

Island of



Guernsey

Ordinance of the States **IX**

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The Fishing (Licensing and Protection of Fisheries) Ordinance, 1987

ARRANGEMENT OF SECTIONS

Section

PART I

LICENSING OF FISHERIES

1. Power of the Committee to designate fisheries by order.
2. Effect of an order under section 1.
3. Fishery Licences.
4. Fees for licences.
5. Marking limits of fishery.
6. Records and information.
7. Revocation of licence and cesser of right.
8. Notice of refusal to grant a licence and notice of conditions.
9. Removal of things and re-instatement of area on expiry or revocation of licence.
10. Service of notices.
11. Appeals.

PART II

PROTECTION OF FISHERIES

12. Protection of fisheries.
13. Powers of officers of police and of authorised persons for the protection of fisheries.

PART III

GENERAL AND MISCELLANEOUS
PROVISIONS

14. Saving for rights of the Crown.
15. Saving for rights of other persons.
16. Saving for enactments.
17. Offences involving the use of a boat.
18. Offences by bodies corporate.
19. Interpretation.
20. Extent.
21. Citation.

The Fishing (Licensing and Protection of Fisheries) Ordinance, 1987

THE STATES, in pursuance of their Resolution of the 28th day of January, 1987, hereby order:—

PART I

LICENSING OF FISHERIES

1. (1) Subject to the succeeding provisions of this Ordinance, where the Committee is satisfied that it is in the interests of the fishing industry in the Island so to do, the Committee may, subject to the provisions of this section, from time to time, by order designate any area of the shore and bed of the sea, above or below, or partly above and partly below, low water mark and within the territorial waters adjacent to this Island (which shore and bed are hereinafter referred to as “the sea shore”) for the establishment or improvement and for the maintenance and regulation, of a fishery for fish of any description as may be specified in the order.

Power of the Committee to designate fisheries by order.

(2) In any case where the Committee proposes to make an order under this section, the Committee shall publish on at least two occasions in “La Gazette Officielle” a notice of the Committee’s proposal, stating the terms of the draft order, the address to which objections to the proposal may be sent and the period, which shall be not less than twenty-one days beginning with the date on which the notice is first published in accordance with this subsection, within which any such objection may be so sent.

(3) The Committee shall before making an order under this section consider any objection sent to the

Committee in accordance with a notice under subsection (2) of this section.

(4) Every order made under this section shall prescribe the manner in which the limits of any area of a fishery to which the order relates and within which the right of several fishery is exercisable by virtue of a licence granted under section 3 of this Ordinance or, as the case may be, of that part of that area as may for the purposes of section 5 of this Ordinance be specified in such licence, shall be marked.

(5) The terms of any order made under this section shall be published by the Committee on at least one occasion in "La Gazette Officielle" prior to the date of the coming into effect thereof.

(6) Every order made under this section shall be laid before a meeting of the States as soon as may be after the making thereof and if, at that meeting or at the next subsequent meeting, the States resolve that the order be annulled, the order shall cease to have effect but without prejudice to anything done thereunder or to the making by the Committee of a new order.

Effect of an
order under
section 1.

2. (1) Where an order is for the time being in force under section 1 of this Ordinance, then, subject to the succeeding provisions of this Ordinance and to any restrictions and exceptions contained in the order, the Committee may, in pursuance of a licence granted under section 3 of this Ordinance (hereinafter referred to as a "Fishery Licence"), authorise such persons as may be specified in the licence (hereinafter referred to as "the licensee") to exercise, with respect to the whole of the area of the fishery to which the order relates or with respect to such part of that area as shall be specified in the

licence, such right as shall be specified in the licence (hereinafter referred to as a "right of several fishery") to the exclusive right of depositing, propagating, dredging, fishing for and taking fish of any description to which the order applies as shall be specified in the licence, and in the exercise of that right within those limits to—

- (a) make and maintain beds for such fish;
- (b) install and maintain cages for such fish;
- (c) do all other things for obtaining, storing and disposing of the produce of his fishery;

as shall be specified in the licence.

(2) Where an order is for the time being in force under section 1 of this Ordinance, a person shall not dredge, fish for or take, within any part of the area of the fishery to which the order relates, fish of the description to which the order applies except under the authority and in accordance with a licence granted under the provisions of section 3 of this Ordinance.

