

# STATES OF JERSEY



## DRAFT AQUATIC RESOURCES (JERSEY) LAW 201-

---

**Lodged au Greffe on 24th September 2013  
by the Minister for Economic Development**

---

**STATES GREFFE**





Jersey

## **DRAFT AQUATIC RESOURCES (JERSEY) LAW 201-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Economic Development has made the following statement –

In the view of the Minister for Economic Development the provisions of the Draft Aquatic Resources (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator A.J.H. Maclean**

*Minister for Economic Development*

Dated: 23rd September 2013

## REPORT

---

The Sea Fisheries (Jersey) Law 1994 is the primary legislative tool for the management of exploited marine resources. However, the definition used in this legislation to define its applicability is 'fish and shellfish' which does not cover the full range of living aquatic organisms found in the sea. Species falling outside this definition include seaweed, marine cold-water coral (known as Maerl) jelly-fish and worms. This was viewed as a significant gap in the legislation for the management of the Island's marine resources, as there is currently no appropriate legal mechanism for controlling the utilisation of marine aquatic resources, other than those currently set out in the Sea Fisheries Law.

The exploitation of the algal resources is currently legislated for by an 1894 Law: the *Loi (1894) sur la coupe et la peche des vraics*. The Law is in French, very outmoded, and was written to control the exploitation for the purpose of agriculture. The Law's continued presence on the statutes is hampering the development of a sector of the fish farm industry and other emerging industries. Ormers, which feed on seaweed, are currently being farmed experimentally, but the development of this industry is being restricted by the current legal situation which stipulates the time of year when seaweed can be cut. Fresh, live seaweed is required to feed ormers throughout the year. Several enquiries have also been received from individuals looking to harvest seaweed for fertiliser, animal feed, cosmetic or pharmaceutical products. This activity is also currently not permitted by the Law for the majority of the year. The exploitation of algae has become a large industry in other parts of Europe, particularly Ireland and Brittany and other locations. This legislation would allow development of these industries by making use of this renewable resource, under licence in a sustainable and appropriate manner.

The exploitation of other resources (e.g. polychaetes (worms) for bait) is currently unregulated with no mechanism in place to ensure appropriate use should it be necessary. Commercial exploitation of these species does occur in the UK, and whilst there is little commercial exploitation of bait species at present, the possible future development is not unrealistic, with potential significant impacts on the marine intertidal environment, including within the marine protected areas designated under the Ramsar Convention.

Cold-water corals (Maerl) are an OSPAR listed critical habitat, providing an important habitat for juvenile stages of many commercial stocks, as well as other marine species. The ability to manage any exploitation of these species is key to achieving our agreed marine management objectives, as defined through local and international strategies and agreements.

### **Financial and manpower implications**

The financial and manpower resources specifically related to the adoption of the Aquatic Resources (Jersey) Law 201- can be accommodated from within the existing resources of the Marine Resources Section of the Department. Subordinate legislation, in the form of Regulations, to undertake resource assessment and to establish a licensing regime will require additional resources. It is the intention that, where appropriate, the costs to administer and regulate this legislation will be recouped from those applying for the licence to exploit the resource.

## **Human Rights**

The notes on the human rights aspects of the draft Law in the Appendix have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

## APPENDIX TO REPORT

### Human Rights Note on the draft Aquatic Resources (Jersey) Law 201-

1. This note has been prepared in respect of the draft Aquatic Resources (Jersey) Law 201- (“the draft Law”) by the Law Officers’ Department. It summarises the principal human rights issues arising from the contents of the draft Law and explains why, in the Law Officers’ Department’s Opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”). References below to “Articles” are to Articles contained in the draft Law unless otherwise stated.

**These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.**

#### Right to the peaceful enjoyment of property

2. Article 1 of Protocol No. 1 to the ECHR (“A1P1”) provides that –

*“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*

*The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”*

3. A1P1 guarantees the right to the peaceful enjoyment of possessions and provides that a person may only be deprived of their possessions where that occurs in the public interest and in accordance with the law. A1P1 also recognises that states are entitled to control the use of property in accordance with the public interest and to secure the payment of taxes or other contributions or penalties. A1P1 is a qualified right, so if the interference with the A1P1 right takes place in accordance with the law and can be justified in the public interest then no breach of the A1P1 right occurs.
4. Any existing rights or licences over the sea or sea-shore, however they may have arisen, may constitute possessions for the purposes of A1P1. Regulations made by the States under Article 2 of the draft Law may include provision restricting or prohibiting the taking of aquatic resources<sup>1</sup> or imposing any requirement to obtain a licence or permit to take those resources<sup>2</sup>. On the face of it, such provisions might perhaps have interfered with the peaceful enjoyment of existing rights over the sea or sea-shore in a way that would need to be justified for the purposes of A1P1. However, the draft Law provides that Regulations made under Article 2 may not prejudicially affect any right on, to or over any portion of the sea or the sea-shore<sup>3</sup>. Therefore, this power to make Regulations does not pose any particular difficulties as to compliance with A1P1.

