

EXECUTIVE COUNCIL

PUBLIC

Title: Administrative penalties– updating the Fisheries (Conservation and Management) Ordinance 2005.

Paper Number: 101/17

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Responsible Director: Attorney General

Report Author: Attorney General’s Policy Officer

Portfolio Holder: MLA Phyl Rendell

Reason for paper: This paper is submitted to Executive Council:
For Bill approval, drafting and policy decision

Publication: Yes

Previous papers: None.

List of Documents: Appendix A – Instructions for legislative drafting (Page 11).
Appendix B – Instructions for legislative drafting. Updating the administrative penalty fine (Option A) (Page 12)
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1. Recommendations

- (a) Honourable Members are recommended to approve the draft “Fisheries (Conservation and Management) (Amendment) Bill 2017” attached as **Appendix D based on the drafting instructions set out in appendix A and Appendix B/C** and to instruct the Attorney General to publish the Bill in the *Gazette*, thereby commencing the legislative process as first reading to:

- (i) Implement the administrative penalties system.
 - (ii) Decriminalise minor fisheries offences, reducing pressures on the court system and government financial burden.
 - (iii) Improve the fisheries sustainability through updated legislation consistent with international best practice.
- (b) Honourable Members are recommended to authorise the Attorney General to correct any typographical and minor drafting errors found in the Bill prior to publication in the *Gazette*.
- (c) Honourable Members are recommended to instruct the Attorney General to bring forward further amending Bills, and policy where relevant, to ensure all relevant Falkland Islands legislation is adapted as necessary to be consistent with the amendments here proposed.
- (d) Honourable Members are kindly requested to confirm a proposed commencement date for this amendment. Notice. **EXECUTIVE COUNCIL AGREED A COMMENCEMENT DATE OF 1ST SEPTEMBER 2017.**

2. Additional Budgetary Implications

None.

3. Executive Summary

3.1. The Fisheries (Conservation and Management) Ordinance 2005 established provisions for the application of Administrative Penalties –see sections 208, 209 and 210. Nevertheless, no policy was designed for their implementation. It is also recommended to update some of the Ordinance sections to align Falkland Islands’ legislation to leading international practice on the matter.

3.2. The legislative amendments here proposed take on board, to the extent possible, issues of concern highlighted by key stakeholders related to the fishing industry and its regulation.

3.3. Their objective is to strengthen the Falkland Islands Fisheries’ international reputation and foster the industry-State relationship through clearer and well-structured processes for administrative penalties.

3.4. Honourable Members are asked to approve the legislative amendments to give effect to the administrative penalties system to ensure that legislation continues supporting the objectives of the Fisheries (Conservation and Management) Ordinance 2005.

3.5. No additional funding is required to give effect to these legislative amendments.

4. Background [and Links to Islands Plan and Directorate Business Plan/s]

4.1. In August 2005 the –then– Legislative Council approved the Fisheries (Conservation and Management) Ordinance 2005 “to strengthen the powers of conservation measures” and “extend the powers of enforcement of regulations”.¹

4.2. Sections 208, 209 and 210 effectively establish the possibility for the application of administrative penalties for minor fishing offences. Nevertheless, the corresponding policy and processes have not been defined.

4.3. Enacted in 2005, some of the provisions contained in the “Fisheries (Conservation and Management) Ordinance 2005” require updating to align them to international practice and enable fulfilment of its objective: achieving the optimum utilisation of the living resources of the fishing waters and the implementation of efficient and cost-effective fisheries management on behalf of the Falkland Islands.²

4.4. In this paper, Government Legal Services, in consultation with other government departments, provide policy proposals and appropriate draft legislation in the following areas:

- **Including deemed admittance of responsibility**
- **Extending applicability of administrative penalties**
- **Updating the administrative penalties fines**
- **Optimising the administrative penalties process**

5. Proposals, Options and Reasons for Recommending Relevant Option

5.1. The proposed amending Bill is appended to this document (**Appendix D**), setting out the recommended changes necessary for the application of administrative penalties system.

5.2. The overall aim of the administrative penalty system is to decriminalise minor fishing offences, reduce pressures of the court system and diminish unnecessary prosecution costs when dealing with them (i.e. minor offences).

5.3. The administrative penalty scheme does not replace the existing criminal system, it complements it, and therefore, serious offences are still referred directly for prosecution without the option of an administrative penalty.

5.3. While some countries around the world exclusively use criminal sanctioning, the trend in the Western world (e.g. Germany, Portugal, Spain) and some of the biggest fisheries in the world (e.g. China³) is to apply administrative sanctioning (sometimes complemented with criminal enforcement measures).

¹ LegCo260805.

² “Fisheries (Conservation and Management) Ordinance 2005”, Section 13.

³ Blanco, Lucio, “Environmental Crime in China and the Philippines: a comparative study of their respective fisheries laws”, *Chines Studies Programmes Lectures Series*, No. 3, 2016, pp. 126-148.

- 5.4. Across international fisheries it is widely acknowledged that “the level of the fine is important for its success: low fines risk the perception by industry that sanctions are a basic cost of doing business”.⁴
- 5.5. Most of the vessels operating in the Falkland Islands maritime zone are habituated to best practices. However, the implementation of administrative penalties would ensure more active compliance with the Ordinance where there may have been complacency and curb the incidence of minor offences.
- 5.6. The appropriate implementation of administrative penalties for minor offences, alongside court proceedings for major infringements, would aid in ensuring the long-term sustainability of the Falkland Islands’ fisheries, source of +40% of the country’s annual GDP.
- 5.7. Enforcement and compliance is in the government and industry’s own interest.

Including deemed admittance of responsibility

- 5.8. The main *raison d’être* of an administrative penalty is to tackle minor fishing offences, by enforcing fisheries prohibitions in a more expeditious and economic way, and avoiding lengthy processes involved in criminal proceedings.
- 5.9. Administrative penalties, when suitable, are an alternative to criminal prosecution.
- 5.10. Therefore, once an administrative penalty has been judged to be the most suitable way to deal with a minor offence, it is not operationally efficient [and could be legally challenged] to later prosecute such offence.
- 5.11. Currently, section 209 of the Ordinance penalises not responding to a penalty notice for a minor offence with prosecution.
- 5.12. Proposal: Amendment to section 209, with the proposed amendment Bill included in Appendix D.
- It is proposed that, in the case of no response to a penalty notice for a minor offence according to section 209(4), the Ordinance allows *deemed admittance* of responsibility instead of the current automatic prosecution of the offence.
 - This would permit to avoid unnecessary criminalisation, reduce government (prosecution) and industry (legal) costs, and achieve a more expeditious compliance with the “Fisheries (Conservation and Management) Ordinance 2005”.
- 5.13. Alternative / Do nothing: Not allowing deemed responsibility would imply criminalising captains, charterers or owners of vessels for having failed to comply with an administrative process related to a minor offence. It would also increase the

⁴ Blomeyer & Sanz: Beke, M., Ackerman, R., Blomeyer, R., “The CFP-Infringement Procedures and Imposed Sanctions Throughout the EU”, *Directorate General For Internal Policies. Policy Department B: Structural and Cohesion Policies*, European Parliament, 2014.

court and government costs by executing –what were already considered– unnecessary legal actions vis-à-vis the relevance of the offence.