(3) Any person who contravenes or fails to comply with the provisions of the last preceding subsection shall be guilty of an offence and liable, on conviction, to a fine not exceeding five hundred pounds.

3. (1) Any person desirous of obtaining a Fishery Licence shall make application in that behalf to the Committee and such application shall be in such form and accompanied by such information as the Committee may, from time to time, require.

Fishery
Licences

(2) The Committee may upon receipt of an application under the provisions of the last preceding subsection—

- (a) grant the licence applied for; or
- (b) refuse to grant such licence; or
- (c) grant such licence subject to such conditions as the Committee may consider it necessary or expedient to impose.

(3) In deciding whether or not, in the exercise of its powers under this section, to grant the licence applied for the Committee shall take into account the welfare of the fishing industry in this Island and of the persons engaged in it and the experience in fishery of the person making the application.

(4) Nothing in the last preceding subsection contained shall be taken to preclude the Committee in deciding whether or not, in the exercise of its powers under this section, to grant the licence applied for from taking into account such other factors as the Committee may, from time to time, deem necessary or expedient.

(5) The Committee may grant licences in exercise of its powers under this section in such numbers and to such persons, and operative for such periods, as shall be specified in such licences:

Provided that the operative period of any such licence shall not exceed the period of five years.

(6) The Committee may at any time revoke or vary any conditions attached to any licence granted in exercise of its powers under this section.

(7) A licence granted by the Committee in exercise of its powers under this section shall be personal to the holder thereof and shall not be assignable.

4. There shall be paid in advance to the Treasurer of the States in respect of the grant of a licence under section 3 of this Ordinance the fee of fifty pounds. Fees for licences.

5. The licensee shall mark out the limits of the area of the fishery within which the right of several fishery is exercisable or, as the case may be, of that part of that area as may for the purposes of this section be specified by the Committee in the Fishery Licence granted in respect thereof in the manner prescribed in the order to which the licence relates, and the licensee shall maintain such marks in position and good repair. Marking limits of fishery.

6. (1) Every licensee shall keep for such period as shall, from time to time, be determined by the Committee, a record in writing in such form and containing such particulars relating to the exercise by such person of the right of several fishery in respect of which a Fishery Licence was granted to him, as the Committee may, from time to time, require, and every such record shall at all times be open to inspection by any person authorised in writing in that behalf by the Committee, on production of his authority if so required. Records and information.

(2) A licensee shall as regards the exercise by him of the right of several fishery in respect of which a Fishery Licence was granted to him, if so required by notice in writing by the Committee, furnish to the Committee or to such person as may be specified in such notice, within such time as shall be specified in such notice, a true statement of all

or such of the particulars required to be kept under the provisions of the last preceding subsection as regards such date or dates or such period or periods as shall be specified in such notice.

Revocation
of licence
and cesser
of right.

7. (1) If, in the case of any right granted under a Fishery Licence, the Committee is satisfied, either as respects the whole of the area within which that right is exercisable or as respects any part of that area, that the licensee is not properly carrying into effect any of the terms of the licence or enforcing any of the restrictions of the order to which the licence relates or of any of the conditions attached to the licence or has failed to comply with any provisions of this Ordinance with respect to the exercise of his licence, the Committee may, by notice in writing served on the licensee, revoke the licence and thereupon that right shall be absolutely determined as regards that area or, as the case may be, that part thereof.

(2) For the purpose of subsection (1) of this section, the Committee may, from time to time, with respect to any fishery to which a Fishery Licence relates, make such inquiries and examination by any person authorised in that behalf by the Committee, and require from the licensee such information, as the Committee thinks necessary or proper, and the licensee shall afford all facilities for such inquiries and examination and give such information, accordingly.

(3) For the purpose of carrying out any inquiry or examination specified in the last preceding subsection, the person authorised in that behalf by the Committee shall, subject to the next succeeding subsection, have the right, at any reasonable time, to enter and search any premises or land used for carrying on any business in connection with the fishery and any area of the sea shore within the

limits of the fishery, and to obtain and take away samples (which shall be marked, labelled or otherwise made capable of identification) of any fish found within those limits; and, notwithstanding anything contained in any enactment for the time being in force in this Island relating to fishing, when the purpose for which any such sample was taken has been satisfied the person by whom the sample was taken shall dispose of it as the Committee may determine.

