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Island of Alderney



Ordinance of the States IX 2003

Made 23rd July 2003

Came into operation 1st August 2003

THE SEA FISH LICENSING (ALDERNEY) ORDINANCE, 2003

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THE SEA FISH LICENSING (ALDERNEY) ORDINANCE, 2003

THE STATES OF ALDERNEY, in pursuance of their Resolution of the 23rd July, 2003, in exercise of the powers conferred on them by sections 1 and 4 of The European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994(a), and all other powers enabling them in that behalf, and for the purpose of implementing Council Regulation (EC) No. 3690/93 of the 20th December, 1993(b) and Council Regulation (EC) No. 2371/02 of the 20th December, 2002(c), hereby order:-

PART I

PROHIBITION OF UNLICENSED FISHING

Prohibition of fishing without a licence.

1. (1) Subject to subsection (2), fishing for any sea fish within the territorial seas adjacent to Alderney by British fishing boats is prohibited unless authorised by a licence granted by the States of Guernsey Sea Fisheris Committee ("the Committee") and for the time being in force.

(2) The prohibition in subsection (1) above shall not apply to fishing:-

- (a) for salmon and migratory trout;
- (b) by any vessel used wholly for the purpose of conveying persons wishing to fish for pleasure;
- (c) for common *eels* (*Anguilla anguilla*) by any vessel whose length is not more than 10 metres;
- (d) by any vessel whose length is not more than 10 metres and which does not have an engine to power the vessel.

General provisions as to licences.

2. (1) A licence shall be granted to the owner or charterer in respect of a named vessel and may authorise fishing generally or may confer limited authority by reference to, in particular:-

- (a) the area within which fishing is authorised;

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- (a) Order in Council No. III of 1994.
 - (b) The Regulation establishes a Community system laying down rules for the minimum information to be contained in fishing licences. See O.J. No. L 341, 31.12.93, p. 93.
 - (c) The Regulation concerns the conservation and sustainable exploitation of fisheries resources. See O.J. No. L358, 31.12.02, p. 59. The Regulation replaces Council Regulation (EEC) No. 3760/92 (O.J. No. L 389, 31.12.92, p. 1) establishing a Community system for fisheries and aquaculture.

- (b) the periods, times or particular voyages during which fishing is authorised;
- (c) the descriptions and quantities of fish which may be taken; or
- (d) the method of sea fishing.

(2) A licence may authorise fishing unconditionally or subject to such conditions as may appear to the Committee to be necessary or expedient for the regulation of sea fishing, and in particular a licence may contain conditions:-

- (a) as to the landing of fish or parts of fish taken under the authority of the licence (including specifying the ports at which the catch is to be landed); or
- (b) as to the use to which the fish taken may be put.

(3) The conditions subject to which a licence may be granted may differ as between different vessels or between vessels of different descriptions.

(4) The licensing powers conferred on the Committee by this Ordinance may be exercised so as to limit the number of fishing boats, or of any class of fishing boats, engaged in fishing in any area, or in fishing in any area for any description of fish, to such extent as may appear to the Committee to be necessary or expedient for the regulation of sea fishing.

(5) 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 Committee:-
 - (i) to be necessary or expedient for the regulation of sea fishing; or
 - (ii) to be appropriate in a case where there is an offence under this Ordinance.

(6) Where a condition of a licence prohibits fishing in a specified area for a specified description of sea fish, there shall be returned to the sea forthwith:-

- (a) any fish of that description taken on board a fishing boat in contravention of the condition; and
- (b) except so far as the condition otherwise provides, any fish of that description taken on board a fishing boat in that area in the course of fishing for sea fish of a different description;

but, where the condition applies only to fishing by a specified method or during a specified period or by boats of a specified description, paragraph (b) applies only if the fish are caught by that method, during that period or by a boat of that description.

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

Matters which may be taken into account.

3. In deciding whether or not to grant a licence the Committee may take into account any relevant factor, including (without limitation):-

- (a) the record of the applicant in fishing in the territorial seas adjacent to Alderney during the period from the 30th September, 1991 to the 30th September, 1992 (both dates inclusive);
- (b) whether the vessel in respect of which the application is made is registered under Part IV of the Merchant Shipping Act 1894(d) or Part II of the Merchant Shipping Act 1995(e) or was so registered during any particular period; and
- (c) the terms of any fisheries management agreement for the time being in force and made between:-
 - (i) the Committee of the one part; and
 - (ii) the Department for the Environment, Food and Rural Affairs, or the authorities of Jersey, the Isle of Man, Sark or Alderney, of the other part.

