

# ORDINANCE

## OF THE STATES OF DELIBERATION

ENTITLED

### **The Fishing Ordinance, 1997** \*

[CONSOLIDATED TEXT]

#### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* No. XXV of 1997 (Recueil d'Ordonnances Tome XXVII, p. 334); as amended by the: Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); Fishing (Amendment) Ordinance, 2022 (No. \*\* of 2022); European Union (Sea Fisheries, etc.) (Brexit) (Bailiwick of Guernsey) Regulations, 2020 (G.S.I. No. 163 of 2020). This Ordinance is applied, in part, to certain authorisations granted under the Fishing (Control of First Sale and Purchase) (Guernsey) Order, 2022 (G.S.I. No. 88 of 2022). See also the Police Force (Bailiwick of Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207).

# ORDINANCE OF THE STATES OF DELIBERATION

ENTITLED

## **The Fishing Ordinance, 1997**

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(Made on 1st August, 1997.)

## The Fishing Ordinance, 1997

**THE STATES**, in pursuance of their Resolution of the 30<sup>th</sup> day of October, 1996<sup>a</sup>, hereby order: –

### PART I

#### GENERAL PROVISIONS IN RELATION TO FISHING

##### **Prohibition of importation, etc. of certain fish.**

1. (1) No person shall land, import, export, take, buy, sell or have in his possession any fish which is of a prescribed species and which is of a size less than the minimum size prescribed in relation to that species.

(2) No person shall land, import, export, take, kill, injure, buy, sell or have in his possession any small cetacean or basking shark.

(3) A person who takes any fish, small cetacean or basking shark in contravention of subsection (1) or (2) shall return it to the sea forthwith.

[ (4) The Committee may by order regulate the import, export, taking, buying and selling of any fish which is of a prescribed species.]

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#### NOTES

*In section 1, subsection (4) was inserted by the Fishing (Amendment) Ordinance, 2022, section 2, with effect from 25th November, 2022.*

*The following case has referred to this Ordinance:*

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<sup>a</sup> Article VIII of Billet d'État No. XXIV of 1996.

*Jersey Fishermen's Association Limited et al v States of Guernsey* (2004) (Unreported, Royal Court, 29th June) (Guernsey Judgment No. 30/2004).

*The following Orders have been made under section 1:*

*Fishing (Minimum Size and Prescribed Species) Order, 1997;*  
*Fishing (Minimum Size and Prescribed Species) (Amendment) Order, 1999;*  
*Fishing (Minimum Size and Prescribed Species) (Amendment) (No. 2) Order, 2016;*  
*Fishing (Control of First Sale and Purchase) (Guernsey) Order, 2022.*

*In accordance with the provisions of the Fishing (Control of First Sale and Purchase) (Guernsey) Order, 2022, article 3(2), with effect from 30th January, 2021 and subject to the provisions of article 3(2)(a) and article 3(2)(b) of that Order, Part II of this Ordinance (save for sections 19 and 20) shall apply in respect of authorisations granted under that article as if an authorisation were a licence.*

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**Prohibition of exportation of fish.**

2. (1) No person shall export any fish except under the authority of and in accordance with the conditions of a licence of the Committee.

(2) The Committee shall not grant a licence under subsection (1) in respect of any fish of a prescribed species.

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**NOTE**

*The following Order has been made under section 2:*

*Fishing (Minimum Size and Prescribed Species) Order, 1997.*

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**Close season for ormers.**

3. (1) No person shall take any ormer except on a permitted day.

(2) No person shall buy, sell or have in his possession any ormer except –

- (a) on a permitted day, or
- (b) on the first or second day of May, or on the third or fourth day immediately following a permitted day described in subsection (3)(a), provided in each case that he can prove that the ormer was taken on a permitted day.

(3) For the purposes of this section, a "**permitted day**" is any of the following falling in the period from 1<sup>st</sup> January to 30<sup>th</sup> April in any year –

- (a) the day of each new moon and of each full moon, and
- (b) the two days immediately following those days.

[ (3A) Notwithstanding anything in this section, a person shall not take ormers at any time between the hours of sunset and sunrise.]

(4) This section does not apply to preserved ormers.

(5) Where a person is charged with an offence under this section, the burden of showing that the ormer in question was not taken, bought, sold or possessed in contravention of this section shall lie on him.

