or permission, or to vary, suspend or revoke a licence or permission, may appeal to the Magistrates' Court on the grounds that the Chief Fisheries Officer or such authorised person erred in law or that the decision was based on an incorrect understanding of the facts.

(2) The appeal must be commenced by giving notice in writing within 14 days from the date that the person is notified of the decision.

(3) Subject to subsection (4), the court may uphold the decision of the Chief Fisheries Officer or authorised person, or may amend the decision and substitute its own decision, and costs will be at the discretion of the court.

(4) The court must not uphold the appeal and amend the decision unless it is established with respect to the relevant decision that the facts are such that had the Chief Fisheries Officer or authorised person been aware of these facts, he or she could not reasonably have made the decision that was made.

PART 11 OFFENCES

Offences: Fishing without licence or in breach of licence

71. (1) A person fishing in contravention of the prohibition imposed by section 7, commits an offence.

Maximum penalty on summary conviction a fine of £25,000, on indictment a fine of £1,000,000.

(2) If a fishing vessel is used in contravention of the prohibition imposed by section 7, the master, owner and charterer (if any) of the fishing vessel, each commits an offence.

Maximum penalty on summary conviction a fine of £25,000, on indictment a fine of £1,000,000.

(3) A person who breaches a condition of a licence commits an offence.

Maximum penalty on summary conviction a fine of £25,000, on indictment a fine of £1,000,000.

(4) Liability for breach of a licence attaches to the master having responsibility for the vessel at the time of the alleged breach and to any nominated individual required by section 14(3) and if neither such person can be found or identified, liability attaches to the vessel owner.

Offences: Restrictions on fishing and related operations

72. (1) A person fishing by any method in contravention of the prohibition imposed by section 17, commits an offence.

Maximum penalty on summary conviction a fine of £25,000, on indictment a fine of £2,000,000.

(2) Subject to subsection (3), a person who contravenes a fishing control notice issued under section 19, commits an offence.

Maximum penalty on summary conviction a fine of £25,000.

(3) Untargeted catching of a fish prohibited by a fishing control notice issued under section 19(1)(a), which is returned to the sea as soon as reasonably practicable, whether dead or alive, does not constitute an offence under subsection (2).

(4) A person who places or keeps a fish aggregating device in contravention of section 20 or breaches any condition subject to which permission was granted, commits an offence.

Maximum penalty on summary conviction a fine of £25,000.

(5) If a fishing vessel is used in contravention of any provision referred to in this section, the master, owner, charterer and licence holder (if any) of the fishing vessel, each commits the offence.

(6) The penalty for any other offence where the penalty has not been specified is a maximum fine of £10,000.

Offence: Possession and use of spear gun

73. (1) A person who uses or has in his or her possession a spear gun or fishes with scuba equipment in contravention of section 23 commits an offence.

Maximum penalty on summary conviction a fine of £50,000 or imprisonment for 12 months, or both.

(2) If a person is convicted of an offence under subsection (1), the convicting court may, in addition to imposing any fine in respect of the offence, order that the spear gun or scuba equipment involved in the commission of the offence be forfeited to the Crown.

(3) A person does not contravene section 23(1)(d) if the person has a spear gun in his or her possession solely for the purpose of conveying the spear gun through a prohibited area to an area that is not a prohibited area.

(4) The burden of proving that a person has a spear gun in his or her possession for the purpose mentioned in subsection (3) is upon the person found in possession of the spear gun.

Offences: Transshipment

74. (1) If a vessel transships fish from or to another vessel in contravention of the prohibition in section 25, the master, owner and charterer (if any) of the vessel each commits an offence.

Maximum penalty on summary conviction a fine of £25,000, on indictment a fine of £2,000,000.

Offences: Illegal Unregulated and Unreported fishing and related business

75. (1) A person who conducts business directly related to illegal, unreported or unregulated fishing, including the trade or importation of fish so caught or the commercial sale of fish caught under authority of a recreational licence or by traditional rock fishing commits an offence.

Maximum penalty on summary conviction a fine of £25,000, on indictment a fine of £1,000,000.

(2) In this section —

“**illegal**”, with respect to fishing, means fishing—

- (a) conducted by a fishing vessel in the fisheries limits without, or not in accordance with, a licence issued under this Ordinance; or
- (b) conducted by a fishing boat flying the flag of a State which is a party to a RFMO, but which is operating in contravention of the conservation and management measures of that RFMO; or
- (c) conducted in contravention of international law applicable to St Helena;

“**RFMO**”, means any Regional Fisheries Management Organisation.

“**unregulated**”, with respect to fishing, means fishing—

- (a) conducted in the area of application of a RFMO by a fishing boat of a State that is not a contracting party to that RFMO, or by a fishing boat that does not fly the flag of any State, or of any other fishing entity, in a manner that contravenes the conservation and management measures of the RFMO; or
- (b) conducted in an area, or for fish stocks, in relation to which there are no conservation or management measures, but in a manner that is not consistent with the responsibilities of the flag State for the conservation of marine living resources under international law;

“**unreported**”, with respect to fishing, means fishing—

- (a) which has not been reported, or has been misreported, to the Chief Fisheries Officer; or
- (b) which has been undertaken in the area of application of a RFMO but which has not been reported, or has been misreported, in contravention of the reporting procedures of that RFMO.