Provision of information.

4. The Committee may require the master, the owner and the charterer (if any) of a vessel named in a licence to provide the Committee with such information, in such form, as it may direct.

Regulations as to licences and charges for licences.

5. (1) The Committee may by regulation make provision as to:-

- (a) the manner in which a licence is to be granted or a variation, suspension or revocation effected;
- (b) the time when a licence or a variation, suspension or revocation shall have effect.

(2) Without prejudice to the generality of subsection (1), regulations thereunder may include provisions:-

(d) An Act of Parliament (1894 c.60).

(e) An Act of Parliament (1995 c.21).

- (a) for documents to be delivered, or notices given, to the nominees of persons to whom licences are granted;
 - (b) for documents or notices to be treated as delivered or given if they are posted or otherwise communicated in accordance with the regulations;
 - (c) for notices to be given by publication in newspapers;
 - (d) as to the transitional effects of variations.
- (3) The Committee may by regulation prescribe charges for the granting of a licence and may prescribe different charges in relation to different classes of licence.

(4) Regulations under this Ordinance:-

- (a) may make different provisions for different cases or classes of case;
- (b) may be amended or revoked by subsequent regulations thereunder; and
- (c) shall be laid before a meeting of the States as soon as possible after being made; and if at that or the next meeting the States resolve that the regulations be annulled, the regulations shall cease to have effect but without prejudice to anything done under them or to the making of new regulations.

PART II
BRITISH SEA-FISHERY OFFICERS

6. (1) For the purpose of enforcing the provisions of this Ordinance a British sea-fishery officer may exercise the powers conferred by subsections (2) to (4) in relation to:-

- (a) any British fishing boat within the territorial seas adjacent to Alderney;
- (b) any British fishing boat registered in Guernsey anywhere outside those seas.

(2) He may go on board the boat, with or without persons assigned to assist him in his duties, and may require the boat to stop and do anything else which will facilitate either the boarding of, or the disembarkation from, the boat.

(3) He may require the attendance of the master and other persons on board the boat and may make any examination and inquiry which appears to him to be necessary for the purpose mentioned in subsection (1) and, in particular:-

Powers of British sea-fishery officers for enforcement of Ordinance.

- (a) he may search for and examine, and may test, any equipment of the boat, including the satellite tracking device and the fishing gear, and may search for and examine any fish on the boat, and require persons on board the boat to do anything which appears to him to be necessary for facilitating such a search, examination or test;
- (b) he may require any person on board the boat to produce any document relating to the boat or the equipment of the boat, to any fishing operations or other operations ancillary thereto or to the persons on board which is in his custody or possession;
- (c) he may search the boat for any such document and may require any person on board the boat to do anything which appears to him to be necessary for facilitating the search;
- (d) he may inspect, take copies of and retain in his possession while he completes any search, examination, inspection and test provided for under this section, any such document produced to him or found on board;
- (e) without prejudice to paragraphs (c) and (d), he may require the master and any person for the time being in charge of the boat to render all such documents on a computer system or navigation system into a visible and legible form, including requiring any such document to be produced in a form in which it may be taken away; and
- (f) where the boat is one in relation to which he has reason to suspect that an offence under this Ordinance has been committed, he may seize and detain any such document produced to him or found on board for the purpose of enabling the document to be used as evidence in proceedings for the offence.,

but nothing in paragraph (f) shall permit any document required by law to be carried on board the boat to be seized and detained except while the boat is detained in a port.

(4) Where it appears to a British sea-fishery officer that an offence under this Ordinance has at any time been committed within the territorial seas adjacent to Alderney, the officer may:-

- (a) require the master of the boat in relation to which the offence was committed to take, or the officer may himself take, the boat and its

crew to the port which appears to him to be the nearest convenient port; and

- (b) detain or require the master to detain the boat in the port;

and where such an officer detains or requires the detention of a boat he shall serve on the master a notice in writing stating that the boat will be or is required to be detained until the notice is withdrawn by the service on the master of a further notice in writing signed by a British sea-fishery officer.

(5) The powers which may be exercised by a British sea-fishery officer under this Ordinance in respect of any fishing boat shall include power to:-

- (a) require any person on board the boat to produce:-
 - (i) any automatic recording equipment or transmitting equipment used in accordance with a condition included in a licence;
 - (ii) any record produced by means of such equipment, or partly by those means and partly by other means;
- (b) search the boat for any such equipment or record, and require any person on board the boat to do anything which appears to the officer to be necessary to facilitate the search;
- (c) examine and take copies of any such record;
- (d) seize and detain any such equipment or record for the purpose of enabling that equipment or record, or any record that may be produced by means of that equipment, to be used as evidence in proceedings for any offence;

but the powers arising by virtue of this subsection shall not permit anything which is required to be carried on board the boat by a condition included in a licence to be seized and detained except while the boat is detained in a port.