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**NOTE**

*In section 3, subsection (3A) was inserted by the Fishing (Amendment) Ordinance, 2022, section 3, with effect from 25th November, 2022.*

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**Prohibition of certain types of net, etc.**

4. No person shall carry or use in territorial waters any net, pot, line or other gear, device or equipment designed or adapted for use in connection with fishing which is of a prescribed description.

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**NOTE**

*The following Orders have been made under section 4:*

*Fishing (Restrictions on the Use of Trot Line and Set Net) Order, 1997;*  
*Restricted Fishing Areas Order, 1997.*

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**Restriction on trawling in certain boats.**

5. (1) No person shall, in territorial waters, for the purpose of fishing by any method of trawling or dredging, use or cause or permit to be used a boat –

- (a) the overall length of which exceeds 18 metres, or
- (b) the engine power of which exceeds 224 kilowatts or 300 horse power.

(2) In this section, "**engine power**" means the total maximum continuous power which can be obtained at the flywheel of each engine and which can, by mechanical, electrical, hydraulic or other means, be applied to vessel propulsion, with no deduction being made in respect of auxiliary machines driven by the engine, and, where a gearbox is incorporated into the engine, the power shall be measured at the gearbox output flange.

(3) For the purposes of subsection (2), the "**continuous engine power**" shall be determined in accordance with the requirements adopted by the International Organization for Standardization in its recommended International Standard ISO 3046/1, second edition, October 1981.

**Prohibited fishing areas.**

6. (1) The Committee may by order –
- (a) designate any area within controlled waters to be used for experimental purposes in relation to fish,
  - (b) prohibit or restrict the taking within controlled waters of any fish, aquatic animal or plant, or of any fish, aquatic animal or plant of a prescribed species,
  - (c) prohibit or restrict the taking within controlled waters of any fish, aquatic animal or plant, or of any fish, aquatic animal or plant of a prescribed species, by any prescribed method,
  - (d) prohibit the taking within controlled waters of any fish bearing a prescribed mark or tag.

(2) For the purposes of this section, "**controlled waters**" means any area of the sea which is within territorial waters and the boundaries of which are

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- (a) determined by the Committee, and
- (b) marked on a map of the territorial waters kept by the Committee for the purposes of this section.

(3) A copy of the map, marked with the boundaries of the controlled waters, shall be deposited at the Greffe for public inspection.

(4) The map and the copy thereof shall, for the purposes of identification, be signed by the President.

(5) The Committee may at any time determine that the boundaries of any area of controlled waters shall be modified or that any area of the sea within territorial waters shall become or shall cease to be an area of controlled waters.

(6) No such determination is valid until –

(a) the map and the copy thereof are altered accordingly,  
and

(b) the alterations are signed as mentioned in subsection (4),

and the Committee shall also publish notice in *La Gazette Officielle* that it has made such alterations (although a failure to do so shall not invalidate them).

(7) The Committee may determine that an area of the sea within territorial waters shall be an area of controlled waters only between certain dates of the year; and in that case the dates shall be shown on a written statement which may be amended from time to time.

(8) The written statement and any amendment thereof –

(a) shall identify the area of controlled waters in question,

(b) shall be signed by the President, and

(c) shall be appended to the map and the copy thereof.

(9) The map and the copy thereof, and any statement or amendment thereof appended to them pursuant to subsection (8), shall be admissible in evidence as a public document in any legal proceedings; and the boundaries of the controlled waters marked on the map and the copy thereof, and the dates shown on the statement or amendment thereof, shall without further proof be deemed to be the boundaries and the dates duly determined by the Committee under subsections (2)(a), (5) or (7), as the case may be.

(10) The President shall, when signing any document under this section, append the date of signature.

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**NOTES**

*The following Order has been made under section 6:*

*Restricted Fishing Areas Order, 1997.*

*The following Order has effect as if made under section 6:*

*Fishing (Prohibited Area) (Revocation) Order, 1975.*

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**Restrictions on use of trot lines and set nets.**

7. No person shall use, set or place any trot line or set net within territorial waters or on the foreshore except in such place, during such period, in such manner and subject to such conditions as may be prescribed.

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**NOTE**

*The following Order has been made under section 7:*

*Fishing (Restrictions on the Use of Trot Line and Set Net) Order, 1997.*

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**Certain fish not to be landed, sold or retained.**

8. No person shall land, sell or have in his possession any fish taken by fishing in contravention of section 4, 5, 6 or 7.