Extending the applicability of administrative penalties

- 5.14. The administrative penalties system is designed to complement the existing enforcement system, rather than replace it.
- 5.15. The Fisheries (Conservation and Management) Ordinance 2005 currently limits the possibility of applying administrative penalties to its Parts VI and VII, forcing prosecution for offences included in its other six Parts.
- 5.16. Section 208(1)(a) currently produces disparities in the application of the Ordinance. Presently, it allows administrative penalties for minor offences contained in Parts VI and VII, but criminalises [what could be regarded as even more] minor offences (by level of penalty associated to them) contained in Parts I, II, III, IV, V and VIII:

Administrative penalty not allowed, but required prosecution		Administrative penalty allowed	
<i>Ordinance Part/Section</i>	<i>Level of penalty</i>	<i>Ordinance Part/Section</i>	<i>Level of penalty</i>
<u>Part I. Section 5(3).</u> Failing to hand in warrant card.	Level 5	<u>Part VI. Section 132(2).</u> Failure without reasonable excuse to provide information, etc.as to high seas fishing.	Level 8
<u>Part II. Section 50(20).</u> Master failing to facilitate boarding or co-operate with inspection of fishing vessel.	Level 5	<u>Part VII Section 165.</u> Receiving fish other than for private or domestic purposes from a commercial fisher, other than by holder or fish receiver permit.	Level 8

5.17. Proposal: *Amendment to section 208(1)(a), with the proposed amending Bill included in **Appendix D**.*

- It is recommended that Honourable Members extend the applicability of administrative penalties to *minor offences* across the “Fisheries (Conservation and Management) Ordinance 2005” in its entirety as long as the offence does not carries a fine Level 12 on the standard scale.
- Amending *section 208(1)(a)* would permit to achieve further fairness, transparency and promptitude in the treatment of *minor* fishing offences.
- This amendment will not change the fact that an administrative penalty may not always be issued if the Director of Natural Resources and Attorney General consider court proceedings are more suitable (as currently stated in sections 208 (2)(b) and 208 (2)(c)).

5.18. Alternative/Do nothing: this is not the recommended approach because this would promote inconsistency in the sanctions imposed to offences. By following this not-recommended route, owners, captains or charterers of vessels will be penalised for failing to comply with an administrative process associated to a minor offence.

Updating the administrative penalty fines

5.19. The Fisheries (Conservation and Management) Ordinance 2005, including administrative fines (sections 208 and 210) are currently associated to penalty rates of 2011 (i.e. Criminal Justice Ordinance section 11(2)). The 2011 penalty rates have not been updated since that time.

5.20. The average annual inflation rate between 2011 and 2016 was 2.27% in the FI and 2.7% in the UK:⁵

Year	FI (RPI) Inflation	UK (RPI) Inflation
2011 (post Ordinance)	9.23%	5.2%
2012	4.06%	3.2%
2013	0.63%	3.0%
2014	1.31%	2.0%
2015	0.2%	1.0%
2016	-1.8%	1.8%
Average	2.27%	2.7%

5.21. The 2011 penalty rates have neither been updated considering the increase in the value of the fisheries production of 3.77% (from 2011 to 2014):⁶

	Value (£)	Annual Growth (£)	Annual Growth (%)
2010	£175,820,952		
2011	£200,075,661	£24,254,709	13.80%
2012	£221,307,710	£21,232,049	10.61%
2013	£182,916,984	-£38,390,726	-17.35%
2014	£197,617,426	£14,700,442	8.04%

5.22. Fisheries around the world are following a clear trend: updating (increasing) fishing fines whilst promoting a more self-regulated model aligned to their local context:

- U.S.A: In April 2017, the US Maritime Administration updated its regulations to reflect required annual inflation-related increases to the civil monetary penalties in its regulations.⁷
- U.S.A: In May 2017, the National Oceanic and Atmospheric Administration (NOAA) increased the penalties for fish caught violations.⁸
- Developing countries have also made important advances in the matter.

⁵ Data based on Policy Unit, State of the Falkland Islands Economy, March 2015, available at <http://www.fiassociation.com/shopimages/pdfs/2015%2003%20State%20of%20the%20Falkland%20Islands%20Economy%20Report.pdf> [accessed on 20/05/2017], Office for National Statistics, *RPI All items: Percentage change over 12 months: Jan 1987=100*, available at <https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/czbh/mm23> [accessed on 22/05/2017]

⁶ Data based on Policy Unit information.

⁷ MARAD, *Annual Civil Monetary Penalties Adjustment*, Federal Register Volume 82, Number 77 (Monday, April 24, 2017)].

⁸ See <http://www.thefishingwire.com/story/403547>

- Senegal has recently approved legislation that increased fines for illegal fishing to \$1m⁹
- Philippines: in 2016 the *Philippines Fisheries Code* was amended to set higher penalties.¹⁰
- Sri Lanka: in 2016, the *Fisheries Act of 2015* and 2016 aimed to increase fines for illegal, unreported and unregulated fishing.

5.23. Updating the fines will not only deter illegal activity. It will also put the Falkland Islands in line with leading international practices, improve its reputation as an international sustainable fishery and contribute to safeguarding the source of +40% of its annual GDP.

5.24. Representatives from the Falkland Islands’ fishing industry have also acknowledged both: the need for further guidelines to strengthen the conservation of the FI fishing industry and its compliance with international environmental regulations,¹¹ *and* their preference for administrative penalties over criminal proceedings for minor offences.

5.25. Proposal Amendment to section 208(1)(a) and Schedule 3, with the proposed amending Bill.

- Option A:

Honourable Members may approve an updated schedule of fines, considering compound inflation since 2011, exclusive for the Fisheries (Conservation and Management) Ordinance 2005, as detailed in the following table, this would create inconsistency across the statute book and the alternative of increasing the potential fines levels in option B may be preferred.

Appendix B:

Level of Fine	Amount value in 2011	Updated value with compound inflation of 2.5% since 2011.	Recommended (rounded to the closest £500) figures from June 2017 onwards
1	£250	£297	£300
2	£500	£594	£600
3	£1,000	£1,188	£1,000
4	£2,000	£2,377	£2,500
5	£4,000	£4,754	£5,000
6	£10,000	£11,886	£12,000
7	£17,500	£20,802	£21,000
8	£25,000	£29,717	£30,000
9	£50,000	£59,434	£59,500
10	£125,000	£148,585	£148,500
11	£250,000	£297,171	£297,000
12	£625,000	£742,928	£743,000

⁹ See <https://www.nytimes.com/2017/04/30/world/asia/chinas-appetite-pushes-fisheries-to-the-brink.html? r=0>

¹⁰ See <http://oceana.org/press-center/press-releases/amended-fisheries-code-sets-higher-penalties-tightens-rules-commercial>

¹¹ Section 9 of the Minute of the *Fisheries Committee Meeting* of the 15th September 2016

- Option B: as included in Appendix C and D.
 - It is recommended that the Honourable Members raise the existing penalty levels (Schedule 3) for the offences under the Fisheries (Conservation and Management) Ordinance 2005 by four levels: starting at Level 9 for the less serious of the offences and ending at Level 12 for the most serious of the offences.
 - The benefits from this option are that it will permit the *Fisheries (Conservation and Management) Ordinance 2005* to continue operating with the *Criminal Justice (Revised Standard Scale of Fines) Order 2011*, allowing for automatic future updates of the fines according to the Government's needs, inflation calculation, etc.
 - This option would still provide the Director of Fisheries and the Attorney General with the discretionary power to decide the amount of the fine (as long it is lower to the maximum amounts here outlined) whilst improving the enforcement of the *Fisheries (Conservation and Management) Ordinance 2005*.
 - The approval of this option will amend Schedule 3 of the *Fisheries (Conservation and Management) Ordinance 2005* as follows:
 - Level 5 and 6 to Level 9
 - Level 7 and 8 to Level 10
 - Level 9 and 10 to Level 11
 - Level 11 to remain as Level 11
 - Level 12 to remain as Level 12

5.27. The Honourable Members approval of either of these two options will help decision-makers in applying the rules and enhancing transparency in administrative fines. Its approval will undoubtedly contribute to strengthen the Falkland Islands' international reputation as an exemplar fishery in sustainability methods, and could aid in supporting its MSC Certification and potentially extend it to other products.

5.28. Additionally, it is proposed that the Honourable Members approve the *amendment of section 210(1), with the proposed amending Bill included in Appendix D.*

- After careful consideration of international best practices, it is recommended that the limit for the monetary penalties is set as ½ of the maximum monetary penalty to which the person would be liable if the person were convicted of the offence by a court.
- Whilst this amendment will strengthen the Ordinance's deterrent objective, this amendment does not change the Director of Fisheries and Attorney General's discretionary powers to establish the final amount of the fine as low as they consider appropriate.

