

TRISTAN DA CUNHA

REVISED EDITION OF THE LAWS, 2017

ENVIRONMENT AND NATURAL RESOURCES

FISHERY LIMITS (TRISTAN DA CUNHA) ORDINANCE, 1983¹

*Ordinance T1 of 1983
In force 17 March 1983*

Amended by Ordinances T1 of 1991, T2 of 1991, T1 of 1992, T4 of 1997 and T1 of 2021

Subsidiary legislation:

FISHERY LIMITS (LICENSING OF FISHING) (TRISTAN DA CUNHA) ORDER, 1983

Legal Notice T1 of 1983

FISHERY LIMITS (TRISTAN DA CUNHA) ORDINANCE, 1983

ARRANGEMENT OF SECTIONS

1. Short title
2. Interpretation
3. Fishery limits
4. Licensing of fishing boats
5. Types of licences
6. Sea Fishery Officers
7. General powers of sea fishery officers
8. Miscellaneous provisions
9. General penalty and powers of Magistrate
10. Detention of fishing boat on failure to pay or secure fine
11. Protection of Crown, etc.
12. Regulations

AN ORDINANCE to define the fishery limits of Tristan da Cunha and to make provision for the regulation of fishing within those limits and for other matters connected therewith.

Short title

1. This Ordinance may be cited as the Fishery Limits (Tristan da Cunha) Ordinance, 1983.

Interpretation

¹ Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 10 August 2021.

2. In this Ordinance, except where the context otherwise requires—
- “**Administrator in Council**”² means the Administrator acting after consultation with the Island Council;
- “**bottom trawling**”³ means fishing using a bottom trawl or similar towed nets operating in contact with the bottom of the sea;
- “**fishing boat**” means any vessel of whatever size, and in whatever way propelled, which is for the time being employed in fishing operations or any operations ancillary thereto;
- “**foreign fishing boat**” means a fishing boat which is not—
- (a) registered in Tristan da Cunha; or
 - (b) owned by a person who is ordinarily resident in Tristan da Cunha;
- “**master**” means, in relation to a fishing boat, the person for the time being in command or in charge of that fishing boat or in charge of the fishing operations on board that fishing boat or, if there is no such person, any person for the time being on board that fishing boat;
- “**miles**” means international nautical miles of 1,852 metres;
- “**sea fish**”⁴ means a marine animal, other than a mammal or bird, and includes a shellfish;
- “**sea fishing**” means—
- (a) the catching or taking of sea fish; or
 - (b) an operation or activity where the catching or taking of sea fish—
 - (i) is intended; or
 - (ii) as a direct result of the operation or activity - is likely;
- “**shellfish**” includes crustaceans and molluscs of any kind and includes any part of a shellfish and any (or any part of any) brood, half-ware or spat of shellfish and any spawn of shellfish, and the shell, or any part of the shell of a shellfish;
- “**Tristan da Cunha**” means the Island of Tristan da Cunha, Gough Island, Nightingale Island and Inaccessible Island;
- “**Tristan fishing boat**” means any fishing boat which is not within the definition of a foreign fishing boat given above.

Fishery limits

3. Notwithstanding any reference to fishery limits or cognate expressions in any other Ordinance, the Tristan da Cunha fishery limits are the limit of the exclusive economic zone declared by the Governor by Proclamation of 13th July 2017.⁵

Licensing of fishing boats

- 4.⁶ (1) Subject to section 5A, the Administrator in Council may by order provide that—
- (a) in any specified area within Tristan da Cunha fishery limits, fishing by fishing boats (whether Tristan fishing boats or foreign fishing boats) is prohibited unless authorised by a licence granted by the Administrator;

² Definition of “Administrator in Council” inserted by Ord. T1 of 2021

³ Definition of “bottom trawling” inserted by Ord. T1 of 2021

⁴ Definition of “shellfish” amended by Ord. T1 of 2021

⁵ See L.N.T1/2017. The EEZ extends 200 nautical miles (M) from the nearest points on the baseline from which the breadth of the territorial waters adjacent to the Islands of Tristan da Cunha, Gough Island, Inaccessible Island and Nightingale Islands are measured. See the St Helena and Dependencies (Territorial Sea) Order 1989 (SI 1989/1994).

⁶ Section 4 amended by Ord. T1 of 2021

- (b) in any specified area outside those limits fishing by Tristan fishing boats is prohibited unless so authorised.

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

- (a) for a specified description of sea fish;
- (b) by a specified method;
- (c) during a specified season of the year or other period; or
- (d) in the case of an order under subsection (1)(a) - by fishing boats registered in a specified country,

and whether the order is general or limited in scope it may provide for exceptions from the prohibition contained in it.

(3) If a fishing boat is used in contravention of a prohibition imposed by an order under this section—

- (a) the master, owner and the charterer (if any) are each guilty of an offence and liable on conviction to a fine not exceeding £250,000; and
- (b) the court may on convicting the master, owner or any charterer, order the forfeiture of the fishing boat, its gear and stores, and any fish found in the boat or taken or used by a person from the boat.