**Prohibition of diving for crawfish and ormers.**

9. (1) No person shall, within territorial waters, take by diving any crawfish or ormer.

(2) In proceedings for a contravention of subsection (1) –

- (a) any crawfish or ormer found in the possession or control of a person using a boat as a base for diving shall be deemed to have been taken by diving,
- (b) any diver in the water using a boat which is within territorial waters as a base for diving shall himself be deemed to be diving within territorial waters,
- (c) where a person is found within territorial waters in possession or control of any crawfish or ormer, it shall be for him to prove that the crawfish or ormer was not taken by diving within territorial waters,
- (d) where any crawfish or ormer is found in the possession or control of a person using a boat as a base for diving and the boat is within territorial waters, it shall be for him to prove that the crawfish or ormer was not taken within territorial waters.

**Restrictions on shucking of shellfish.**

10. (1) No person shall –

- (a) subject to subsection (2), shuck on board any boat any molluscan shellfish taken within territorial waters,
- (b) land any molluscan shellfish shucked in contravention of paragraph (a).

(2) No offence is committed under subsection (1)(a) if the person charged can prove that he shucked the shellfish for immediate consumption on board the boat by himself or by another.

(3) Where a person is charged with an offence under subsection (1), it shall be for him to prove that the molluscan shellfish in question was not taken within territorial waters.

**Damaged shellfish.**

**11.** (1) Subject to subsection (2), no person shall retain on board any boat, land or have in his possession any molluscan shellfish which, by reason of damage to its shell –

- (a) is smaller than the minimum size prescribed for that species, or
- (b) cannot properly be measured by the prescribed method.

(2) No offence is committed under subsection (1) if the body of the molluscan shellfish remains properly attached to its shell and, despite the damage to its shell, its overall size is greater than the minimum size prescribed for that species.

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**NOTE**

*The following Orders have been made under section 11:*

*Fishing (Minimum Size and Prescribed Species) Order, 1997;*  
*Fishing (Minimum Size and Prescribed Species) (Amendment)*  
*Order, 1999;*  
*Fishing (Minimum Size and Prescribed Species) (Amendment) (No.*  
*2) Order, 2016.*

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**Restriction on landing and sale of lobster tails, etc.**

12. No person shall –

- (a) land the tail of any lobster or crawfish or the claw of any lobster, edible crab or spinous spider crab, being a tail or claw separated from the animal,
- (b) sell any such tail or claw, unless in the form of a processed product designated and approved by licence of the Committee.

**Control of deposit of aquatic animals, etc.**

13. (1) No person shall, except under the authority of and in accordance with the conditions of a licence of the Committee, deposit within territorial waters or on the foreshore any type of aquatic animal or plant (freshwater or seawater).

(2) Without prejudice to the provisions of section 19, the Committee may refuse a licence under subsection (1), or grant such a licence subject to conditions, if satisfied that it is necessary or expedient to do so for the purpose of preventing the introduction or spread of disease or pests in such animals or plants.

(3) For the purposes of subsection (1), a person shall be deemed to have deposited an animal or plant –

- (a) within territorial waters, if he causes the animal or plant

to enter those waters,

- (b) on the foreshore, if he throws down, drops or discharges the animal or plant on the foreshore.

**Control of discharge of effluent water.**

**14.** No person shall, within territorial waters or on the foreshore, discharge any effluent water in which aquatic animals or plants (freshwater or seawater) have been placed or kept, except under the authority of and in accordance with the conditions of a licence of the Committee.

**Control of importation to prevent spread of disease.**

**15.** (1) The Committee may, if satisfied that it is necessary or expedient to do so for the purpose of preventing the introduction or spread of disease or pests in fish, by order prohibit the importation from any prescribed country of –

- (a) any prescribed species of aquatic animal or plant (whether freshwater or seawater, and whether dead or alive), and
- (b) the eggs of any prescribed species of aquatic animal.

(2) An order under subsection (1) may prohibit importation absolutely, conditionally or otherwise than under the authority of and in accordance with the conditions of a licence of the Committee under this section.