(4) A right of entry under the last preceding subsection shall not be exercisable in respect of any premises or land unless not less than twenty-four hours' notice of the intended entry has been given to the licensee or during the hours of darkness; and the person exercising the right shall, if so requested, produce written evidence of his authority before entering.

(5) Any person who obstructs any person authorised in that behalf by the Committee in the exercise of any power or right conferred by this section, or who refuses or without reasonable excuse fails to provide any information reasonably required by such person in the exercise of any such power or right, shall be guilty of an offence and liable, on conviction, to a fine not exceeding five hundred pounds.

8. Where the Committee refuses to grant a Fishery Licence to any person or grants such a licence subject to conditions, notice in writing of such refusal or grant setting out the reasons therefor and signed by the President or any other member of the Committee authorised in that behalf by the Committee shall be served, as soon as may be, on the applicant for the licence.

Notice of refusal to grant a licence and notice of conditions.

Removal of things and re-instatement of area on expiry or revocation of licence.

9. (1) It shall be the responsibility of every licensee to remove every bed made, every cage installed and every other thing of whatever description brought within any part of the area of the fishery to which the licence relates and to re-instate the aforesaid area to its condition prior to the grant of the licence to the satisfaction of the Committee on or before the date of the expiry of the licence under section 3(5) of this Ordinance or on or before the date of revocation of the licence under section 7 of this Ordinance.

(2) Where before the date of expiry of a licence or revocation of a licence, as the case may be, a licensee believes that he has fully complied with the requirements of subsection (1) of this section as regards every part of the area of the fishery to which his licence relates, he may apply in writing to the Committee to certify that the aforesaid requirements have been duly complied with.

(3) On receipt of an application under subsection (2) of this section, the Committee shall cause the area of the fishery to which the application relates to be inspected and—

- (a) if satisfied that the requirements of subsection (1) of this section have been duly complied with in respect thereof, issue to the licensee a certificate of compliance;
- (b) if satisfied that the requirements of subsection (1) of this section have not been duly complied with in respect thereof, notify the licensee in writing that the Committee is not so satisfied and such notification shall specify the action required to be taken by the licensee to ensure compliance with the aforesaid requirements.

(4) Without prejudice to the provisions of subsection (5) of this section, a person who knowingly fails to comply with the requirements of subsection (1) of this section shall be guilty of an offence and liable, on conviction, to a fine not exceeding five hundred pounds and to a further fine not exceeding two hundred pounds for every day during which the offence is continued after conviction.

(5) Where a person has failed to comply with the requirements of subsection (1) of this section then, without prejudice to any proceedings for an offence under subsection (4) of this section consequent upon such failure, the Committee may apply *ex parte* to the Court for an order authorising any person on behalf of the Committee to enter within any part of the fishery to which the order relates and to take such action to ensure compliance with the aforesaid requirements as shall be specified in the order; and the cost of taking such action shall be recoverable by the States from such person as a civil debt.

10. Any notice which may be served for the purposes of this Part of this Ordinance shall be validly served:— Service of notices.

- (a) on any person, if delivered to him, left, or sent by registered post or recorded delivery service to him, at his usual or last known place of abode;
- (b) on any firm, if delivered to any partner of the firm or left at, or sent by registered post or recorded delivery service to, the principal or last known principal place of business of the firm;

- (c) on any body corporate, if left at, or sent by registered post or recorded delivery service to, its registered office if situate in this Island, or, if its registered office is not so situate, its principal or last known principal place of business in this Island.

Appeals.

11. (1) Any person aggrieved by any decision of the Committee under any of the provisions of this Part of this Ordinance may appeal therefrom to the Royal Court on the grounds that the decision of the Committee was ultra vires or was an unreasonable exercise of its powers.

(2) Any appeal under this section shall be instituted by way of summons which shall set out the material facts upon which the appellant relies and which shall be served upon the President of the Committee to show cause why the decision appealed from should not be set aside or varied.