5.29. Alternative-Doing nothing: This is not the recommended option because, to date, in certain cases the government's legal costs of prosecuting an offence (based on the minimum Scale of Prosecution costs) can surpass the maximum monetary value of the penalty associated to that offence. By sustaining the current low amounts, the Falkland Islands is in risk of falling behind international practice, even of less advanced nations, reducing its capacity to secure the sustainability of

its most profitable economic sector. Not doing anything could increase the future financial burden for government, reduce the effectiveness of the Fisheries (Conservation and Management) Ordinance 2005 and endanger the sustainability of the Falkland Islands' fisheries.

Optimising the administrative penalties process

- 5.31. The implementation of administrative penalties requires an expeditious and coordinated process. In terms of efficiency, the importance of reducing transactional bureaucratic processes while maintaining accountability, checks and balances, is widely recognised.¹²
- 5.32. To reduce operational costs and delays, this paper proposes the simplification of the administrative processes involved in the implementation of Administrative Penalties.
- 5.33. **Proposal: Amendment of sections 208(3)(a), 208(3)(iii), 194(1), 210(1), 210(2) and 209(4)(b) with the proposed amendment Bill included in Appendix D.**
- It is recommended that the Honourable Members empower the Director of Fisheries and Attorney General to apply administrative penalties for minor fishing offences.
 - The Director of Fisheries and Attorney General would have powers to identify offences, determine the extent of responsibility, assess the offence's negative impact over the FI's fisheries and determine the corresponding fines.
 - Building on both recent court cases and arguments presented by other government agencies, it is also suggested to extend liability to those who may incur in fisheries offences, including the owner of the fishing right in respect of which a fishing vessel or fishing operation derives its rights. A fishing right would include and IOTQ holder.¹³
 - As noticed in a recent report from the Organisation for Economic Cooperation and Development, in established and highly-developed fisheries, the fishing "industry is beginning to supply intelligence information on breaches of the law".¹⁴ In Canada, government forced quota holders to set up privately funded dockside-monitoring systems to inspect catches. And we believe the Falkland Islands can be at the forefront of sustainable fisheries.
- 5.34. The approval of this suggestion would, firstly, promote prompter inter-directorate communication and more appropriate conflict resolutions. Secondly, it would enhance the government-private sector collaborative relation and mutual responsibility with the protection of the Falklands' fisheries. It would enhance homogeneity in legal decisions, reduce the burden of natural resource management on the Falkland Islands Government and promote the observance of usufructuary¹⁵ obligations: whilst the private sector will undoubtedly continue

¹² National Audit Office, *Briefing for the House of Commons Regulatory Reform Committee*, available at https://www.nao.org.uk/wp-content/uploads/2012/10/0910_reducing_bureaucracy.pdf [accessed on 22/05/2017].

¹³ Draft Section 5 amending Section 194 below

¹⁴ See <http://www.oecd.org/tad/fisheries/2349219.pdf>

¹⁵ The right of one individual to use and enjoy the property of another provided its substance is neither impaired nor altered. In this case the right to take fish but not damage the fishing stock is an imperfect usufructuary right.

having the right to fish and enjoy the profits of its fishing, it will aid government in safeguarding the Falkland Islands' fisheries.¹⁶ More importantly, this amendment would improve the Falkland Islands fisheries sustainability and the Falkland Islands control over its natural resources.

6. Resource Implications

6.1. Financial Implications – None for government.

6.2. Human Resource Implications – None – this can be achieved using current staff resources and does not require hiring additional staff.

6.3. Other Resource Implications – None

7. Legal Implications

7.1 This would require amendments to the current legislation as appended and set out elsewhere in this document.

8. Environmental & Sustainability Implications

8.1 Honourable Members' approval of the proposals here made could positively impact on the sustainability of the Falkland Islands' fisheries.

8.2 Honourable Members approval will also allow prompter and more consistent responses to fishing offences, while supporting the Department of Fisheries efforts to "change fishing behaviour" so as to decrease seabird mortality (e.g. Argos Pereira Limited case) and other negative outcomes.¹⁷

9. Significant Risks

9.1 None

10. Consultation

10.1 Consultations were conducted with the Fisheries Directorate, representatives from the private sector and elected members. To the extent possible, their recommendations and comments were taken on board in the production of this paper.

¹⁶ *Op Cit* Soliman.

¹⁷ *Ibid*, Section 2.2.4.

APPENDIX A (Instructions for Legislative Drafter).

A. Section 44(7)(a) of the “Fisheries (Conservation and Management) Ordinance 2005” to be amended in accordance to the decision made by ExCo on the 12th of August 2005, stating:

Clause 44 (7)(a):

The revision to this clause was not listed in the Attorney General’s note attached to paper 209/05 but was agreed by Members.

“(a) if the holder of the licence is convicted of an offence under this Ordinance **or of an** offence under the law of an overseas country or territory corresponding to an offence under this Ordinance;”

At the moment, the legislation reads:

Clause 44 (7)(a):

“(a) if the holder of the licence is convicted of an offence under this Ordinance **or an** offence under the law of an overseas country or territory corresponding to an offence under this Ordinance;”

B. Deemed admittance of Responsibility

- i. Building on paragraph 5.12, it is suggested for the Legislative Drafter to **add** to the FI *Fisheries (Conservation and Management) Ordinance 2005* a new provision in section 205, (turning into 209(5)) similar to Section 21(5) of the SGSSI *Fisheries (Conservation and Management) Ordinance 2000*.

C. Extending the applicability of administrative penalties

- i. Building on paragraph 5.17, it is suggested for the Legislative Drafter to **amend** Section 208(1)(a) of the FI *Fisheries (Conservation and Management) Ordinance 2005* to show that the applicability of Administrative Penalties is not reserved to Parts VI and VII of the Ordinance, but can be applied to any offence under any Part of the Ordinance.

D. Updating the Administrative Penalty fines

- i. Building on paragraph 5.30, it is suggested for the Legislative Drafter to **amend** Section 210(1)(a) of the FI *Fisheries (Conservation and Management) Ordinance 2005* to state that the maximum monetary penalty should not exceed ½ of the maximum monetary penalty to which the person would be liable if the person were convicted of the offence by a court.

E. Optimising the administrative penalties process

- i. Building on paragraph 5.33, it is suggested for the Legislative Drafter to **amend** Sections 208(3)(a), 208(3)(iii), 210(1), 210(2) and 209(4)(b):

- Section 209(4)(b) should be **amended to state**: “make submissions to the Director as to the matters the person wishes the Director to take into account in imposing a penalty under section 210”.
- Sections 208(3)(iii), 210(1) and 210(2) should **replace** the word “Governor” for “Director”.
- In section 208(3)(a) the Legislative Drafter should **insert** a new provision after Section 208(3)(a)(ii) stating that the notice given should include the range of the penalty amount to be imposed (minimum and maximum).

APPENDIX B

F. Updating the administrative penalty fines (Option A – Paragraph 5.26)

- i. Building on paragraph 5.26, it is suggested for the Legislative Drafter to complement Section 208(1)(a) of the FI *Fisheries (Conservation and Management) Ordinance 2005* with a provision stating that administrative penalties are applicable “as long as the offence carries a penalty of a fine not exceeding the maximum of Level 10 on the Standard Scale of this Ordinance”.
- ii. The Legislative Drafter should note that for *D.i.* to occur, it is necessary to link the current Schedule 3 of this Ordinance to a new Schedule 4 stating the Amount of the Administrative Penalties (to be inserted by the Legislative Drafter – see paragraph *D.v.*).
- iii. The Legislative Drafter should be aware that this amendment has to be aligned to, and does not have to change in any way the intention of Section 208(2) of the FI *Fisheries (Conservation and Management) Ordinance 2005*.
- iv. It is also suggested for the Legislative Drafter to amend the current introduction of Schedule 3 of the FI *Fisheries (Conservation and Management) Ordinance 2005* to state that the standard scale refers to Schedule 4 (to be inserted by the Legislative Drafter – see paragraph *D.v.*)
- v. The Legislative Drafter is instructed to insert the following table as Schedule 4 of the Ordinance , indicating this are the values of the Standard Scale applicable to the FI *Fisheries (Conservation and Management) Ordinance 2005*:

Level of Fine	Amount
1	£300
2	£600
3	£1,000
4	£2,500
5	£5,000
6	£12,000
7	£21,000
8	£30,000
9	£59,500
10	£148,500
11	£297,000
12	£743,000

APPENDIX C.