(4) An order under this section may authorise the making of a charge for a licence.

(5) A licence under this section must be granted to the master, owner or charterer and may authorise fishing generally or may confer limited authority by reference to, in particular—

- (a) the area within which fishing is authorised;
- (b) the periods, times or particular voyages during which fishing is authorised;
- (c) the descriptions and quantities of fish which may be taken;
- (d) the method of sea fishing; and
- (e) the specific vessel or vessels, or number of vessels to be used.

(6) A licence under this section may authorise fishing either unconditionally or subject to such conditions as appear to the Administrator to be necessary or expedient for the regulation of sea fishing, and in particular a licence may contain conditions as to—

- (a) the landing of fish or parts of fish taken under the authority of the licence; or
- (b) the use to which the fish taken may be put,

and if a licence condition is broken the master, the owner and the charterer (if any) of the vessel concerned in such breach each commits an offence.

Penalty: As provided in section 9(1).

(7) The Administrator, in granting a licence under this section, may require the master, the owner and the charterer (if any) of the vessel or vessels provided for in the licence to provide the Administrator with any statistical information he or she directs, and a person who fails to comply with such a requirement commits an offence.

Penalty: As provided in section 9(1).

(8) A licence under this section—

- (a) may be varied from time to time; and

(b) may be revoked or suspended, if this appears to the Administrator to be necessary or expedient for the regulation of sea fishing.

(9) If a licence is varied, revoked or suspended the Administrator may, if he or she considers it appropriate in all the circumstances of the case, refund the whole or part of any charge made for the licence.

(10) The Administrator may not delegate the Administrator's licensing powers under this section.

(11) Notwithstanding this section the Governor may exercise all or any of the Administrator's licensing powers under this section in relation to foreign fishing vessels and, for this purpose, all references to the Administrator in this section and any order made under it are deemed to be references to the Governor also.

(12) If this section is contravened in the case of a foreign fishing boat—
 (a) the master of the boat is liable on summary conviction to a fine not exceeding £2,000,000 or on conviction on indictment to a fine of unlimited amount;
 (b) the court may on convicting a person of an offence under this section order the forfeiture of any fish or fishing gear found in the boat or taken or used by any person from the boat.

Types of licences

5.7 (1) A licence granted under section 4 in respect of a fishing boat must be either—

- (a) A Commercial Fishing Licence, either Full or Part Time;
- (b) A Recreational Fishing Licence;
- (c) A Research Fishing Licence, by which the primary purpose of the fishing is for a scientific, educational or research purpose; or
- (d) An Exploratory Fishing Licence, by which the primary purpose of the fishing is to determine if commercially viable and environmentally sustainable catch quantities of fish species or stock is present.

(2) The Administrator must not grant a Commercial Fishing Licence in respect of a fishing boat unless he or she has been satisfied by the applicant for the licence that the boat is to be operated by a person who—

- (a) in the case of an application for a Commercial fishing Licence (Full)—
 - (i) receives at least 90% of his income from fishing; or
 - (ii) spends at least 90% of his working time fishing; or
- (b) in the case of an application for a Commercial Fishing Licence (Part Time)—
 - (i) receives at least 30% but less than 90% of his income from fishing; or
 - (ii) spends at least 30% but less than 90% of his working time fishing.

(3) The Administrator must not grant a licence for fishing within the Marine Protection Zone declared as such under section 3 of the Marine Protection (Tristan da Cunha) Ordinance, 2021, other than a licence referred to in subsection (1)(c) which the Administrator

⁷ Section 5 amended by Ord. T1 of 2021

must be satisfied will be consistent with the Marine Management Plan published under section 4 of that Ordinance.

Prohibition on fishing by bottom trawling

5A.⁸ (1) Fishing by bottom trawling in any area within the fishery limits is prohibited.

(2) If a fishing boat is used in contravention of this section—

- (a) the master, owner and the charterer (if any) each commit an offence; and
- (b) the court may, on convicting the master, owner or any charterer, order the forfeiture of the fishing boat, its gear and stores, and any fish found in the boat or taken or used by a person from the boat.

Maximum penalty: In the case of an offence committed using—

- (a) a foreign fishing boat, a fine not exceeding £2,000,000 or on conviction on indictment an unlimited fine;
- (b) a Tristan fishing boat, a fine not exceeding £250,000.

Sea Fishery Officers

6. (1) The provisions of this Ordinance are to be enforced by sea fishery officers, and for that purpose sea fishery officers have the powers set out in section 7.

(2) The following persons are sea fishery officers, that is to say, every officer appointed in that behalf by the Administrator, and every member of the Tristan da Cunha Police Force.