(3) On any appeal under this section the burden of satisfying the Royal Court that the decision of the Committee which is the subject of the appeal is intra vires or reasonable shall be discharged by the Committee and the Committee shall be entitled to a final right of reply.

(4) The decision of the Royal Court on any appeal under this section shall be final and conclusive.

PART II

PROTECTION OF FISHERIES

Protection of fisheries.

12. (1) The provisions of this section shall have effect with respect to a right of several fishery granted in a Fishery Licence.

(2) All fish of a description to which a Fishery Licence applies in or on a bed or in a cage for such fish within the area of the fishery with respect to which the right of several fishery is granted shall be the absolute property of the licensee and in all Courts and for all purposes shall be deemed to be in the actual possession of the licensee.

(3) All fish as is referred to in the last preceding subsection removed by any person from a bed or cage for such fish within the area of the fishery with respect to which the right of several fishery is granted shall, unless sold or disposed of by or under the authority of the licensee, be the absolute property of the licensee and in all Courts and for all purposes the absolute right to the possession thereof shall be deemed to be in the licensee.

(4) Subject to the next succeeding subsections, if within the limits of the area of the fishery with respect to which the right of several fishery is granted or in any part of that area specified for the purposes of section 5 of this Ordinance in the Fishery Licence granted in respect thereof, any person other than the licensee or an agent or employee of his knowingly does any of the following things, namely—

(a) uses any implement of fishing except—

(i) a line and hook; or

(ii) a net adapted solely for catching floating fish and so used as not to disturb or injure in any manner fish of the description specified in the licence or any bed or cage thereof or the fishery thereof;

(b) dredges for any ballast or other substance except under a lawful authority for improving the navigation;

- (c) deposits any ballast, rubbish or other substance;
- (d) places any implement, apparatus or thing prejudicial or likely to be prejudicial to any such fish, bed, cage or fishery except for a lawful purpose of navigation or, in a case of emergency, anchorage;
- (e) disturbs or injures in any manner, except for a lawful purpose of navigation or, in a case of emergency, anchorage, any such fish, bed, cage or fishery;

he shall be guilty of an offence and liable, on conviction, to a fine not exceeding five hundred pounds and shall, in addition, be liable to make full compensation to the licensee for all damage sustained by him by reason of the unlawful act, and such compensation in default of payment may be recovered from him by the licensee as a civil debt whether he has been prosecuted for or convicted of the offence in question or not.

(5) Nothing in subsection (4) of this section shall make it unlawful for any person to do any of the things therein mentioned if at the time of his doing that thing the limits of the area of the fishery within which the right of several fishery is exercisable or of that part of that area specified for the purposes of section 5 of this Ordinance in the Fishery Licence granted in respect thereof are not sufficiently marked out in the manner prescribed in the order to which the licence relates.

Powers of officers of police and of authorised persons for the protection of fisheries.

13. (1) An officer of police may—
- (a) detain any person who has committed, or whom he has reasonable cause to suspect of having committed, an offence under section 12(4) of this Ordinance;

- (b) stop, board and enter and search any boat or vehicle reasonably suspected by him of being used in the taking or conveying of any fish and search for and examine any fish, any equipment or other apparatus whatsoever used in the taking or conveying of any fish, in any place, whether on board a boat, in a vehicle or elsewhere, and whether in a receptacle or not;
- (c) seize any fish which he has reasonable cause to suspect has been taken in contravention of section 11(4) of this Ordinance;
- (d) seize any equipment or other apparatus whatsoever which he has reasonable cause to suspect has been used or is being used in contravention of section 11(4) of this Ordinance.

(2) The powers conferred in the last preceding subsection may be exercised by any person authorised in that behalf by the Committee, on production of his authority if so required.

PART III

GENERAL AND MISCELLANEOUS PROVISIONS

14. (1) Nothing in this Ordinance shall affect pre-judicially any estate, right, power, privilege or exemption with respect to any portion of the sea shore which belongs to Her Majesty in right of the Crown, and in particular nothing contained in any Fisheries Licence shall authorise the licensee to take, use or in any manner interfere with any portion of the sea shore or any rights of whatever description belong- Saving for
rights of
the Crown.

ing to Her Majesty in right of the Crown except with the appropriate consent given in that behalf on behalf of the Crown.