G. Updating the administrative penalty fines (Option B – Paragraph 5.27)

- i.** Building on paragraph 5.27, it is suggested for the Legislative Drafter to **replace** Section 208(1)(a) of the FI *Fisheries (Conservation and Management) Ordinance 2005* with the provision created as part of suggestion *C.i.* Administrative penalties will NOT be subject to any maximum [or minimum] level on the standard scale.
- ii.** The Legislative Drafter is instructed to update Schedule 3 of the *Fisheries (Conservation and Management) Ordinance 2005* , rising the Penalties as follows:
 - Level 5 and 6 to Level 9
 - Level 7 and 8 to Level 10
 - Level 9 and 10 to Level 11
 - Level 11 to remain as Level 11
 - Level 12 to remain as Level 12

F. For its correct implementation, effectiveness and to avoid future legal quandaries, it is suggested that the Legislative Drafter includes the corresponding provisions to ensure these amendments supersede previous guidance and secondary legislation on the scale of fines/penalties for Fisheries offences.

APPENDIX D.

Draft Bill.

01.06.2017

FISHERIES (CONSERVATION AND MANAGEMENT) (AMENDMENT) BILL 2017

(No: of 2017)

ARRANGEMENTS OF PROVISIONS

Clause

1. Title
2. Commencement
3. Amendment of Fisheries (Conservation and Management) Ordinance
4. Section 44 amended – Overseas master fishing licences
5. Section 194 amended – Criminal Liability of owners, operators, charterers and masters
6. Section 208 amended – Administrative penalties
7. Section 209 amended – Right to require that offence be dealt with by court
8. Section 210 amended — Amount of administrative penalty
9. Schedule 3 replaced – Manner in which offences under this Ordinance are punishable

FISHERIES (CONSERVATION AND MANAGEMENT) (AMENDMENT) BILL 2017

(assented to: 2017)
(commencement: 2017)
(published: 2017)

A BILL

for

AN ORDINANCE

To amend the Fisheries (Conservation and Management) Ordinance 2005.

BE IT ENACTED by the Legislature of the Falkland Islands —

1. Title

This Ordinance may be cited as the Fisheries (Conservation and Management) (Amendment) Ordinance 2017.

2. Commencement

This Ordinance comes into force on a day appointed by the Governor by notice in the *Gazette*.

3. Amendment of Fisheries (Conservation and Management) Ordinance

This Ordinance amends the Fisheries (Conservation and Management) Ordinance 2005.

4. Section 44 amended — Overseas master fishing licences

Section 44 is amended by deleting subsection (7)(a) and replacing it with the following —

“(a) if the holder of the licence is convicted of an offence under this Ordinance or of an offence under the law of an overseas country or territory corresponding to an offence under this Ordinance;”.

5. Section 194 amended — Criminal liability of owners, operators, charterers and masters

Section 194 is amended by deleting subsection (1) and replacing it with the following —

“(1) Where an offence under this Ordinance is proved to have been committed in relation to a fishing vessel or any fishing operation undertaken by a fishing vessel —

(a) the owner, charterer, operator and the master of that fishing vessel; and

(b) the owner of the fishing right in respect of which the fishing vessel or fishing operation derives its rights;

shall each be deemed to have committed that offence and may be proceeded against in respect of that offence and convicted and sentenced in respect of it accordingly.”.

6. Section 208 amended — Administrative penalties

Section 208 is amended as follows —

(a) by deleting paragraph (a) of subsection (1) and replacing it with the following —

“(a) applies in respect of an alleged offence under this Ordinance which carries a penalty of a fine which is below level 12 on the standard scale;”;

(b) in subsection (3) —

(i) by deleting “and” at the end of subparagraph (ii);

(ii) after subparagraph (ii), by inserting the following subparagraph —

“(iia) the range of the penalty set by the Attorney General under subsection (4); and”;

(iii) in subparagraph (iii), by deleting “Governor” and replacing it with “Director”;

(c) by adding after subsection (3), the following subsection —

“(4) The Attorney General, in giving consent under subsection (1), must also set the range of the penalty that the Director may impose for the offence provided that the maximum amount of the penalty does not exceed one-half of the maximum monetary penalty to which the person would be liable if the person were convicted of the offence by a court.”.

7. Section 209 amended – Right to require that offence be dealt with by court

Section 209 is amended —

(a) by deleting subsection (2) and replacing it with the following —

“(2) No further proceedings may be taken under section 208 by the Director if a person gives notice in accordance with subsection (1).”;

(b) in subsection (4)(b), by deleting “Governor” and replacing it with “Director”;

(c) by the addition after subsection (4) of the following subsection —

“(5) Where a person on whom a notice under section 208 is served does not within 28 days after the notice is served —

(a) require in writing that proceedings in respect of the alleged offence be dealt with by a court; or

(b) admit the offence;

the person shall on the expiration of that period be deemed to have admitted the offence.”.

8. Section 210 amended — Amount of administrative penalty

Section 210 is amended —

(a) by deleting subsection (1) and replacing it with the following —

“(1) If under section 209 the person admits or is deemed to have admitted an offence, the Director may, after taking into account any submissions made by the person under that section, impose on that person a monetary penalty within the range set by the Attorney General under section 208(4).”;

(b) in subsection (2), by deleting “Governor” wherever it appears and replacing it with “Director”;

(c) by deleting subsection (5) and replacing it with the following —

“(5) Where a person admits or is deemed to have admitted an offence under section 209(4), no information or charge may be laid against that person in respect of the offence.”.

9. Schedule 3 replaced — Manner in which offences under this Ordinance are punishable

Schedule 3 is repealed and replaced with the following —

“SCHEDULE 3

MANNER IN WHICH OFFENCES UNDER THIS ORDINANCE ARE PUNISHABLE

Offences under the provisions of this Ordinance mentioned in the first column of the following Table are punishable on conviction in the manner specified in the third column of

that Table. A reference to a Level in that column is to be construed as a reference to a fine not exceeding the maximum of that Level on the standard scale.

Table

Provision	Description of offence	Penalty
section 5 (3)	Failing to hand in warrant card	Level 9
section 26(6)	Failing to make application for renewal of registration upon Individual Transferable Quota Eligibility Register without having notified Director under section 31(2) of non-eligibility	Level 9
section 30(6)	The like offence in relation to failure to make application for refusal of registration upon Provisional Quota Eligibility Register	Level 9
section 32(4)	Failing to supply documents in accordance with section 32(1) or section 32(3)	Level 9
section 36(1)	Making false statement or supplying document containing false statement in connection with application under sections 24(1), 26(2) or 28(1)	Level 11 and imprisonment for 2 years
section 44(8)	Using fishing vessel with overseas master who does not have overseas master fishing licence	Level 10
section 45(4)	Contravening prohibition under section 45(2)	Level 9
section 45(5)	Employing as master person prohibited under section 45(2)	Level 11 and imprisonment for 6 months
section 46(1)	Trans-shipping or exporting fish without licence under section 46(3)	Level 10
section 47(8)(a)	Receiving fish without permit	Level 9
section 47(8)(b)	Failing to provide information or to verify it	Level 9
section 50(2)	Master failing to facilitate boarding or co-operate with inspection of fishing vessel	Level 9
section 54(3)	Failing to notify change in characteristics of fishing vessel as required by section 54(2)	Level 11 and imprisonment for 6 months
section 86	Making etc. false entry in Register or producing document falsely purporting to be copy of or extract of document lodged for registration etc.	Level 11 and imprisonment for 2 years
section 92(7)	Contravening any provision of section 91 as to disposal of fish	Level 10