---

<sup>1</sup> Article 2(1)(a)

<sup>2</sup> Article 2(2)

<sup>3</sup> Article 2(3)

5. A1P1 may be engaged by the exercise of the powers given to officers appointed or deemed to be appointed under the draft Law<sup>4</sup>, firstly, to seize aquatic resources and gear<sup>5</sup> used in taking those resources and, secondly, to sell, destroy or otherwise dispose of those aquatic resources or gear<sup>6</sup>. The exercise of these powers will, therefore, need to be justified by reference to the public interest in each case. The reason these powers have been taken is to facilitate the enforcement of the draft Law with the aim of conserving and managing Jersey's aquatic resources. Conserving and managing those resources is in the public interest; and that interest should be sufficient justification to exercise these powers, particularly given the safeguards placed on them. These safeguards provide that the power of seizure may only be exercised over aquatic resources or gear in respect of which the officer has reasonable cause to suspect that an offence has been committed<sup>7</sup>. Further restrictions are placed on the powers of officers to sell those items to ensure that is handled in a proportionate manner<sup>8</sup>. It is also important to note that these powers are not novel and that similar powers are afforded to fisheries officers by the Sea Fisheries (Jersey) Law 1994<sup>9</sup>. For these reasons the exercise of these powers by officers should be capable of being justified by reference to the public interest.
6. The powers of the Royal Court to authorise the seizure and detention of any boat, gear or aquatic resources for the purpose of levying the amount of any fine<sup>10</sup> and to order forfeiture of aquatic resources and the gear used in taking those resources<sup>11</sup> may also engage A1P1. Again these powers are not novel and similar powers are given to the court to order the seizure of property to levy a fine or the forfeiture of property under the Sea Fisheries Law 1994<sup>12</sup>. The Royal Court's powers in the draft Law can only be used where the court has convicted the offender of an offence under the draft Law. Further, forfeiture may only be applied where the aquatic resources were taken, or the gear was used, in committing the offence. The court may consider the proportionality of its actions in each case and the creation of these powers raises no particular difficulty with complying with A1P1.

#### The right to respect for private and family life

7. The draft Law provides officers appointed under the draft Law with a range of investigatory powers<sup>13</sup>. The exercise of those powers may interfere with the right in Article 8 of the ECHR. Article 8 of the ECHR provides that –

- “1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the*

---

<sup>4</sup> Article 6

<sup>5</sup> Article 7(2)

<sup>6</sup> Article 7(3) and (4)

<sup>7</sup> Article 7(2)(a) and (b)(i)

<sup>8</sup> Article 8

<sup>9</sup> Article 16 of the Sea Fisheries (Jersey) Law 1994

<sup>10</sup> Article 11

<sup>11</sup> Article 3(2)

<sup>12</sup> Articles 20 and 4(2) of the Sea Fisheries (Jersey) Law 1994

<sup>13</sup> Article 7(1)

*law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”*

8. Corporations, as well as private individuals, may rely on the right in Article 8(1) of the ECHR in respect of business premises, and searches of offices may constitute an interference with the right to respect for private life, home and correspondence. Under the draft Law, officers have the power to enter premises (other than dwellings) to either examine or require the production of documents or, if the officer has reasonable cause to suspect an offence has been committed, to search premises and seize and detain documents or other things<sup>14</sup>. The exercise of these powers may amount to an interference with the right in Article 8(1) of the ECHR that must be justified in accordance with Article 8(2) if it is to be compatible with the ECHR. In order to justify interference with the right in Article 8(1) of the ECHR, the interference must be in accordance with the law, be in pursuit of one of the legitimate aims specified in Article 8(2) of the ECHR and be proportionate to that aim.
9. The proper exercise of these powers, by serving to conserve Jersey’s aquatic resources, would pursue the legitimate aim of protecting the “*economic well-being of the country*”. Further, these powers should be exercised in a proportionate manner taking into account the safeguards that are placed on them. These safeguards include, *inter alia*, limits on an officer’s power of entry into premises to examine aquatic resources and to require the production of documents so that it may only be used to enter at a reasonable time and may not be used to enter a dwelling. Further, the power to search premises and to seize and detain any document or thing may only be exercised where the officer has reasonable cause to suspect that an offence has been committed. It may also be noted that these powers are very similar to those provided to Sea Fisheries Officers under existing Jersey law<sup>15</sup> and to British Fisheries Officers under UK law<sup>16</sup>. The exercise of the powers provided by the draft Law should, therefore, be capable of being justified in accordance with Article 8(2) of the ECHR.

