

THE BRITISH INDIAN OCEAN TERRITORY.

**THE FISHERIES (CONSERVATION AND
MANAGEMENT) ORDINANCE 2007 AMENDMENT
ORDINANCE 2013**

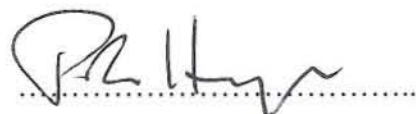
Ordinance No. 1 of 2013

An Ordinance to amend the Fisheries (Conservation and Management)
Ordinance of 2007

Arrangement of sections.		
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Enacted by the Commissioner for the British Indian Ocean Territory

25th October 2013



Peter Hayes
Commissioner

THE BRITISH INDIAN OCEAN TERRITORY

Ordinance No. 1 of 2013

Citation and commencement.	1. This Ordinance may be cited as the Fisheries (Conservation and Management) Ordinance 2007 Amendment Ordinance 2013 and shall come into force forthwith.
Definitions	2. “The Principal Ordinance” means the Fisheries (Conservation and Management) Ordinance 2007.
Amendment of section 2. (1) of the Principal Ordinance	3. In sub-section 2. (1) of the Principal Ordinance before “the Director” there shall be inserted: “commercial fishing boat” means any fishing boat as defined in subsection 2. (2) which is adapted, used, or intended to be used to catch fish for sale, or which is used to support any such fishing related activities.”
Amendment of section 19. (1) of the Principal Ordinance	4. Sub-section 19. (1) of the Principal Ordinance is replaced by the following: 19. (1) Where, on any occasion, a Fisheries Protection Officer finds a person whom he has reason to believe is committing or has on that occasion committed an offence under this Ordinance or under any regulations made under section 21, he may give that person a fixed penalty notice in respect of that offence, save that where that offence relates to fishing from a commercial fishing boat. The Fisheries Protection Officer shall not give that person a fixed penalty notice in respect of that offence without first reporting the matter, if necessary by radio or telephone, to a Magistrate and being instructed by that Magistrate to issue a fixed penalty notice for the offence.
Amendment of section 19. (4) of the Principal Ordinance	5. Sub-section 19. (4) of the Principal Ordinance is replaced by the following: “(4) The fixed penalty for an offence is - (a) £10,000 for an offence relating to fishing from a commercial fishing boat, (b) £5000 for an offence relating to fishing from any other fishing boat, and (c) £200 for an offence relating to a person fishing other than from a fishing boat or relating to a person fishing from a fishing boat based in and operating out of Diego Garcia in circumstances where the persons fishing from that boat have paid, or have contracted to pay, for the right to do so or to be on board the boat; or (d) one-half of the maximum fine to which a person

committing any other offence would be liable on conviction of that offence by the Magistrates' Court, whichever is the less"

Amendment of
section 19. (5)
of the Principal
Ordinance

6. Sub-section 19. (5) of the Principal Ordinance is replaced by the following:

“(5)(a) Where a fixed penalty notice has been given to a person no proceedings may be brought against him for the offence if he has forthwith paid the penalty to the Fisheries Protection Officer.

(b) “forthwith” in this section includes payment by bank transfer to the Commissioner’s bank account for the Territory, and whenever a fixed penalty notice has been issued in relation to the activities of a commercial fishing boat means payment to that bank account within 21 days of the date of issue of a fixed penalty notice..

(c) (i) In addition to being liable for the payment of the fixed penalty, the person to whom a fixed penalty notice has been issued shall also surrender to the Fisheries Protection Officer all fishing gear and fish on the fishing boat for destruction or other disposal at the discretion of the Commissioner, save that in the case of a fixed penalty notice being issued in respect of the activities of a commercial fishing boat. The Magistrate shall direct how the fishing gear and fish on the fishing boat are to be destroyed or otherwise disposed of.

(ii) Whenever the Master of a commercial fishing boat is required to surrender all fishing gear and fish on the fishing boat he and his crew shall surrender or destroy the gear and fish in such manner as is directed by the Fisheries Protection Officer as he is directed by the Magistrate.

(d) If the Master of a commercial fishing boat is unable to make payment of the fixed penalty immediately upon the issue of a fixed penalty notice, the Fisheries Protection Officer:

(i) shall take the suspected offender and take, or require the master to take, the boat (together with the crew and any other person on board) to such place within the Territory as he may appoint, and he shall then bring the suspected offender before a competent court; and, subject to section 13 and to any order made by the court, he may cause the suspected offender, the master, the crew and any other such person as aforesaid, and also the boat, to be detained in the Territory until the suspected offence has been adjudicated upon,

OR

(ii) he may release the Master and the fishing boat and its crew provided the Master has surrendered to the Fisheries

Protection Officer all fishing gear and fish on the fishing boat for destruction or other disposal as directed, and has signed an acknowledgement in the form set out in the Second Schedule.

(e) If, after a commercial fishing boat has been released in accordance with the preceding subsection, the penalty has not been paid within 21 days, proceedings for the alleged offence(s) may be commenced against the registered owner, charterer or Master of the fishing boat and the court may hear and dispose of the case without further notice to any of them, save that if within the said 21 days any one of them gives notice to the clerk to the Magistrates Court in Diego Garcia that they wish to be present when the case is heard, a court date will be set at a place and time to enable that person subject of the proceedings to be present at the hearing. If such person then fails to attend the hearing, the court may hear and determine the case in the absence of the defendant and without further notice to the defendant.

Amendment of
the Schedule to
the Principal
Ordinance

7. The Schedule to the Principal Ordinance is replaced by the following two schedules:

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THE FIRST SCHEDULE

Fixed
Penalty
Notice form



BRITISH INDIAN OCEAN TERRITORY

Section 19 The Fisheries (Conservation and Management) Ordinance 2007

FIXED PENALTY NOTICE

Notice official number

1. **To** (Here set out name and details of recipient)

2. **Circumstances constituting offence.**

It is alleged that you have committed an offence under section

.....of the Fisheries (Conservation and

Management) Ordinance 2007/regulation of the Fishing Regulations 2007.