section 93(4)	Contravening any provision of sections 93(1), (2) or (3) as to purchase or acquisition of fish	Level 10
section 95(3)	Unlawful possession by fish farmer of fish for sale	Level 10
section 115(1)	Unreasonably refusing as witness before Commission to take oath or affirmation or failing or refusing to answer question	Level 9
section 115(2)	Unreasonably refusing to produce document to Commission	Level 9
section 117(2)	Publication of any evidence, document etc. in contravention of direction by the Commission	Level 9
section 118	Failure to comply with summons to attend before Commission as witness	Level 9
section 122	Obstructing or hindering Commission	Level 10
section 127(2)	Falkland Islands fishing vessel fishing on high seas without licence	Level 12 and imprisonment for 3 years
section 131(4)	Contravening section 131(3) (duty to notify change of owner, charterer or operator of fishing vessel in respect of which high seas fishing licence held)	Level 10
section 132(2)	Failure without reasonable excuse to provide information etc. as to high seas fishing	Level 10
section 136	Unlawful possession of fish on Falkland Islands fishing vessel on high seas	Level 11 and imprisonment for 30 months
section 137	Falkland Islands fishing vessel unlawfully on high seas when equipped for fishing	Level 11 and imprisonment for 30 months
section 138(1)	Falkland Islands fishing vessel unlawfully fishing in another country's waters	Level 12 and imprisonment for 3 years
section 139(4)	Visit by non-Falkland Islands vessel contrary to section 139(2) or (3)	Level 10
section 161(1)(a)	Contravening condition of fishing concession, fish receiver permit or overseas master fishing licence or of temporary order	Level 10
section 161(1)(b)	Holder of fishing concession or fish receiver permit causing or permitting person acting on his behalf to contravene condition of concession or	Level 10

	permit or temporary order	
section 161(1)(c)	Person acting on behalf of holder of fishing concession, or fish receiver permit contravening condition of concession or permit or temporary order	Level 10
section 161(1)(d)	Making false or misleading record or return in relation to a matter specified in section 90	Level 10
section 162	Breach of condition or requirement of licence, permit etc. where no other penalty provided	Level 9
section 163(1)	Resisting or obstructing a fisheries officer; using threatening language or behaviour to a fisheries officer; failing to comply with a lawful requirement of a fisheries officer; providing false or misleading particulars to a fisheries officer; personating or falsely claiming to be a fisheries officer	Level 11 and imprisonment for 6 months
section 164	Removing fish from traps etc.	Level 9 and imprisonment for 3 months
section 165	Receiving fish other than for private or domestic purposes from a commercial fisher, other than by holder of fish receiver permit	Level 10
section 167	Using fishing vessel in fishing waters without licence: absolute offence	Level 11 and imprisonment for 6 months
section 168	Deliberate unlawful use of fishing vessel in fishing waters	Level 12 and imprisonment for 3 years
section 169	Unlawful possession of nets, traps or other equipment for fishing on fishing vessel within fishing waters	Level 11 and imprisonment for 30 months
section 170	Fishing in internal waters other than with a fishing vessel	Level 10 and imprisonment for 12 months
section 171	Possession of nets etc. in internal waters other than upon a fishing vessel	Level 10 and imprisonment for 12 months
section 172	Using boat outside fishing waters to support illegal fishing in fishing waters	Level 12 and imprisonment for 3 years
section 182(2)	Prohibited person re-offending	Level 12 and imprisonment

		for 3 years
section 186(2)	Failing to provide reasonable assistance to observer or hindering or obstructing observer	Level 10
section 187(2)	Failing to provide food or accommodation etc. to observer	Level 10
section 188(4)	Failing to provide information to observer or allow observer to carry out inspections	Level 10
section 192(1)	Using false document or making false statement to obtain benefit under the Ordinance	Level 10 and imprisonment for 2 years
section 192(2)	Using or causing another to use, deal or act upon false communication etc.	Level 10 and imprisonment for 2 years
section 220(2)	Breach of secrecy	Level 9 and imprisonment for 6 months

OBJECTS AND REASONS

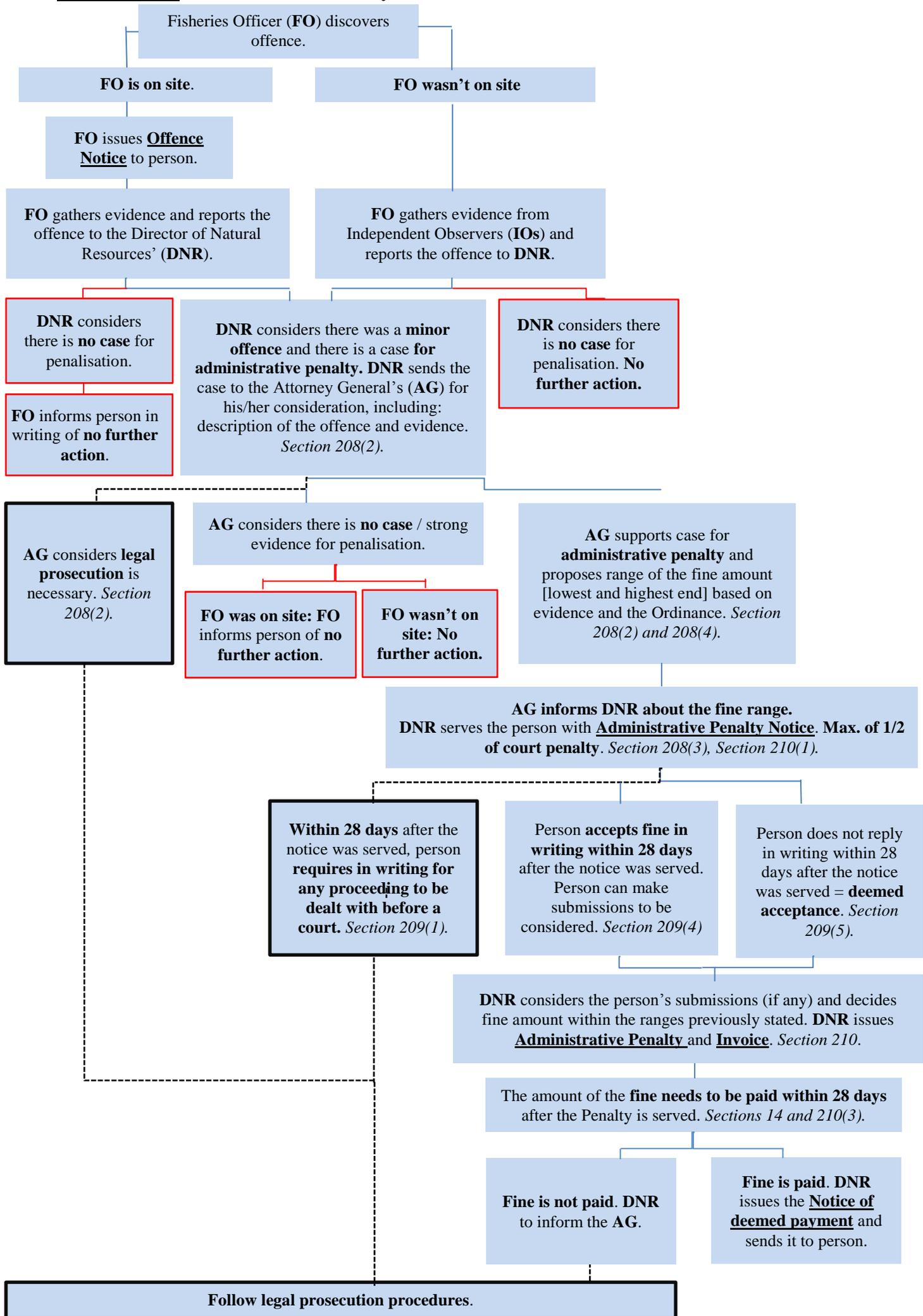
This Bill amends the Fisheries (Conservation and Management) Ordinance 2005 to update the provisions dealing with administrative penalties in preparation for their commencement. The Bill will also extend criminal liability to owners of fishing rights (*clause 5*). Where a fishing vessel or fishing operations are found liable of a criminal offence, the owner from whom they derive their rights is also liable. Section 194 is amended accordingly. Sections 208, 209 and 210 providing for administrative penalties were enacted in 2005, but have not yet been commenced. Best international practice is to allow for administrative penalties as an alternative to going to court. This will have the effect of decriminalising minor fishing offences.