#### The right to a fair trial

10. Article 6 of the ECHR guarantees procedural fairness in the course of civil proceedings and a right of access to a court for the determination of civil rights and obligations. Administrative decisions affecting the ability to operate a business may determine a civil right and so a decision to grant a licence, impose conditions on the grant of a licence, or to revoke or vary a licence to run a business may need to be made in a manner that is compliant with Article 6 of the ECHR<sup>17</sup>. This does not mean that the Minister or public authority that makes these decisions must do so in a way that conforms to all

---

<sup>14</sup> These powers arise under several sub-paragraphs of Article 7(1).

<sup>15</sup> See Article 16 of the Sea Fisheries (Jersey) Law 1994.

<sup>16</sup> See section 8 of the UK Sea Fisheries Act 1968. See also the powers given Marine Enforcement Officers by Part 8 of the UK Marine and Coastal Access Act 2009.

<sup>17</sup> Decisions with respect to licences to take aquatic resources or carry on other activities concerning an aquatic area may be made by the Minister or another specified person in accordance with Regulations made under Article 2(1)(n) to (q) of the draft Law.

the procedural requirements of Article 6 of the ECHR. However, where such decisions are initially made without meeting all those procedural requirements, there may need to be a right of appeal against the decision to a court that is sufficient to render the process as a whole compatible with Article 6 of the ECHR.

11. The draft Law provides that an appeal against a decision in respect of a licence or permit may be made to the Royal Court<sup>18</sup>. The draft Law does not impose any restrictions on the jurisdiction of the Royal Court with respect to such an appeal and having heard the appeal, the Royal Court has the power to give the Minister such directions as it thinks fit as respects the licence or permit. Therefore, the draft Law is compatible with Article 6 of the ECHR in this regard.

---

<sup>18</sup> Article 18

## Explanatory Note

---

This draft Law would make provision for the management of aquatic resources, other than sea fish.

*Article 1* defines words and terms used in the Law. In particular, it defines a number of key phrases in relation to taking aquatic resources. The term “aquatic resources” is defined to mean any marine aquatic species other than sea fish. The word “take” is defined to mean taking aquatic resources for the purpose of exploitation or other use (whether or not commercial) in any manner from the marine environment, including subsequent transportation to shore. “Marine environment” is defined to mean, in relation to Jersey, any of its territorial waters, sea-bed or beach, including man-made structures on the sea bed or suspended in the sea. It also defines an “aquatic area” as an area from which aquatic resources may be taken from the marine environment.

This Article also states that this Law applies to Jersey and its territorial waters.

*Article 2* gives the States power to make Regulations for managing aquatic resources. Regulations may make provision in relation to the taking of aquatic resources; establishing aquatic areas; the boats and gear used, equipment to be carried by boats; prohibitions or restrictions on harmful deposits into the sea; prohibitions or restrictions on the sale or exportation of aquatic resources, the disposal of aquatic resources and the granting of licences and permits.

*Article 3* makes it an offence to contravene any Regulations made under Article 2. A person who is guilty of such an offence is liable to such maximum fine as may be specified in the Regulations, or, if none is specified, to an unlimited fine. The court which convicts a person of such an offence may order the forfeiture of anything used in committing the offence, other than a boat, and for the forfeiture of any aquatic resources taken in contravention of the Regulations.

*Article 4* makes provision for a master, owner and charterer (if any) of a boat to each be liable for contravention of any Regulations made under Article 2 involving the boat. “Master” is defined in Article 1 to include the skipper or any other person in charge of the boat.

*Article 5* allows the Minister to grant exemptions, with conditions, from liability for breach of Regulations under Article 2 to persons carrying out scientific research. If a person were to carry out activities otherwise than in accordance with such an exemption a criminal offence would be committed if those activities breach such Regulations.