Unstowed fishing gear

76. (1) A vessel must not within a specified area carry aboard it any unstowed fishing net, line or other device directly employed in the taking of fish if the fishing vessel—

- (a) is not licensed under Part 5 to fish within that specified area; or
- (b) is licensed under Part 5 to fish, but—
 - (i) is not licensed to fish within the part of the specified area in which it for the time being happens to be; or
 - (ii) is not authorised by that licence, to directly employ that net, line or other device in the taking of fish of any particular type, dimensions or specification mentioned in the licence.

(2) If subsection (1) is contravened in respect to of a vessel, the master, owner and charterer (if any) of the vessel each commits an offence.

Maximum penalty a fine of £2,000,000.

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

Discarding of inorganic fishing material

77. (1) A person who discards inorganic fishing material, including material comprising of plastic into the sea, commits an offence.

Maximum penalty a fine of £10,000.

(2) Subsection (1) does not apply to the discarding of inorganic fishing material, line or gear reasonably necessary to release fish, vessels or gear fouled at sea.

False information and falsifying documents

78. (1) It is an offence for a person to provide information which the person knows to be false or recklessly furnish information which is false in a material particular—

- (a) for the purpose of obtaining a licence or permission under this Ordinance;
- (b) in purported compliance with a condition contained in a licence or permission which requires the provision of information; or
- (c) for purposes of any other reporting requirement in this Ordinance.

Maximum penalty a fine of £50,000.

(2) It is an offence for a person—

- (a) to falsify documents referred to in this Ordinance; or
- (b) to use false or invalid documents.

Maximum penalty a fine of £50,000.

(3) If a person other than the master, owner or charterer (if any) of the vessel in question provides false information, or falsifies or uses a false or invalid document as referred to in subsection (1) or (2), the master, owner and charterer (if any), as well as the person who provided the information or falsified or used the document, is each deemed to have provided, falsified or used it and to have committed the offence and is each liable to be dealt with in respect thereof, unless the master, owner or charterer proves that the person who provided the information or falsified or used the false or invalid document was not authorised to act on behalf of the master, owner or charterer, as the case may be.
Maximum penalty a fine of £50,000.

Offences in relation to enforcement officers

79. (1) A person commits an offence if—

- (a) the person fails without reasonable excuse to comply with a requirement reasonably made, or a direction reasonably given, by an enforcement officer in the exercise of any power conferred by Part 9; or
- (b) the person prevents any other person from complying with any such requirement or direction.

Maximum penalty a fine of £50,000 or imprisonment for a period of 12 months, or both.

(2) A person is not guilty of an offence by reason of a failure to comply with a requirement made under section 38(1) if the person complies with section 38(2).

(3) A person who provides information in pursuance of a requirement reasonably made by an enforcement officer in the exercise of the power conferred by section 43 commits an offence if—

- (a) the information is false in a material particular, and the person knows that it is or is reckless as to whether it is; or
- (b) the person intentionally fails to disclose any material particular.

Maximum penalty: A fine of £50,000.

(4) A person who intentionally obstructs an enforcement officer in the performance of any of the officer's functions under this Ordinance commits an offence.

Maximum penalty: A fine of £50,000.

(5) A person who assaults an enforcement officer in the performance of any of the officer's functions under this Ordinance commits an offence.

Maximum penalty: a fine of £50,000 or imprisonment for a period of 12 months, or both.

(6) A person who, with intent to deceive, falsely pretends to be an enforcement officer commits an offence.

Maximum penalty a fine of £50,000 or imprisonment for a period of 12 months, or both.

(7) Proceedings for an offence under this section may be taken, and the offence may for all incidental purposes be treated as having been committed, in St Helena.

(8) In this section any reference to an enforcement officer includes a reference to a person assisting an enforcement officer by virtue of section 41.

General penalty and power of Magistrates' Court

80. A person who commits an offence against this Ordinance, or any order made under it, for which no other penalty is specifically provided, is liable to a fine of £10,000.

Offences by corporate body

81. If an offence under this Ordinance is committed by a corporate body and is proved to have been committed with the consent or connivance of a person who was a director, manager, secretary or other similar officer of the body, or who was purporting to act in such capacity, that person as well as the corporate body commits that offence and is liable to be proceeded against and punished accordingly.