7. (1) A British sea-fishery officer may seize:-

- (a) any fish in respect of which an offence under this Ordinance has been or is being committed where the fish are on the fishing boat with or on which the offence was or is being committed or are in the ownership or custody of, or under the control of, the owner, the master or the charterer (if any) of the fishing boat; and

**Powers of entry,
search and
seizure.**

(b) any net or other fishing gear used in contravention of this Ordinance or any licence.

(2) A British sea-fishery officer or a person authorised in that behalf by the Committee in writing may, for the purpose of ascertaining whether an offence under this Ordinance has been committed:-

- (a) enter at any reasonable time any premises (other than a dwelling house) used for carrying on any business in connection with:-
 - (i) the operation of fishing boats or activities connected therewith or ancillary thereto; or
 - (ii) the treatment, storage or sale of sea fish;
- (b) require any person on the premises to produce any documents which are in his custody or possession relating to the catching, landing, sale or disposal of any sea fish; and
- (c) take copies of any such document;

and, if he has reason to suspect that an offence under this Ordinance has been committed, he may also:-

- (d) search the premises for any such document and require any person on the premises to do anything which appears to him to be necessary for facilitating the search; and
- (e) seize and detain any such document produced to him or found on the premises for the purpose of enabling the document to be used as evidence in proceedings in relation to the offence.

Exclusion of liability of British sea-fishery officers.

8. A British sea-fishery officer or a person authorised by the Committee under section 7(2) is not liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on him by this Ordinance if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

PART III
PROCEEDINGS, ETC

Penalties.

9. (1) Where a fishing boat is used in contravention of section 1(1), the master, the owner and the charterer (if any) are each guilty of an offence and liable:-

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding £50,000.

(2) Where a licence condition is contravened, the master, the owner and the charterer (if any) of the vessel named in the licence are each guilty of an offence and liable:-

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding level 5 on the Guernsey uniform scale.

(3) A person who fails without reasonable excuse to comply with a requirement imposed under section 4 is guilty of an offence and liable:-

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding level 5 on the Guernsey uniform scale.

(4) Where section 2(6) is contravened in the case of any fishing boat, the master, the owner and the charterer (if any) are each guilty of an offence and liable:-

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding level 5 on the Guernsey uniform scale.

(5) Any fine to which a person is liable under this section in respect of an offence shall be in addition to any other penalty (pecuniary or otherwise) to which he is liable in respect of that offence pursuant to the provisions of section 12.

10. A person who:-

- (a) fails without reasonable excuse to comply with a requirement imposed by, or to answer a question asked by, a British sea-fishery officer under this Ordinance;
- (b) prevents or attempts to prevent another person from complying with any such requirement or answering any such question;
- (c) assaults a British sea-fishery officer while exercising any power conferred by this Ordinance; or
- (d) wilfully obstructs a British sea-fishery officer in the exercise of any such power:-

shall be guilty of an offence and liable:-

- (i) on conviction on indictment, to a fine; or
- (ii) on summary conviction, to a fine not exceeding level 5 on the Guernsey uniform scale;

and in the case of an assault under paragraph (c) the offender,

Offences in relation to British sea-fishery officers.

shall, instead of or in addition to such a fine, be liable to imprisonment for a term not exceeding six months on summary conviction or two years on conviction on indictment.

False statements.

11. A person who, for the purpose of obtaining a licence or in purported compliance with a requirement imposed by or under this Ordinance:-

- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;
- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular;
- (c) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular; or
- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular;

shall be guilty of an offence and liable:-

- (i) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine, or to both;
- (ii) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the Guernsey uniform scale, or to both.

Supplementary provisions in relation to criminal proceedings

12. (1) Subject to the following provisions of this section, the court by or before which a person is convicted of an offence under section 9(1), 9(2) or 9(4) may:-

- (a) order that the owner or charterer (if any) of the vessel used to commit the offence or, as the case may be, the vessel named in the licence of which a condition is contravened, be disqualified for a specified period from holding a licence in respect of that vessel; and
- (b) order the forfeiture of any fish in respect of which the offence was committed and of any net or other fishing gear used in committing the offence.