(2) Without prejudice to the provisions of subsection (1) of this section and in addition thereto and not in derogation thereof, an order under section 1 of this Ordinance shall not be made by the Committee and a licence under section 3 of this Ordinance shall not be granted by the Committee unless the Committee has, as regards the area of the sea shore to be designated or the fishery to be specified, as the case may be, satisfied Her Majesty's Receiver General that the making of the order or the grant of the licence, as the case may be, would not prejudicially affect any rights of the Crown in relation thereto and unless the Committee has received the written authorisation of Her Majesty's Receiver General to the making of that order or the grant of that licence, as the case may be.

Saving for
rights of
other
persons.

15. Nothing in this Ordinance and nothing contained in any Fisheries Licence shall take away or abridge any right on, to or over any portion of the sea shore, being a right enjoyed by any person under any enactment, or any Royal Charter, letters patent, prescription or immemorial usage, except with the consent of that person.

Saving for
enactments.

16. The provisions of this Ordinance shall not in any way affect the operation of any enactment for the time being in force in this Island except in so far as inconsistent with this Ordinance and the provisions of this Ordinance shall be in addition to, and not in derogation of, the provisions of any such other enactment.

17. Where a person has been convicted of an offence under this Ordinance involving the use of a boat, every person who, at the time of the commission of the offence, was on board such boat or was the master, the owner or the charterer (if any) of such boat, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

Offences involving the use of a boat.

18. Where an offence under this Ordinance which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any negligence on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Offences by bodies corporate.

19. (1) In this Ordinance, except where the context otherwise requires, the following expressions have the meanings respectively assigned to them, that is to say:—

Interpretation.

“bed”, in relation to a fishery, means any bed or ground which is used for the propagation, cultivation or storage of fish;

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

“cage”, in relation to a fishery, means any thing howsoever constructed and howsoever erected or placed in or on the sea shore or at sea by

which an area of the sea shore or sea is enclosed and which is used for the propagation, cultivation or storage of fish;

“the Committee” means the States Sea Fisheries Committee;

“the Court” means the Magistrate’s Court constituted under the Magistrate’s Court (Guernsey) Law, 1954(a);

“fish” means fish of any description and includes shellfish;

“fishery” means—

(a) in relation to an order under section 1 of this Ordinance, the area designated in that order;

(b) in relation to a Fishery Licence, the area to which that licence applies;

“Fishery Licence” has the meaning assigned to it in section 2 of this Ordinance and the expression “licence” shall be construed accordingly;

“hours of darkness” means the time between half an hour after sunset on any day and half an hour before sunrise on the day next following;

“this Island” means any of the Islands of Guernsey, Herm and Jethou and includes the islets and rocks and the territorial waters adjacent thereto;

“licensee” in relation to a Fishery Licence, means the person for the time being entitled to the right of several fishery under the licence;

(a) Ordres en Conseil Vol. XVI, p. 103; Vol. XVII, p. 218; No. XII of 1979; No. I of 1983; No. IV of 1984.

“officer of police” means a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey;

“right of several fishery” has the meaning assigned to it in section 2 of this Ordinance;

“the sea shore” has the meaning assigned to it in section 1 of this Ordinance;

“shellfish” includes crustaceans and molluscs of any kind and any spat or spawn of shellfish;

“vehicle” means a mechanically propelled vehicle intended or adapted for use on a public highway and includes a trailer drawn thereby, an animal drawn vehicle, a hand drawn vehicle, a bicycle and a tricycle;

“vessel” includes any ship or boat or any other description of vessel used in navigation.

(2) Any reference in this Ordinance to any other enactment shall, except where the context otherwise requires, be construed as including a reference to that enactment as amended, repealed or replaced, extended or applied by or under any other enactment including this Ordinance.

20. This Ordinance shall have effect in the Islands of Guernsey, Herm and Jethou. Extent.

21. This Ordinance may be cited as the Fishing (Licensing and Protection of Fisheries) Ordinance, 1987. Citation.

K. H. TOUGH,
Her Majesty's Greffier.