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**NOTES**

*The following Order has been made under section 15:*

*Fishing (Prohibition of Importation of Ormers) Order, 1999.*

*The following Order has effect as if made under section 15:*

*Fishing (Prohibition on the Importation of Molluscan Shellfish)  
Order, 1987.*

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**Control of landing for reasons of conservation.**

16. The Committee may, if satisfied that it is necessary or expedient to do so for the purpose of securing compliance with any enforceable Community obligation or restriction relating to sea fishing in force within [Bailiwick fishery limits], by order prohibit the landing of any prescribed species of fish, either generally or from a prescribed country.

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**NOTE**

*In section 16, the words in square brackets were substituted by the European Union (Sea Fisheries, etc.) (Brexit) (Bailiwick of Guernsey) Regulations, 2020, regulation 8(d), with effect from 11 p.m. on 31st December, 2020.*

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**Access to, and fishing in, territorial waters.**

17. (1) Subject to subsection (4), a foreign fishing boat –
- (a) shall not fish or attempt to fish within territorial waters,
  - (b) shall not enter territorial waters except for a purpose recognised by international law or by a convention in force in the Islands between Her Majesty's Government in the United Kingdom and the government of the country to which the boat belongs.
- (2) A boat which enters territorial waters for a purpose referred to in subsection (1)(b) –
- (a) shall leave those waters as soon as the purpose has been

fulfilled, and

(b) shall not fish or attempt to fish when within those waters.

(3) Subject to subsection (4), when a foreign fishing boat is within territorial waters, its fishing gear shall be stowed securely and in such a manner that it is not capable of being used for fishing.

(4) Nothing in this section shall affect the operation of an order under section 2(1) of the Fishery Limits Act 1976<sup>b</sup> designating a country and the areas in which, and the descriptions of fish for which, boats registered in that country may fish.

## PART II

### GENERAL PROVISIONS IN RELATION TO LICENCES

#### **Licences.**

**18.** (1) A person wishing to obtain the grant, renewal or variation of a licence under this Ordinance or any order made under it shall apply in that behalf to the Committee.

(2) The application shall contain details of the licence in respect of which the application is made and shall be in such form and accompanied by such information as the Committee may require.

(3) Upon receipt of an application, the Committee may –

(a) grant the application,

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<sup>b</sup> An Act of Parliament (1976 c. 86).

- (b) refuse the application, or
- (c) grant the application subject to –
  - (i) the imposition of such conditions as the Committee may consider necessary or expedient,
  - (ii) the payment of such fee as the Committee may by order prescribe in relation to licences of the type in respect of which the application is made.

(4) A person who holds a licence or in respect of whom a licence has been granted shall comply with the conditions thereof in all respects.

(5) The Committee may at any time grant, renew, suspend, revoke or vary a licence or any condition thereof.

- (6) A licence –
- (a) may be granted to any person or class of person or to persons in general,
  - (b) may be limited or unlimited in time, and
  - (c) may be granted in respect of a named vessel.

**Matters to be taken into account by Committee.**

**19.** In the exercise of its powers under section 18, the Committee may make such decisions as appear to it to be necessary or expedient for the regulation of

fishing in the Islands, and the Committee may, in making any such decision, take into account –

- (a) the welfare of the fishing industry in the Islands and of the persons engaged in it,
- (b) any offence (whether under this Ordinance or any other legislation in force in the Islands relating to fishing) of which the applicant has been convicted,
- (c) any provision of the Community Treaties or of any Community instrument (within the meaning of section 1(1) of the European Communities (Bailiwick of Guernsey) Law, 1973, as amended<sup>c</sup>) which, in the opinion of the Committee, it is necessary or desirable to implement in the Islands, and
- (d) any other factor reasonably considered by the Committee to be relevant to the application.

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**NOTE**

*The European Communities (Bailiwick of Guernsey) Law, 1973 has since been repealed by the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018, section 1, with effect from 11 p.m. on 31st December, 2020, subject to the saving in section 2 of the 2018 Law.*

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**Returns as to exports of fish.**

20. (1) A person who –

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<sup>c</sup> Ordres en Conseil Vol. XXIV, p. 87; Vol. XXVII, p. 242; Vol. XXIX, pp. 127 and 419; Ordinance No. XIX of 1994.

- (a) obtains a licence under section 2 for the export of fish,  
or
- (b) is the master, owner or charterer of a fishing boat registered in Guernsey from which a consignment of fish is landed in any place outside the Islands,

shall furnish to the Chief Officer of Customs and Excise a written return in such form and containing such information relating to the consignment as the Committee and the said Chief Officer may require.