(2) A person guilty of an offence under section 9(1), 9(2) or 9(4) shall, subject to subsection (3), be liable on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed.

(3) A person shall not be liable to a fine under subsection (2) in respect of an offence if, under subsection (1), the court orders the forfeiture of the fish in respect of which the offence was committed; and, where a fine is imposed under subsection (2) in respect of an offence, the court shall not have power under subsection (1) to order the forfeiture of the fish in respect of which the offence was committed.

(4) Subject to subsection (3), any fine to which a person is liable under subsection (2) in respect of an offence shall be in addition to any other penalty (pecuniary or otherwise) to which he is liable in respect of that offence under this Ordinance or any other enactment.

13. (1) Where an offence under this Ordinance is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

Offences committed by bodies corporate.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

14. Where a fine is imposed on the master, owner or charterer or a member of the crew of a fishing boat who is convicted of an offence under this Ordinance the court may by order authorise Her Majesty's Sheriff to seize, detain and sell the boat and its gear and catch for the purpose of levying the amount of the fine:-

Recovery of fines imposed on master, etc or crew.

PROVIDED THAT where the boat, gear and catch are within the jurisdiction of the Court of Alderney, the functions of Her Majesty's Sheriff under this section shall be exercisable by the Clerk of the Court of Alderney.

15. (1) In any civil or criminal proceedings a written statement purporting to be a report made by a British sea-fishery officer on matters ascertained in the course of exercising his powers under this Ordinance shall be admissible as evidence to the like extent as oral evidence to the like effect by that officer.

Evidence.

(2) Where automatic recording equipment:-

- (a) is used in accordance with a condition of a licence; or
- (b) is used to record information transmitted or derived from equipment used in accordance with such a condition;

any record produced by means of the automatic recording equipment, or partly by those and partly by other means, shall, in any proceedings for an offence under this Ordinance, be evidence of the matters appearing from the record.

(3) Subsection (1) and (2) are in addition to, and not in derogation from, any other enactment or rule of law relating to the reception or admissibility of documentary evidence.

Jurisdiction of court to try offences.

16. Proceedings for an offence under this Ordinance may be taken, and the offence may be treated as having been committed, in any place in the Bailiwick.

PART IV
APPEALS

Right of appeal to Royal Court

17. (1) A person aggrieved by a decision of the Committee:-

- (a) to refuse an application by him for a licence;
- (b) to vary, suspend or revoke his licence; or
- (c) to impose, vary or rescind any condition in respect of his licence;

may appeal to the Royal Court sitting as an Ordinary Court ("**the Royal Court**") against the decision.

(2) The grounds of an appeal under this section shall be:-

- (a) that the decision was ultra vires or that some other error of law has been made;
- (b) that a material error as to the facts has been made;
- (c) that there was a material procedural error; or
- (d) that there was some other material irregularity, including unreasonableness, bad faith or lack of proportionality.

(3) An appeal under this section shall be instituted:-

- (a) within a period of 28 days immediately following the date of the Committee's decision; and

(b) by summons served on the President of the Committee stating the grounds and material facts on which the appellant relies.

(4) The Committee may, where an appeal under this section has been instituted, apply to the Royal Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and upon hearing such an application the Royal Court may:-

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Royal Court may direct); or
- (b) make such other order as the Royal Court considers just;

and the provisions of this subsection are without prejudice to the inherent powers of the Royal Court or to the provisions or rule 36(2) of the Royal Court Civil Rules, 1989(f).

(5) On an appeal under this section the Royal Court may:-

- (a) set the decision of the Committee aside and, if the Royal Court considers it appropriate to do so, remit the matter to the Committee with such directions as the Royal Court thinks fit; or
- (b) confirm the decision, in whole or in part.

(6) On an appeal under this section against a decision described in subsection (1)(b) or (c), the Royal Court may, upon the application of the appellant, and on such terms as the Royal Court thinks just, order that the decision or any part of the decision shall not have effect pending the determination of the appeal.

(7) An appeal from a decision of the Royal Court made under this section shall lie to the Court of Appeal on a question of law.

PART V MISCELLANEOUS

18. (1) In this Ordinance, except where the context otherwise requires:-

Interpretation.

“**Bailiwick**” means the Bailiwick of Guernsey;

“**British fishing boat**” means a fishing boat which is:-

- (a) registered in the United Kingdom under Part II of the Merchant Shipping Act 1995(g);

(f) O.R.C. No. VII of 1989.

(g) An Act of Parliament (1995 c.21).