*Article 6* gives the Minister power to appoint officers for enforcing this Law. In addition, the Harbour Master, Deputy Harbour Master, an assistant Harbour Master, a British sea fishery officer and a member of the States of Jersey Police Force or the Honorary Police are each deemed to be officers.

*Article 7* sets out the enforcement powers of officers. These include detention of persons; stopping and boarding boats; searching vehicles; entering premises; requiring production of documents and information; seizure of items, including aquatic resources, suspected to be involved in an offence; the sale, disposition or destruction of aquatic resources so seized.

*Article 8* makes provision for action that may be taken when aquatic resources are seized and not sold, disposed of or destroyed under Article 7 or when gear is seized under Article 7. In such circumstances the Minister must give notice of the seizure and pay the owner the reasonable wholesale value of the aquatic resources or gear. This provision does not apply if a court has ordered forfeiture or if the court has ordered that payment is unwarranted; nor if sale would be contrary to any enactment or in circumstances prescribed by Regulations.

*Article 9* makes it an offence to obstruct any officer exercising powers under Article 7.

*Article 10* exempts officers from liability for anything done in the exercise or purported exercise of powers under Article 7.

*Article 11* allows a court to authorize the Viscount to seize and detain any boat, its gear and any aquatic resources for the purpose of levying the amount of a fine imposed on the master, owner, charterer or member of a crew convicted of an offence under this Law.

*Article 12* allows a Court to order compensation, up to £5,000 for any damage caused to property by reason of an offence committed under this Law.

*Article 13* allows a Court to order the forfeiture, and direct the disposal of, any aquatic resources or gear seized under this Law, regardless of whether, in the case of aquatic resources, they have been sold, destroyed or disposed of under Article 7(2).

*Article 14* makes a person who makes a false or misleading statement under this Law guilty of an offence and liable to a maximum term of imprisonment of 12 months and to a maximum fine of level 4 on the standard scale, that is, up to £5,000.

*Article 15* provides that any record produced by automatic recording equipment carried by a boat in compliance with Regulations under Article 2 shall be evidence of the matters appearing from that record.

*Article 16* is a general provision in respect of liability for offences committed by a company, limited liability partnership or a separate limited liability partnership.

*Article 17* allows any Regulations that make provision for fees to make provision for such fees to be set by the Minister by Order.

*Article 18* makes provision for a person to appeal to the Royal Court against decisions relating to the grant of licences.

*Article 19* applies the enforcement powers in Articles 7 and 8 to any provisions made to give effect to any European Communities legislation that sets out restrictions or prohibitions relating to aquatic resources. This Article also allows any provision that could be made under the European Communities Legislation (Implementation) (Jersey) Law 1996 to be made under this Law.

*Article 20* is a general provision allowing any Regulations or Order made under the Law to contain transitional, consequential, incidental or supplementary provisions.

*Article 21* repeals the Loi (1894) sur la coupe et la pêches des vrais.

*Article 22* sets out the title of the Law and provides that it will come into force 7 days after registration.





Jersey

## DRAFT AQUATIC RESOURCES (JERSEY) LAW 201-

### Arrangement

---

#### Article

|    |  |    |
|----|--|----|
| 1  | Interpretation and application.....                            | 15 |
| 2  | General power to regulate use of aquatic resources .....       | 16 |
| 3  | Offence of contravening Regulations.....                       | 18 |
| 4  | Liability where boat used in contravention of Regulations..... | 19 |
| 5  | Exemption for scientific research.....                         | 19 |
| 6  | Officers.....  | 19 |
| 7  | Powers of officers.....  | 19 |
| 8  | Action where aquatic resources or gear seized.....             | 21 |
| 9  | Obstruction of officers .....                                  | 22 |
| 10 | Protection of officers .....                                   | 22 |
| 11 | Recovery of fines .....  | 22 |
| 12 | Compensation for damage caused by offence.....                 | 23 |
| 13 | Disposal of forfeitures.....                                   | 23 |
| 14 | False statements.....  | 23 |
| 15 | Evidence.....  | 23 |
| 16 | General provisions as to offences.....                         | 23 |
| 17 | Fees .....   | 24 |
| 18 | Appeals.....   | 24 |
| 19 | European Community provisions.....                             | 24 |
| 20 | Regulations and Orders .....                                   | 25 |
| 21 | Repeal.....  | 25 |
| 22 | Citation.....  | 25 |





Jersey

## DRAFT AQUATIC RESOURCES (JERSEY) LAW 201-

A **LAW** to make provision for the management of aquatic resources other than sea fish.