General powers of sea fishery officers

7. A sea fishery officer or any person authorised by a sea fishery officer may exercise the following powers with respect to any fishing boat fishing or which he or she reasonably suspects may have fished within the fishery limits of Tristan da Cunha as defined by this Ordinance—

- (a) the officer may go aboard the fishing boat;
- (b) the officer may require the master, the crew or any of them to produce any certificate of registry, licence, official logbook, official paper, article of agreement, and any other document relating to the fishing boat or to the crew or any member of it, or to any person on board the fishing boat which is in their respective possession or control on board the fishing boat;
- (c) the officer may muster the crew of the fishing boat;
- (d) the officer may require the master to appear and to give an explanation concerning the fishing boat and any crew, any other person on board the fishing boat, and any document mentioned in paragraph (b);
- (e) the officer may make any examination or enquiry which he or she considers necessary to ascertain whether any provisions of the Export of Goods (Tristan da Cunha) Ordinance, 1951, the Export and Import Control (Tristan da Cunha) Ordinance, 1976 or this Ordinance have been contravened;

⁸ Section 5A inserted by Ord. T1 of 2021

- (f) in the case of any person who appears to the officer to have committed any such contravention, the officer may, without summons, warrant or other process, take the offender and the fishing boat in respect of which it appears to the officer there has been a contravention together with its crew to the Island of Tristan da Cunha until the alleged contravention has been adjudicated upon.

Miscellaneous provisions

8. (1) A person who obstructs a sea fishery officer when acting in the exercise of his or her powers under this Ordinance, or who refuses or neglects to comply with any requisition or direction lawfully made or given by, or to answer any question lawfully asked by, a sea fishery officer pursuant to this Ordinance commits an offence.

Penalty: A fine of £10,000 or imprisonment for 3 months, or both.

(2) In this section, references to a sea fishery officer include references to any person authorised by the officer for the purposes of section 7.

General penalty and powers of Magistrate

9. (1) Every 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 not exceeding £10,000.

(2) In respect of offences charged under this Ordinance or under any order made hereunder, and notwithstanding any other law applying in Tristan da Cunha, the Magistrate is given extended jurisdiction to impose any fines up to those specified as maxima.

Detention of fishing boat on failure to pay or secure fine

10. If any fine or amount of costs is adjudged to be due by the master, owner or charterer of any fishing boat in respect of any contravention of the provisions of this Ordinance –

- (a) the court may order that in default of payment forthwith, the defendant must give security for payment of the amount due;
- (b) if such security to the satisfaction of the court is not given, the court may order the detention of the fishing boat concerned with the contravention; and
- (c) the fishing boat may accordingly be detained at the Island of Tristan da Cunha until the amount due is paid or until sufficient security is given to the satisfaction of the court.

Protection of Crown, etc.

11. (1) No action lies against the Crown, its servants or agents for anything done or omitted to be done in good faith in the exercise or purported exercise of any power or duty under this Ordinance.

(2) Without limiting subsection (1), no action lies against the Crown, its servants or agents for the loss of, or any damage caused to, any fishing boat while in the possession of the Crown, or its servants or agents, by virtue of this Ordinance unless negligence on the part of the Crown, its servants or agents is proved.

Regulations

12. The Governor may make regulations necessary or convenient for the purposes of this Ordinance and may, in particular, make regulations—

- (a) prohibiting or restricting the carriage of any prescribed fishing gear or equipment on fishing boats within Tristan da Cunha's fishing limits;
- (b) imposing fines, not exceeding £10,000, for any breach of the regulations.

FISHERY LIMITS (TRISTAN DA CUNHA) ORDINANCE, 1983

FISHERY LIMITS (LICENSING OF FISHING) (TRISTAN DA CUNHA) ORDER, 1983 (Section 4)

TABLE OF CONTENTS

- 1. Citation
- 2. Licensing of fishing
- 3. Form of licence
- 4. Charge for licence
- 5. Exemptions

Citation

1. This Order may be cited as the Fishery Limits (Licensing of Fishing) (Tristan da Cunha) Order, 1983.

Licensing of fishing

2. Fishing by fishing boats as defined by section 2 of the Ordinance within the Tristan da Cunha fishery limits as set out in section 3 of the Ordinance is prohibited unless authorised by a licence (hereinafter called 'a fishing licence') granted by the Administrator.

Form of licence

3. The form and duration of a fishing licence must be determined by the Administrator in each case and such licence may authorise fishing either unconditionally or subject to conditions that appear to the Administrator to be necessary or expedient for the regulation of sea fishing as defined by section 2 of the Ordinance.

Charge for licence

4. A charge may be made for each fishing licence of a sum determined by the Administrator.

Exemptions

5. The prohibition contained in Article 2 of this order does not apply to the taking and processing of any descriptions of fish authorised by the Administrator—

- (a) by any inhabitant or resident of Tristan da Cunha for local consumption or use;
 - (b) by any vessel for consumption by the passengers and crew; or
 - (c) for scientific purposes.
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