The Bill will review and raise penalties in Schedule 3 of the principal Ordinance. A person who commits an offence and has an administrative penalty imposed, makes a saving by not going through the court system. Section 210 is amended to increase the maximum monetary administrative penalty to not more than half of the penalties set out in Schedule 3. Currently it is pegged at one third. The Attorney General must set a range of the penalty that the Director may impose but the maximum penalty must not exceed half of the penalty that the court would have imposed.

Administrative penalties will be limited to an offence that is below a level 12 fine on the standard scale. Currently clause 208 limits the application of administrative penalties to Parts VI and VII and to level 10 fines.

Sections 209 and 210 give the responsibility to impose an administrative penalty to the Governor, and this will be changed to Director. The Director must impose a penalty within the range set by the Attorney General after taking into account representations by the person being charged.

APPENDIX F. Administrative Penalty – Process Flow.



APPENDIX G. Administrative Forms for the Implementation of *Administrative Penalties*.

Falkland Islands Government



Fisheries Department
Falkland Islands

**FISHERIES (CONSERVATION & MANAGEMENT) ORDINANCE
(Sections 208, 209, 210)
ADMINISTRATIVE PENALTY NOTICE**

To [Master/Charterer as applicable]
[Address]

TAKE NOTICE pursuant to Section 208 of the Falkland Islands' *Fisheries (Conservation and Management) Ordinance 2005* that I have reasonable cause to believe an offence against the Ordinance has been committed by you in respect of the [Fishing Vessel xxxxxx]. But having regard to the nature of the offence, the previous conduct of the [FV xxxxx] and of you as [Master / charterer(s)] of the vessel I believe it would be appropriate in this particular case to impose a penalty under Section 208 of the Ordinance rather than initiate criminal proceedings against you, the [Master / charterer], in a court.

The offence(s), which I have reasonable cause to believe you have committed, is:

- (i) Breach of a fishing licence condition(s), contrary to Section [xx] of the *Fisheries (Conservation and Management) Ordinance 2005*. In particular, that on..... [continue with nature of offence/s time date position etc and cite relevant sections of Ordinance. This should include a) the date and nature of the alleged offence; b) a summary of the facts on which the allegation that an offence has been committed is based, which summary is sufficient to fully and fairly inform the person of the allegation against him; and c) any other matters (other than previous convictions) that the Governor considers relevant to the imposition of a penalty].

TAKE NOTICE that pursuant to section 209 of the *Fisheries (Conservation and Management) Ordinance 2005* you may, within 28 days of receipt of this Notice, by notice in writing served on me at the Falkland Islands' Fisheries Department, require that proceedings in relation to this alleged offence be dealt with by a court having jurisdiction, to try and determine that offence, in which case:

- (a) No further proceedings will be taken by me under Section 208 (that is to say that the matter will not be dealt with by imposition of an Administrative Penalty under Section 208, but by court proceedings); and
- (b) Nothing in Section 209 or in this Notice will prevent the subsequent laying of any information or charge in respect of the alleged offence, your conviction of the offence by a court, or the imposition of a penalty under an

enactment, or forfeiture under this Ordinance by the court on such a conviction.

If you do not choose to have the matter dealt with as a prosecution before the court you may, by notice in writing served on me at Falkland Islands' Fisheries Department:

- (a) admit the offence the particulars of which have been given above; and
- (b) bring to my attention any matters you wish me to take into account in imposing a penalty under Section 210 of the *Fisheries (Conservation and Management) Ordinance 2005*.

I may then, under section 210 of the *Fisheries (Conservation and Management) Ordinance 2005*, take into account any matters that you wish me to consider before imposing a monetary penalty on you. The monetary penalty must not exceed two thirds of the maximum fine to which you would be liable if you were to be convicted by a court of the offence mentioned above.

If you do not, within 28 days after this Notice is served on you, require that proceedings in respect of the offence be dealt with by a court or admit the offence, you will, on the expiration of those 28 days be deemed to have admitted the offence.

An admission or deemed admission of the offence does not:

- (a) count as a conviction; and
- (b) means that a prosecution cannot be brought in relation to the offence against the person who has admitted it.

If you were to admit the offence, or are deemed to have admitted the offence, I would be minded to impose a penalty of between [insert the lower and upper limits of the potential fine as determined by the Attorney General's Chambers].

If I impose a penalty on you under section 208 of the Ordinance, I will cause Notice in writing to be given to you of that penalty and you will then have 28 days from service of that Notice to pay the penalty.

Dated this [] day of [Month] [year].

[Name of the Fisheries Director]
Director
Falkland Islands Fisheries Department
Bypass Rd, PO Box 598, Stanley
Falkland Islands, FIQQ 1ZZ
Tel: +500 27260
Fax: +500 27265
Email: director@fisheries.gov.fk

Falkland Islands Government



Fisheries Department
Falkland Islands

[Name of the person responsible for the offence]
[Address]

[Date]

Dear [person's name]

Administrative Penalty – [Case name]

Thank you for your letter dated [date of letter], received by [email / post], in response to the Administrative Penalty Notice served on you in respect of [matter in case, including: short description of the offence, fishing vessel's name, date of the offence]. I note that you accept the Administrative Penalty.

In deciding upon the amount of the Administrative Penalty I have taken into account all the contents of your letter.

Consequently I attach to this letter a notice imposing an administrative penalty of [penalty amount in number (and words), related to the limits set out in the Administrative Penalty Notice previously sent] and an accompanying invoice.

Yours sincerely,

[Name of the Fisheries Director]
Director
Falkland Islands Fisheries Department

Bypass Rd, PO Box 598, Stanley
Falkland Islands, FIQQ 1ZZ
Tel: +500 27260
Fax: +500 27265
Email: director@fisheries.gov.fk

Falkland Islands Government



Fisheries Department
Falkland Islands

**FISHERIES (CONSERVATION AND MANAGEMENT) ORDINANCE
(208, 209, 210)
ADMINISTRATIVE PENALTY**

[Name of the person responsible for the offence]
[Address]

[Date when this letter is being sent]

1. On [date of the administrative penalty notice] you were served with notice that I had reasonable cause to believe that the offence of breach of fishing licence condition, contrary to section [section where the offence is included] of the *Fisheries (Conservation and Management) Ordinance 2005*, had been committed by you in respect of the [name of fishing boat] during [date of the offence].
2. By letter dated [date of the offender's response to the Administrative Penalty notice], as [charterer/owner] of the [name of the fishing vessel], you admitted the offence.
3. In accordance with section 210 of the *Fisheries (Conservation & Management) Ordinance 2005*, and taking account of the circumstances outlined in your letter, I have decided to impose a penalty on you of [penalty amount in number (and words), related to the limits set out in the Administrative Penalty Notice previously sent].
4. The penalty should be paid to the Falkland Islands Government within 28 days of receipt of this notice.
5. Details of how to pay the Penalty are set out in the attached invoice.

Dated this [date when this letter is being sent].

[Name of the Fisheries Director]

Director.
Falkland Islands Fisheries Department
Bypass Rd, PO Box 598, Stanley,
Falkland Islands, FIQQ 1ZZ
Tel: +500 27260
Fax: +500 27265
Email: director@fisheries.gov.fk

Falkland Islands Government



Fisheries Department
Falkland Islands

**FISHERIES (CONSERVATION AND MANAGEMENT) ORDINANCE
(208, 209, 210)
ADMINISTRATIVE PENALTY**

[Name of the person responsible for the offence]

[Address]

[Date when this letter is being sent]

1. On [date of the administrative penalty notice] you were served with notice that I had reasonable cause to believe that the offence of breach of fishing licence condition, contrary to section [section where the offence is included] of the *Fisheries (Conservation and Management) Ordinance 2005*, had been committed by you in respect of the [name of fishing boat] during [date of the offence].