PART 12 MISCELLANEOUS

Regulations

82. The Governor in Council may make regulations for the execution of this Ordinance and for the better regulation of sea fishing and, without limiting that power, the regulations may specifically—

- (a) prescribe the matters to be taken into account by the Chief Fisheries Officer with respect to issuing of licences to foreign fishing vessels;
- (b) prescribe the matters to be taken into account in determining total catch limits;
- (c) prescribe the Regional Fisheries Management Organisations as to which the Chief Fisheries Officer is to report at least annually under section 6;
- (d) provide for compliance and delivery of St Helena's obligations under recognised RMFOs;
- (e) establish a deadline for applications for licences in respect of a year;
- (f) prescribe preconditions to be satisfied before a licence may be issued;
- (g) prescribe mandatory conditions which must be attached to any type of fishing licence as may be necessary for the better regulation of sea fishing or stewardship of the marine environment, which may include, the carrying and transmission of AIS / VMS location equipment, the carrying of fisheries protection officer or authorised observers on vessels fishing by licence, a requirement for fees and expenses to be paid by the licensee for carrying such officer or observer and requirements for conservation monitoring and reporting;
- (h) prescribe matters to be considered in apportioning catch quota between applicants or holders of commercial fish licences;
- (i) prescribe matters which may preclude the award of a licence, including previous non-compliance, failure to meet pre-conditions, unregistered or unseaworthy vessel or recent surrender of licence;
- (j) prescribe circumstances in which a licence may be transferred from one licensee to another;
- (k) prescribe circumstances in which any fish species, once caught, may be retained for the purpose of any bona fide record attempt;
- (l) make provision for warrants issued under section 30;
- (m) make provision for an open, transparent and comprehensive scheme for apportioning licences if and when a fishery is to be restricted;

- (n) prescribe the forms to be used and fees to be paid under the Ordinance; and
- (o) any other matter which must or may be prescribed under the Ordinance.

Repeal and amendment of legislation

- 83. (1)** The Fishery Limits Ordinance, 1977, is repealed.
- (2)** The Conservation and Management of Fishery Resources Ordinance (2003) is repealed.
- (3)** The Environmental Protection Ordinance, 2016, is amended—
- (a)** by revoking section 25(7) and substituting the following:
 - “(7) Plant propagation licences, captive breeding licences, fisheries licences under the Fisheries Ordinance, 2021, and traditional rock fishing permitted under that Ordinance which complies with all current fisheries control notices under section 19 of that Ordinance, are to be construed as appropriate permissions under this section.”;
 - (b)** by revoking section 86(4) and substituting the following:
 - “(4) The Chief Environmental Officer and other Environmental Officers, any customs officer, any police officer or, in respect of this Ordinance as it applies to the sea, the Chief Fisheries Officer and fisheries protection officers, are deemed to be enforcement officers for the purposes of this Ordinance, and the Chief Fisheries Officer and fisheries protection officers may exercise all the powers of an enforcement officer under the Fisheries Ordinance, 2021, for the purpose of enforcing the provisions of this Ordinance.”
 - (c)** by repealing section 119(1)(b).
- (4)** The High Seas Fishing Ordinance, 2001, is amended by—
- (a)** by revoking the definition of “**St Helena fishing waters**” and substituting the following:
 - ““**St Helena fishing waters**” means internal waters, the territorial sea, and the St Helena fisheries limits to which the Fisheries Ordinance, 2021, applies;”;
 - (b)** by deleting section 3(6)(a) and substituting the following:
 - “(a) the Chief Fisheries Officer and fisheries protection officers appointed under section 5 of the Fisheries Ordinance, 2021, and such officers may exercise all the powers of an enforcement officer under that Ordinance for the purpose of enforcing the provisions of this Ordinance;”.
- (5)** The Protection of Wrecks and Marine Archaeological Heritage Ordinance, 2014, is amended by inserting the following section after section 4:

“Enforcement powers

4A. The Chief Fisheries Officer and fisheries protection officers appointed under section 5 of the Fisheries Ordinance, 2021, may exercise any of the powers of an enforcement officer under that Ordinance for the purpose of enforcing the provisions of this Ordinance.”

(6) The Land Planning and Development Control Ordinance, 2013, is amended by adding the following subsection to section 2:

“(3) Notwithstanding anything contained in subsection (2), the deployment of any anchored fish aggregating device, whether or not marked by a floating buoy, does not for the purposes of this Ordinance constitute development.”.

(7) The Spear Guns Control Ordinance, 2014 is repealed.

Transitional Provisions

84. (1) A licence issued under the Fisheries Limits Ordinance, 1977 which, but for the repeal of that Ordinance by section 83, would have continued beyond the commencement date of this Ordinance remains in force and has effect as if it had been made under a corresponding provision this Ordinance.

(2) Every order, direction, decision or request made by any person authorised to make such orders, directions or requests under any Ordinance listed in section 83 (7) is, if still subsisting, deemed to be an order, direction or decision made under the corresponding provisions of this Ordinance and has effect accordingly.

(3) Every permit, licence, certificate, declaration or notice issued under ordinance listed in section 83(7) of this Ordinance and remaining in force or having effect immediately prior to the commencement of this Ordinance remains in force and has effect as if it had been made under a corresponding provision of this Ordinance.

SCHEDULE 1

International Commission for the Conservation of Atlantic Tuna