(2) The requirement contained in subsection (1) shall be complied with –

- (a) in the case of a person mentioned in subsection (1)(a), before the consignment to which the licence relates is loaded onto a ship or aircraft for the purpose of being exported,
- (b) in the case of a person mentioned in subsection (1)(b), within 5 days of the boat's return to the Islands.

**Notice of refusal, etc. of licence.**

21. Where, pursuant to section 18, the Committee refuses an application, or grants an application subject to the imposition of conditions, or suspends, revokes or varies any licence or condition of a licence, notice of the decision, signed by the President and stating the reasons for the decision, shall be served on the applicant or holder (as the case may be) as soon as possible.

**Service of notices.**

**22.** (1) Any notice or document to be served for the purposes of this Ordinance or of any order made under it may be served –

- (a) on an individual, by being delivered to him, or by being left at, or sent by registered post or recorded delivery service to, his usual or last known place of abode,
- (b) on a body corporate with a registered office in the Islands, by being left at, or sent by registered post or recorded delivery service to, the registered office,
- (c) on a body corporate without a registered office in the Islands, by being left at, or sent by registered post or recorded delivery service to, the body's principal or last known principal place of business in the Islands,
- (d) on an unincorporated body, by being served on any partner, manager or other similar officer thereof in accordance with paragraph (a), or by being left at, or sent by registered post or recorded delivery service to, the body's principal or last known principal place of business in the Islands,
- (e) on [the President] or Committee, by being left at, or sent by registered post or recorded delivery service to, the Committee's office.

(2) If a notice or document cannot be served in accordance with subsection (1), it may be served by being published on two occasions in La Gazette Officielle.

(3) Subsections (1) and (2) are without prejudice to any other lawful method of service.

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**NOTE**

*In section 22, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(a), with effect from 1st May, 2016.<sup>1</sup>*

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**Forfeiture of licences.**

**23.** (1) Where a person who holds a licence under this Ordinance or any order made under it is convicted of an offence under this Ordinance, the Committee may determine, within 6 months of the date of conviction, that the licence should be suspended, varied or revoked.

(2) In exercising its powers under this section the Committee shall take into account the factors specified in section 19.

(3) Where the Committee determines that a licence should be suspended, varied or revoked under this section, it shall as soon as possible serve notice of such determination, stating the reasons therefor, on the holder of the licence.

**Appeals.**

**24.** (1) A person aggrieved by a decision of the Committee under section 18 or 23 may, within 28 days of the date of service upon him of notice of the decision, appeal therefrom to the Ordinary Court.

(2) The grounds of the appeal shall be that the decision was ultra vires or unreasonable.

(3) The appeal shall be instituted by way of summons served on the President.

(4) The summons shall set out the material facts upon which the appellant relies.

(5) On an appeal under this section, the Ordinary Court may set the decision aside or confirm it, with or without modification.

(6) The decision of the Ordinary Court on an appeal under this section (other than a decision on a question of law) is final.

**Production of licences.**

**25.** (1) An officer of police, and a person authorised in writing in that behalf by the Committee, may require any person whom he reasonably suspects of having done any act which is prohibited by any provision of this Ordinance or any order made under it unless done under the authority of a licence –

(a) to give his name and address, and

(b) to state whether he holds a licence and, if so, to produce it within 7 days at the police station.

(2) A person of whom a requirement is made under subsection (1) shall comply with the requirement in all respects.

PART III  
GENERAL PROVISIONS

**Orders of the Committee.**

**26.** (1) An order of the Committee under this Ordinance –

(a) may be amended or repealed by a subsequent order

hereunder,

- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to the Committee to be necessary or expedient,
- (c) shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul it, cease to have effect, but without prejudice to anything done under it or to the making of a new order.

(2) Any power conferred upon the Committee by this Ordinance to make an order may be exercised –

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised –
  - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
  - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

- (iii) any such provision either unconditionally or subject to any prescribed conditions.

**Powers of search, seizure, etc.**

27. An officer of police, and a person authorised in writing in that behalf by the Committee, may –

- (a) stop, board, enter and search any boat or vehicle used or suspected of being used in the taking or conveying of fish,
- (b) enter and search any premises used or suspected of being used by way of trade for the carrying on of a business in connection with the treatment, storage or sale of fish,
- (c) search for and examine –
  - (i) any net, explosive, equipment or other apparatus whatsoever used or suspected of being used in the taking or conveying of fish,
  - (ii) any animal, plant or other thing in relation to which any act is prohibited or regulated by any provision of this Ordinance or of any order or licence made or granted under this Ordinance,

in any place, boat or vehicle, and whether in a receptacle or not,

- (d) seize any animal, plant, net, explosive, equipment or other apparatus whatsoever in relation to which he reasonably suspects an offence under this Ordinance to have been committed.