2. By the date of [date this letter is being written / 29 days after serving the person with the Administrative Penalty Notice], I have not received any response in writing from you requiring that any proceedings in respect of the offence be dealt with before a court.

3. In accordance with section 209 I take this as deemed admittance of the offence and in accordance with section 210 of the *Fisheries (Conservation & Management) Ordinance 2005*, I have decided to impose a penalty on you of [penalty amount in number (and words), related to the limits set out in the Administrative Penalty Notice previously sent].

4. The penalty should be paid to the Falkland Islands Government within 28 days of receipt of this notice.

5. Details of how to pay the Penalty are set out in the attached invoice.

Dated this [date when this letter is being sent].

[Name of the Fisheries Director]
Director

APPENDIX H. Administrative Penalties: Guidance for Industry



Administrative penalties for fisheries offences

Guidance for Industry

Issued by the Falkland Islands' Fisheries Department
Updated July 2017

INTRODUCTION

1. The Administrative Penalties (AP) scheme came into effect on [date of commencement of Sections 208-210 of the Fisheries Ordinance 2005]. In a sea fisheries context, it applies to owners of vessels; masters of vessels; charterers of vessels; operators of vessels and the owner of the fishing right in respect of which the fishing vessel or fishing operation derives its rights. It applies to any licensed fishing vessel within the Falkland Islands fishery limits, and also to any Falkland Islands registered licensed fishing vessel wherever it may be.
2. An AP is – under the *Fisheries (Conservation and Management) Ordinance 2005* – a financial penalty offered to a person alleged to have committed a minor offence, as an alternative to proceedings be dealt with before a court for consideration of criminal prosecution under relevant fishery legislation. The Ordinance provides that an AP **may** be issued, but there is no compulsion to issue an AP in respect of any of the offences that qualify for an AP.
3. APs potentially offer both reduced uncertainty for fishermen and reduced costs for fishermen and industry through not requiring them to pay legal costs as a result of court proceedings. There is also potential for timescales involved to be reduced and simplified. Under the legislation relevant to these APs, for an AP to be offered, officers must be of the view that there would be a sufficiency of evidence to secure a criminal conviction in the event of non-payment of the AP.
4. This document is not exhaustive, nor is it a definitive statement of the legislation currently in force. The legislative requirements are set out in sections 208 to 210 of the *Fisheries (Conservation and Management) Ordinance 2005*.

AT A GLANCE

5. This document considers the levels of administrative penalty according to Schedule 3 of the *Fisheries (Conservation and Management) Ordinance 2005*.
6. The AP system has been designed to complement the existing enforcement system rather than replace it. The AP system inserts a new method of enforcement into an existing portfolio of enforcement measures and provides an additional option that benefits the person. The person knows with certainty the outcome of the alleged offence and the AP provides a quick and costed solution, with potentially reduced uncertainty around legal costs. It also benefits the court as offences can be dealt with outside the court system.
7. A person *may* be offered a penalty as an alternative to criminal prosecution in certain circumstances. A penalty will only be offered where there is reason to believe that a person has committed an offence for which a financial administrative penalty may be issued. APs should only be issued where there is considered by the Department of Fisheries officers and the Attorney General's Chambers to be sufficient evidence to secure a criminal conviction through the courts.
8. According to Section 210 of the *Fisheries (Conservation and Management) Ordinance 2005*, an AP will not exceed half of the maximum monetary penalty to which a person would be liable if the person were convicted of the offence by a court. See Annex 1.
9. In the event of a penalty offence being detected and an AP being offered, payment of the penalty within 28 days after the AP has been served will discharge the person's liability to be prosecuted for the offence. As the penalty scheme does not replace the existing court process, should an offer of an AP be accepted, or deemed accepted, but not subsequently paid, then the legislation provides that the case will be referred to the Attorney General's Chambers for prosecution.
10. However the person will be under no obligation to accept and pay the penalty if the person wishes to have the matter dealt with via court proceedings.
11. It is important to bear in mind that acceptance, or deemed acceptance, of an AP does not constitute a criminal conviction, it remains an administrative action. Although the fact that an AP has been issued will remain on the Fisheries Department's records, no criminal record attaches to acceptance, or deemed acceptance, of an AP.
12. In line with best international practice, the AP scheme operates on the principle that, as well as punishing the individual who has committed the alleged offence through an administrative penalty, the AP seeks to address any potential gain that was made in committing the alleged offence, and/or to remediate the damage caused by such alleged offence.
13. Repeat offending may result in increased penalties or automatic referral for prosecution.

14. Should the alleged offence carries a penalty of a fine above Level 11 on the standard scale, then the case would automatically be referred to court should there be judged to be sufficient evidence.

OFFENCES

15. The sea fisheries offences have themselves been organised into four basic penalty levels depending on the nature of the offence, as shown in table 1.

Table 1

Penalty Level	
9	Least serious
10	↑
11	↓
12	Most serious

16. All offences have been categorised (see Annex 1).
17. These categories are based on a general scale of seriousness. Offences falling within the least serious categories are more likely to be dealt with by having a penalty imposed, whereas offences falling within the most serious categories will be dealt with at court. However, this does not indicate the level of penalty that will apply in any given case, as other factors will be considered along with the alleged offence, including but not exclusively:
- Severity of the infringement
 - Previous infringement history
 - Other offences detected at the same time as the offence in question
 - Value of catch (when applicable)
 - Volume of catch (when applicable)
 - Environmental damage (when applicable)
18. Whilst issuing an AP might be regarded as “de-criminalising” the offence, the AP system is designed to deliver appropriate punishment commensurate with the nature and seriousness of the offence, and to deter further criminal activity. Therefore, a number of offences listed under the *Fisheries (Conservation and Management) Ordinance 2005* can attract a custodial sentence should a person be convicted in court proceedings. For instance:

Section	Offence	Level of penalty
Section 168	Deliberate unlawful use of fishing vessel in fishing waters	Level 12 and imprisonment for 3 years
Section 169	Unlawful possession of nets, traps or other equipment for fishing on fishing vessel within fishing waters	Level 11 and imprisonment for 30 months
Section 192(2)	Using or causing another to use, deal or act upon false communication etc.	Level 10 and imprisonment for 2 years
Section 220(2)	Breach of secrecy	Level 9 and imprisonment for 6 months

ADMINISTRATIVE PENALTY NOTICE

19. Once a decision has been made to offer an AP, an *Administrative Penalty Notice* will be issued in writing by the Fisheries Department and sent to the person deemed liable for the offence. This will detail the circumstances of the alleged offence, the range of the penalty being offered and the process by which the person can make submissions regarding the matters the person wishes the Director of Fisheries to take into account in imposing a monetary penalty within the range previously set.
20. Wherever possible an *Administrative Penalty Notice* will be sent out via recorded delivery letter and the person will have up to 28 days from the date the *Administrative Penalty Notice* is served to require by notice in writing that any proceedings regarding the alleged offence be dealt with before a court.

PAYMENT OF THE PENALTY

21. If a person who is offered an AP admits the offence in writing within 28 days after the *Administrative Penalty Notice* was served, or is deemed to have admitted the offence, the person will be served with an *Administrative Penalty*.
22. All APs must be paid within 28 days of issue of the *Administrative Penalty*.
23. If the *Administrative Penalty* is paid within the specified time, no criminal proceedings will be taken and no criminal conviction will be recorded in respect of the alleged offence. Once payment has been received, a written notification ("Notice of Deemed Payment") will be sent to the person stating that payment has been received in respect of the penalty offence(s), and indicating that the penalty is being treated as having been paid.
24. If the person does not pay the *Administrative Penalty* within 28 days after it has been served, the case will be referred to the court for prosecution in the usual way.
25. If an accused person is acquitted in court in relation to an alleged offence, the circumstances of that alleged offence will not be taken into account in the investigation of any future offences which may or may not result case in the offer of an administrative penalty.