The circumstances alleged to constitute that offence are as follows: (Here set out sufficient particulars of the offence alleged, including date and approximate time, to give the recipient reasonable information about what he is alleged to have done)

3. You have the opportunity to discharge any liability to be convicted of the above offence if you immediately pay the fixed penalty which is specified in paragraph 4 below to the Officer who gave you this notice. If you fail to do so you may be detained and prosecuted for the offence.

4. Fixed penalty (insert £10,000/£5000/£200 or half the maximum penalty for offence, whichever is the least amount)

.....

.....

(Date of Notice)

(Signature and name of officer issuing Notice)

Section 19 The Fisheries (Conservation and Management) Ordinance 2007.

Fixed
penalty
notices and
procedure

19. (1) Where, on any occasion, a Fisheries Protection Officer finds a person whom he has reason to believe is committing or has on that occasion committed an offence under this Ordinance or under any regulations made under section 21, he may give that person a fixed penalty notice in respect of that offence, save that where that offence relates to fishing from a commercial fishing boat the Fisheries Protection Officer shall not give that person a fixed penalty notice in respect of that offence without first reporting the matter, if necessary by radio or telephone, to a Magistrate and being instructed by that Magistrate to issue a fixed penalty notice for the offence.

(2) In this section "fixed penalty notice" means a notice offering the opportunity of the discharge of any liability to be convicted of the offence to which the notice relates by payment of a fixed penalty in accordance with this section.

(3) A fixed penalty notice must –

- (a) give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence;
- (b) be issued from an authorised sequentially numbered official pad of notices in the form prescribed in the schedule;
- (c) state the amount of the fixed penalty;
- (d) state that the fixed penalty may be paid forthwith to the Fisheries Protection Officer,

and a copy of the provisions of this section shall be attached to the notice.

(4) The fixed penalty for an offence is -

- (a) £10,000 for an offence relating to fishing from a commercial fishing boat,
- (b) £5000 for an offence relating to fishing from any other fishing boat, and
- (c) £200 for an offence relating to a person fishing other than from a fishing boat or relating to a person fishing from a

fishing boat based in and operating out of Diego Garcia in circumstances where the persons fishing from that boat have paid, or have contracted to pay, for the right to do so or to be on board the boat; or

- (d) one-half of the maximum fine to which a person committing any other offence would be liable on conviction of that offence by the Magistrates' Court,

whichever is the less

(5)(a) Where a fixed penalty notice has been given to a person no proceedings may be brought against him for the offence if he has forthwith paid the penalty to the Fisheries Protection Officer.

(b) "forthwith" in this section includes payment by bank transfer to the Commissioner's bank account for the Territory, and whenever a fixed penalty notice has been issued in relation to the activities of a commercial fishing boat means payment to that bank account within 21 days of the date of issue of a fixed penalty notice..

(c) (i) In addition to being liable for the payment of the fixed penalty, the person to whom a fixed penalty notice has been issued shall also surrender to the Fisheries Protection Officer all fishing gear and fish on the fishing boat for destruction or other disposal at the discretion of the Commissioner, save that in the case of a fixed penalty notice being issued in respect of the activities of a commercial fishing boat the Magistrate shall direct how the fishing gear and fish on the fishing boat are to be destroyed or otherwise disposed of.

(ii) Whenever the Master of a commercial fishing boat is required to surrender all fishing gear and fish on the fishing boat he and his crew shall surrender or destroy the gear and fish in such manner as is directed by the Fisheries Protection Officer as he is directed by the Magistrate.

(d) If the Master of a commercial fishing boat is unable to make payment of the fixed penalty immediately upon the issue of a fixed penalty notice, the Fisheries Protection Officer:

- (i) shall take the suspected offender and take, or require the master to take, the boat (together with the crew and any other person

on board) to such place within the Territory as he may appoint, and he shall then bring the suspected offender before a competent court; and, subject to section 13 and to any order made by the court, he may cause the suspected offender, the master, the crew and any other such person as aforesaid, and also the boat, to be detained in the Territory until the suspected offence has been adjudicated upon,

OR

(ii) he may release the Master and the fishing boat and its crew provided the Master has surrendered to the Fisheries Protection Officer all fishing gear and fish on the fishing boat for destruction or other disposal as directed, and has signed an acknowledgement in the form set out in the Second Schedule.

(e) If, after a commercial fishing boat has been released in accordance with the preceding subsection, the penalty has not been paid within 21 days, proceedings for the alleged offence(s) may be commenced against the registered owner, charterer or Master of the fishing boat and the court may hear and dispose of the case without further notice to any of them, save that if within the said 21 days any one of them gives notice to the clerk to the Magistrates Court in Diego Garcia that they wish to be present when the case is heard, a court date will be set to enable that person to travel to Diego Garcia in the fishing boat the subject of the proceedings to be present at the hearing. If such person then fails to travel with the said fishing boat to Diego Garcia, the court may hear and determine the case in the absence of the defendant and without further notice to the defendant.

THE SECOND SCHEDULE

.....

.....

I admit the offence(s) alleged, and have surrendered all fishing gear and fish on board the boat to the Fisheries Protection Officer.

.....

[illegible]

Should the fixed penalty be unpaid within 21 days of the date of issue, it will be the policy of the British Indian Ocean Territory Government to notify appropriate international regulatory bodies and national authorities that this vessel be listed as an illegal fishing vessel, and sanctions applied against the vessel and owner.

Signed
Witness to Master's Signature"