**Powers of arrest.**

28. An officer of police may arrest and detain without warrant any person whom he reasonably suspects of having committed an offence under this Ordinance.

**Authorised persons to produce authority.**

29. A person authorised by the Committee to exercise the powers conferred by sections 25 and 27 shall, when exercising those powers and upon request, produce evidence of his authority.

**Offences.**

30. (1) A person who –
- (a) contravenes any provision of this Ordinance or of any order or licence made or granted under this Ordinance,
  - (b) in connection with an application for the grant, renewal or variation of a licence under this Ordinance or any order made under it, or in purported compliance with section 21(1) –
    - (i) makes a statement which he knows or believes to be false in a material particular,
    - (ii) recklessly makes a statement which is false in a material particular,

- (iii) produces, furnishes, causes or permits to be produced or furnished, any information which he knows or believes to be false in a material particular, or
  - (iv) recklessly produces, furnishes, causes or permits to be produced or furnished, any information which is false in a material particular,
- (c) without reasonable excuse, proof whereof shall lie on him, obstructs or fails to give all reasonable assistance to an officer of police or a person authorised by the Committee in the exercise or purported exercise of their powers under this Ordinance,

is guilty of an offence.

(2) A person guilty of an offence by virtue of subsection (1) is liable –

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months, or to both,
- (b) on conviction on indictment, to a fine not exceeding twice level 5 on the uniform scale, to imprisonment for a term not exceeding 6 months, or to both,

and the court convicting him may, in addition to imposing any such penalty, order the forfeiture, destruction or other disposal of any animal, plant, net, explosive, boat, equipment or other apparatus in relation to which or by means of which the offence

was committed or which was used in the commission of the offence.

**Offences involving use of boat.**

31. Where a person is convicted of an offence under this Ordinance involving the use of a boat, the master, owner and charterer (if any) of the boat at the time of the commission of the offence, and any person on board the boat at that time, shall be deemed to be guilty of the offence unless he can prove –

- (a) that the offence was committed without his knowledge,  
or
- (b) that he exercised all due diligence to avoid the commission of the offence.

**Offences due to default of another.**

32. Where the commission by any person of an offence under this Ordinance is due to the act or default of another, the latter is guilty of the offence and may be proceeded against and punished accordingly, whether or not proceedings are taken against the former.

**Offences by bodies corporate.**

33. (1) Where an offence under this Ordinance committed by a body corporate 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.

(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.

**Interpretation.**

34. (1) In this Ordinance, except where the context otherwise requires

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**"basking shark"** means a shark of the species *Cetorhinus maximus*,

**"boat"** means any description of boat used in navigation, of whatever size and in whatever way propelled,

**"the Committee"** means the States [Committee for Economic Development],

**"contravention"** includes failure to comply, and cognate expressions shall be construed accordingly,

**"fish"** means fish of any kind, whether dead or alive, and includes shellfish and any part of a fish,

**"foreign fishing boat"** means a boat which is not –

- (a) registered in the United Kingdom, Channel Islands or Isle of Man,
- (b) exempted from registration by regulations under section 373 of the Merchant Shipping Act 1894<sup>d</sup>,
- (c) owned wholly by a person who is (within the meaning of that Act) qualified to own a British ship,

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<sup>d</sup> An Act of Parliament (57 & 58 Vict. c. 60).

**"foreshore"** means the foreshores of the Islands, being the shores and bed of the sea and every channel, creek and bay as far up as the tide flows,

**"the Islands"** means the Islands of Guernsey, Herm and Jethou and includes the islets and rocks adjacent to them and the territorial waters,

**"molluscan shellfish"** means molluscan shellfish of any species, whether dead or alive, any part of a molluscan shellfish and any, or any part of any, shell, brood, ware, half-ware, spat or spawn of a molluscan shellfish,