RECORD OF PENALTIES

26. A record of all penalties will be kept in a central register to ensure the Fisheries Department is fully informed should another offence be detected. If the person chooses not to accept the AP but requires that any proceedings in respect of the alleged offence be dealt with before a court, and if the person is found not guilty in court, no infringement will be recorded on the database and will not count as a previous offence in any future decisions.

METHODS OF PAYMENT

27. Payment in cash is not permitted. Payments must be made either by cheque or by electronic transfer:

By cheque:

Payable to: [For the Fisheries Department to complete]

Sent to: [For the Fisheries Department to complete]

Include reference number on the reverse. Included in the corresponding Invoice.

By electronic transfer:

Bank Sort Code: [For the Fisheries Department to complete]

Account: [For the Fisheries Department to complete]

For credit of: [For the Fisheries Department to complete]

Reference: [For the Fisheries Department to complete]

Address: [For the Fisheries Department to complete]

Any queries on payment should be addressed to the Fisheries Department Team on +500 27260.

28. The person must make the payment in time to allow it to be cleared before the end of the 28 day payment period. If paying by cheque the person should allow five working days for cheques paid to be cleared.
29. Payments in other currencies must be sufficient to cover the total penalty value after conversion into Falkland Islands Pounds and relevant bank charges.

RECEIPT OF PAYMENT

30. The person will be issued with a *Notice of Deemed Payment* and a record of the penalty notice will be kept. In some circumstances, the fact that the person has paid a penalty notice might have evidential value in court proceedings.
31. If the person does not pay the penalty notice within the 28 day period, the offence will be referred for prosecution.

AMENDMENTS TO GUIDANCE

32. This guidance document will be amended and reviewed as necessary to accommodate changes to legislation relevant to the financial administrative penalty scheme.

DATA SHARING

33. Information may be shared or input may be sought from other enforcement bodies as may be appropriate.

DEPARTMENT OF FISHERIES

Falkland Islands Fisheries Department
 Bypass Rd, PO Box 598, Stanley,
 Falkland Islands, FIQQ 1ZZ
 Tel: +500 27260
 Fax: +500 27265
 Email: director@fisheries.gov.fk

Annex 1

Provision	Description of offence	Penalty
section 5 (3)	Failing to hand in warrant card	Level 9
section 26(6)	Failing to make application for renewal of registration upon Individual Transferable Quota Eligibility Register without having notified Director under section 31(2) of non-eligibility	Level 9
section 30(6)	The like offence in relation to failure to make application for refusal of registration upon Provisional Quota Eligibility Register	Level 9
section 32(4)	Failing to supply documents in accordance with section 32(1) or section 32(3)	Level 9
section 36(1)	Making false statement or supplying document containing false statement in connection with application under sections 24(1), 26(2) or 28(1)	Level 11 and imprisonment for 2 years
section 44(8)	Using fishing vessel with overseas master who does not have overseas master fishing licence	Level 10
section 45(4)	Contravening prohibition under section 45(2)	Level 9
section 45(5)	Employing as master person prohibited under section 45(2)	Level 11 and imprisonment for 6 months
section 46(1)	Trans-shipping or exporting fish without licence under section 46(3)	Level 10
section 47(8)(a)	Receiving fish without permit	Level 9
section 47(8)(b)	Failing to provide information or to verify it	Level 9
section 50(2)	Master failing to facilitate boarding or co-operate with inspection of fishing vessel	Level 9
section 54(3)	Failing to notify change in characteristics of	Level 11 and imprisonment

	fishing vessel as required by section 54(2)	for 6 months
section 86	Making etc. false entry in Register or producing document falsely purporting to be copy of or extract of document lodged for registration etc.	Level 11 and imprisonment for 2 years
section 92(7)	Contravening any provision of section 91 as to disposal of fish	Level 10
section 93(4)	Contravening any provision of sections 93(1), (2) or (3) as to purchase or acquisition of fish	Level 10
section 95(3)	Unlawful possession by fish farmer of fish for sale	Level 10
section 115(1)	Unreasonably refusing as witness before Commission to take oath or affirmation or failing or refusing to answer question	Level 9
section 115(2)	Unreasonably refusing to produce document to Commission	Level 9
section 117(2)	Publication of any evidence, document etc. in contravention of direction by the Commission	Level 9
section 118	Failure to comply with summons to attend before Commission as witness	Level 9
section 122	Obstructing or hindering Commission	Level 10
section 127(2)	Falkland Islands fishing vessel fishing on high seas without licence	Level 12 and imprisonment for 3 years
section 131(4)	Contravening section 131(3) (duty to notify change of owner, charterer or operator of fishing vessel in respect of which high seas fishing licence held)	Level 10
section 132(2)	Failure without reasonable excuse to provide information etc. as to high seas fishing	Level 10
section 136	Unlawful possession of fish on Falkland Islands fishing vessel on high seas	Level 11 and imprisonment for 30 months
section 137	Falkland Islands fishing vessel unlawfully on high seas when equipped for fishing	Level 11 and imprisonment for 30 months
section 138(1)	Falkland Islands fishing vessel unlawfully fishing in another country's waters	Level 12 and imprisonment for 3 years
section 139(4)	Visit by non-Falkland Islands vessel contrary to section 139(2) or (3)	Level 10

section 161(1)(a)	Contravening condition of fishing concession, fish receiver permit or overseas master fishing licence or of temporary order	Level 10
section 161(1)(b)	Holder of fishing concession or fish receiver permit causing or permitting person acting on his behalf to contravene condition of concession or permit or temporary order	Level 10
section 161(1)(c)	Person acting on behalf of holder of fishing concession, or fish receiver permit contravening condition of concession or permit or temporary order	Level 10
section 161(1)(d)	Making false or misleading record or return in relation to a matter specified in section 90	Level 10
section 162	Breach of condition or requirement of licence, permit etc. where no other penalty provided	Level 9
section 163(1)	Resisting or obstructing a fisheries officer; using threatening language or behaviour to a fisheries officer; failing to comply with a lawful requirement of a fisheries officer; providing false or misleading particulars to a fisheries officer; personating or falsely claiming to be a fisheries officer	Level 11 and imprisonment for 6 months
section 164	Removing fish from traps etc.	Level 9 and imprisonment for 3 months
section 165	Receiving fish other than for private or domestic purposes from a commercial fisher, other than by holder of fish receiver permit	Level 10
section 167	Using fishing vessel in fishing waters without licence: absolute offence	Level 11 and imprisonment for 6 months
section 168	Deliberate unlawful use of fishing vessel in fishing waters	Level 12 and imprisonment for 3 years
section 169	Unlawful possession of nets, traps or other equipment for fishing on fishing vessel within fishing waters	Level 11 and imprisonment for 30 months
section 170	Fishing in internal waters other than with a fishing vessel	Level 10 and imprisonment for 12 months
section 171	Possession of nets etc. in internal waters other than upon a fishing vessel	Level 10 and imprisonment for 12 months
section 172	Using boat outside fishing waters to support	Level 12 and

	illegal fishing in fishing waters	imprisonment for 3 years
section 182(2)	Prohibited person re-offending	Level 12 and imprisonment for 3 years
section 186(2)	Failing to provide reasonable assistance to observer or hindering or obstructing observer	Level 10
section 187(2)	Failing to provide food or accommodation etc. to observer	Level 10
section 188(4)	Failing to provide information to observer or allow observer to carry out inspections	Level 10
section 192(1)	Using false document or making false statement to obtain benefit under the Ordinance	Level 10 and imprisonment for 2 years
section 192(2)	Using or causing another to use, deal or act upon false communication etc.	Level 10 and imprisonment for 2 years
section 220(2)	Breach of secrecy	Level 9 and imprisonment for 6 months