*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

### 1 Interpretation and application

(1) In this Law, unless the context requires otherwise –

“aquatic area” means an area of the marine environment from which aquatic resources may be taken, such area being measured with reference to an area of the sea-bed, including, if appropriate, any part of the sea shore;

“aquatic resources” mean any marine aquatic species, other than sea fish;

“boat” means a vessel of whatever size, and in whatever way propelled, which is used for any of the following –

- (a) taking aquatic resources from the marine environment; and
- (b) cultivating aquatic resources in the marine environment with a view to taking them subsequently;

“court” means the Royal Court;

“gear” means any net, container, pot, trap or other object used for taking or storing aquatic resources or in connection with the taking or storing of aquatic resources;

“marine environment” means, in relation to Jersey, any part of its territorial sea, sea-bed or beach and includes any man-made thing such as

ropes, chains, walls or other structures on the sea bed or suspended in the sea;

“master” includes a skipper or any other person who is for the time being in command or charge of a boat;

“Minister” means the Minister for Economic Development;

“officer” means a person appointed under Article 6 as an officer or deemed under that Article to be an officer;

“police officer” means a member of the Honorary Police or the States of Jersey Police Force;

“Regulations” means Regulations made by the States under this Law;

“sea fish” means fish of any description found in the sea, including shellfish, and any part of such fish;

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

“to take” in relation to aquatic resources, means, for the purpose of exploitation or other use (whether or not commercial) either or both of the following –

- (a) to remove aquatic resources in any manner from the marine environment;
- (b) to transport aquatic resources to shore following their removal from the marine environment;

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

- (2) Save as is specifically provided otherwise, this Law applies to Jersey and the territorial sea of Jersey.
- (3) For the avoidance of doubt a reference in this Law to a country includes a reference to Jersey and any other countries in the British Islands.
- (4) A reference in this Law to an Act of the United Kingdom is a reference to that Act as amended from time to time and includes a reference to that Act as extended or applied by or under another Act.

## **2 General power to regulate use of aquatic resources**

- (1) The States may make Regulations for any of the following purposes, namely –
  - (a) for restricting or prohibiting the taking of aquatic resources or any method of taking aquatic resources from the marine environment or for requiring aquatic resources to be taken by any specified method or instrument;
  - (b) for controlling the establishment of, and for regulating, protecting and developing, aquatic areas in relation to all or any specified kinds of aquatic resources;
  - (c) for requiring the marking or identification of any gear, including any gear used for keeping alive aquatic resources that are intended

- to be left in or on the sea before being taken from the marine environment;
- (d) for requiring any gear carried by any boat to comply with such requirements as to construction, design, material or size as may be specified in the Regulations;
  - (e) for requiring that a boat (wherever registered) carry when it is in the territorial sea such equipment (including, but not restricted to, equipment designed to allow the position of the boat to be monitored) as may be specified in the Regulations;
  - (f) for requiring that a boat registered in Jersey, wherever it may be, carry such equipment (including but not restricted to, equipment designed to allow the position of the boat to be monitored) as may be specified in the Regulations;
  - (g) for requiring that any equipment carried as referred to in sub-paragraph (e) or (f) be obtained, maintained or operated in such manner as may be specified in the Regulations;
  - (h) for prohibiting or restricting any action that may interfere with any equipment as referred to in sub-paragraph (e) or (f), or the operation of such equipment, or with any data recorded, transmitted or received by it, or any action which would compromise the integrity of such equipment;
  - (i) for prohibiting the use of any explosive or poisonous or noxious substance with intent to take or destroy aquatic resources;
  - (j) for restricting or prohibiting the deposit or discharge of any matter detrimental to the marine environment in connection with taking aquatic resources;
  - (k) for specifying the use to which aquatic resources taken may be put or restricting or prohibiting the processing of aquatic resources before or after being taken from the marine environment, or requiring aquatic resources to be kept in some specified condition or kept in some specified environment after being taken from the marine environment;
  - (l) for restricting or prohibiting the sale or use of aquatic resources;
  - (m) for restricting or prohibiting the exportation from Jersey of aquatic resources;
  - (n) for granting licences or permits, whether by the Minister or another specified person for any of the following –
    - (i) taking aquatic resources from the marine environment,
    - (ii) the development of aquatic areas,and for conditions attached to such licences or permits;
  - (o) for specifying the form and manner in which a licence or permit shall be granted or applied for, or a variation or renewal applied for or effected or a revocation or suspension effected;
  - (p) for specifying the time when a licence or permit, or a variation, revocation or suspension, shall have effect;