- (b) registered in accordance with the laws of any of the Channel Islands or the Isle of Man;
- (c) exempted from registration by regulations under section 373 of the Merchant Shipping Act 1894(h); or
- (d) British owned;

“British owned” means owned by a person who is (within the meaning of the Merchant Shipping Act 1894(i) as it has effect in the Bailiwick) a person qualified to own a British ship or owned by two or more persons any one of whom is a person so qualified;

“British sea-fishery officer” means a person who is, by virtue of section 7 of the Sea Fisheries Act 1968(j), a British sea-fisheries officer (including, for the avoidance of doubt, a person appointed as a British sea-fisheries officer in relation to the Bailiwick by the States of Guernsey Civil Service Board), and includes any person authorised by the General Services Committee for the purposes of section 5 of the Fishing (Alderney) (Amendment) Ordinance, 1980(k);

“Committee” means the States of Guernsey Sea Fisheries Committee;

“Contravention” includes failure to comply, and cognate expressions shall be construed accordingly;

“Department for the Environment, Food and Rural Affairs” means the Department of Her Majesty’s Government of that name and includes any other such department in which the functions of that Department as to matters of mutual interest to Her Majesty’s Government and the Bailiwick relating to fisheries are for the time being vested;

“Fisheries Monitoring Centre” means a fisheries monitoring centre established under article 3.7 of Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy(l);

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

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- (h) An Act of Parliament (1894 c.60).
 - (i) An Act of Parliament (1894 c.60).
 - (j) An Act of Parliament (1968 c.77); extended to the Bailiwick by United Kingdom S.I.’s 1973/1319 and 1989/2412.
 - (k) Ordinance of the States of Alderney No. 103.
 - (l) O.J. No. L 261, 20.10.93, p. 1.

“foreign fishing boat” means a fishing boat other than a British fishing boat;

“Guernsey uniform scale” means the uniform scale of fines for the time being in force under sections 1 of the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989(m);

“length”, in relation to a vessel, means the length calculated and measured in accordance with the rules specified in Article 2(1) of Council Regulation (EEC) No. 2930/86 defining characteristics for vessels(n);

“licence” means a licence granted by the Committee under section 1;

“master” includes, in relation to any vessel, the person for the time being in command or charge of the vessel;

“migratory trout” means trout which migrate to or from the sea;

“mile” means an international nautical mile of 1852 metres;

“required information” means data relating to:-

- (a) the fishing boat's identification;
- (b) the most recent geographical position of the fishing boat expressed in degrees and minutes of latitude and longitude within a margin of error of less than 500 metres and within a confidence interval of 99%; and
- (c) the date and time of the fixing of that position;

“Royal Court” means the Royal Court sitting as an Ordinary Court;

“satellite tracking device” means a device for sending required information to a Fisheries Monitoring Centre from a fishing boat via a satellite and land earth station;

“salmon” includes any fish of the salmon species;

“sea fish” means fish, whether fresh or cured, of any kind found in the sea, including shellfish, and any parts of any such fish;

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

“territorial seas adjacent to Alderney” means the seas extending to 3 miles from the baselines from which the breadth of the territorial seas adjacent to Alderney is measured; and this definition shall continue to have effect

(m) Ordres en Conseil Vol. XXXI, p. 278.

(n) O.J. No. L 274, 25.9.86, p. 1.

notwithstanding any extension of the limits of the territorial seas adjacent to the Bailiwick that may occur after the date of commencement of this Ordinance;

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

(2) In this Ordinance any reference to a logbook, declaration, document or required information includes, in addition to a logbook, declaration, document or required information in writing:-

- (a) any map, plan, graph or drawing;
- (b) any photograph;
- (c) any data, however reproduced, received by a Fisheries Monitoring Centre from a satellite tracking device;
- (d) any disc, tape, soundtrack or other device in which sounds or other data (not being visual aids) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
- (e) any film (including microfilm), negative, tape, disc or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom.

(3) Any reference in this Ordinance to an enactment or Regulation is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(4) The provisions of the Interpretation (Guernsey) Law, 1948(o) shall apply to the interpretation of this Ordinance.

Citation.

19. This Ordinance may be cited as the Sea Fish Licensing (Alderney) Ordinance, 2003.

Commencement.

20. (1) This Ordinance shall, subject to the provisions of subsection (2) come into force on the 1st August, 2003.

(2) Section 1 shall come into force on the same date as section 1 of the Sea Fish Licensing (Alderney) Ordinance, 2003.

(o) Ordres en Conseil Vol. XIII, p. 355.

D.V. JENKINS
Clerk of the States

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