**"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,

**"Ordinary Court"** means the Royal Court of Guernsey sitting as an Ordinary Court,

**"prescribed"** means prescribed by order of the Committee,

**"[the President]"** means the [the President] of the Committee,

**"preserved ormers"** means ormers which have been cooked or pickled and not deep-frozen,

**"sell"** includes expose or offer for sale,

**"set net"** means (subject to the provisions of any order of the Committee assigning a different meaning to the expression) a net used for catching fish held in place by anchors, pegs or stakes or by any other means whatsoever,

**"shellfish"** means crustaceans and molluscs of any species and any spat or spawn of shellfish,

**"shuck"** means to remove the flesh or any part thereof from the shell of a molluscan shellfish, and **"shucks"**, **"shucked"** and **"shucking"** shall be construed accordingly,

**"small cetacean"** means any species, sub-species or population of toothed whales *Odontoceti* other than the sperm whale *Physeter macrocephalus*,

**"take by diving"** means to take when totally or partially submerged and either breathing with the aid of submarine breathing apparatus (including a snorkel and any other diving device whatsoever) or wearing a diving suit, face visor, mask or goggles: and cognate expressions shall be construed accordingly,

**"territorial waters"** means the territorial waters adjacent to the Islands,

**"trot line"** means (subject to the provisions of any order of the Committee assigning a different meaning to the expression) a line used for fishing with hooks attached to it and held in place by anchors, pegs or stakes or by any other means whatsoever,

**"vehicle"** includes a mechanically propelled vehicle intended or adapted for use on a public highway (including a trailer drawn thereby), a vehicle drawn by animal or hand, a bicycle or a tricycle.

(2) Any reference in this Ordinance to an enactment is a reference

thereto as amended, re-enacted, extended or applied.

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**NOTES**

*In section 34, the words in square brackets in the definitions of the expressions "the Committee" and "the President" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(a), with effect from 1st May, 2016.<sup>2</sup>*

*The functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Committee for Economic Development and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.<sup>3</sup>*

*In accordance with the provisions of the Police Force (Bailiwick of Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.*

*Section 373 of the Merchant Shipping Act 1894, as it applies to the Bailiwick of Guernsey, has since been repealed by the Merchant Shipping (Bailiwick of Guernsey) Law, 2002, section 296, Schedule 10, Part I, with effect from 1st February, 2009, subject to, first, the savings and transitional provisions in section 296 of, and paragraph 1 of Schedule 11 to, the 2002 Law and, second, the savings in section 4 of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (Commencement) Ordinance, 2009.*

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**Exemptions.**

35. Nothing in this Ordinance or in any order made under it (unless expressly provided otherwise) applies to –

- (a) a member, officer, servant or agent of the Committee when acting for and on behalf of the Committee,
- (b) any of the following acts when done under the authority

of and in accordance with the conditions of a licence of the Committee –

- (i) any act done for the purpose of scientific investigation or restocking territorial waters,
- (ii) the taking and possession of fish for use for propagation or cultivation under artificial conditions, or
- (iii) the possession, sale, purchase or export of fish propagated or cultivated under artificial conditions in accordance with sub-paragraph (ii).

**Repeals and savings.**

36. (1) The Fishing Ordinance, 1988<sup>e</sup>, the Fishing (Amendment) (No. 2) Ordinance, 1988<sup>f</sup> and the Fishing (Amendment) Ordinance, 1990<sup>g</sup> are repealed.

(2) Any order, licence, permit or direction made or given under the Fishing Ordinance, 1988, as amended, and in force immediately before the commencement of this Ordinance shall, if it could have been validly made or given under a provision of this Ordinance or of any order made under it, have effect as if made or given under that provision.

**Extent.**

37. This Ordinance shall have effect in the Islands and in the territorial

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<sup>e</sup> Recueil d'Ordonnances Tome XXIV, p. 382.

<sup>f</sup> Recueil d'Ordonnances Tome XXIV, p. 478.

<sup>g</sup> Recueil d'Ordonnances Tome XXV, p. 171.

waters.

**Citation.**

38. This Ordinance may be cited as the Fishing Ordinance, 1997.

**Commencement.**

39. This Ordinance shall come into force on the 1<sup>st</sup> August, 1997.

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**1** These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 25, with effect from 6th May, 2004.

**2** These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 25, with effect from 6th May, 2004.

**3** The functions, rights and liabilities of the Commerce and Employment Department and its Minister arising under or by virtue of this Ordinance were previously transferred to and vested in them, respectively, from the Sea Fisheries Committee and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 25, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.