- (q) for fees to be charged for any licence or permit, including a fee for an application for such licence or permit and for annual fees following the grant of a licence or permit;
  - (r) for the disposal of any aquatic resources taken in contravention of the Regulations or any licence or permit under the Regulations in such manner as may be specified in the Regulations, including forfeiture or return to the marine environment;
  - (s) for requiring the keeping of records, and the furnishing of returns and reports.
- (2) Regulations made under paragraph (1) may –
- (a) include provisions –
    - (i) requiring that a person involved in the taking of aquatic resources or otherwise involved in activities concerning an aquatic area (whether directly or indirectly) must be the subject of a licence, permit, or other qualification, granted by a specified person or specified authority of a specified country (which may include Jersey),
    - (ii) for determining whether any person involved in the taking of aquatic resources or otherwise involved in activities concerning an aquatic area (whether directly or indirectly) is a fit and proper person, and
    - (iii) for licences or permits to be granted in respect of named boats to the owners or charterers of any such boats;
  - (b) be framed so as to apply only in relation to specified species of aquatic resources or specified areas, or during specified periods, or according to such other factors as may be specified in the Regulations; and
  - (c) prescribe a maximum fine for contravention of any Regulation.
- (3) Regulations under this Article may not be made so as prejudicially to affect any right on, to or over any portion of the sea or the sea-shore enjoyed by any person under any enactment or grant from the Crown, without the consent of that person.

### **3 Offence of contravening Regulations**

- (1) Subject to Article 5, a person who contravenes any Regulation made under Article 2 shall be guilty of an offence and liable –
- (a) to a fine, if the Regulations have not prescribed a maximum fine for the purposes of this paragraph; or
  - (b) to a fine not exceeding the maximum so prescribed, if the Regulations have done so.
- (2) The court by which the offender is convicted may order the forfeiture of –
- (a) anything used in committing the offence (other than a boat);
  - (b) any aquatic resources that were taken in contravention of the Regulations.

**4 Liability where boat used in contravention of Regulations**

- (1) If a boat is used in any manner constituting a contravention of any Regulation made under Article 2, or any such Regulation is contravened in the case of a boat, the master, owner and the charterer (if any) shall each be guilty of an offence under Article 3.
- (2) Paragraph (1) is without prejudice to whether or not any other person is liable for an offence under such Regulations.

**5 Exemption for scientific research**

- (1) Nothing in Regulations made under Article 2 shall apply in relation to anything done under the authority of the Minister for the purpose of carrying out scientific research.
- (2) In granting an authorization for the purpose of this Article, the Minister –
  - (a) must specify the description of person or the name of the person covered by the authorization; and
  - (b) may specify conditions attached to the authorization.
- (3) A person shall not be guilty of an offence under Article 3 by reason of anything done or omitted to be done by the person in the course of scientific research if it is done or omitted under the authority of the Minister for the purposes of this Article and in accordance with any conditions specified by the Minister.

**6 Officers**

- (1) The Minister may appoint one or more persons as officers for the purposes of this Law.
- (2) In addition to officers appointed under paragraph (1), the following persons shall be deemed to be officers for the purposes of this Law –
  - (a) the Harbour Master and Deputy Harbour Master;
  - (b) an assistant Harbour Master;
  - (c) a person who is a British sea fishery officer by virtue of section 7 of the Sea Fisheries Act 1968 of the United Kingdom; and
  - (d) a police officer.

**7 Powers of officers**

- (1) For the purposes of enforcing this Law or the Regulations, an officer, on producing if required to do so some duly authenticated document showing his or her authority, may –
  - (a) detain any person who has committed, or whom the officer has reasonable cause to suspect of having committed, an offence under this Law or the Regulations;
  - (b) go on board any boat;

- 
- (c) require any boat to stop and to do anything else to enable him or her to board it;
  - (d) stop, enter and search any vehicle and examine any aquatic resources in it;
  - (e) enter (at any reasonable time) any premises (other than a dwelling) used for carrying on any business in connection with the treatment, storage or sale of aquatic resources and without prejudice to the generality of the foregoing –
    - (i) examine any aquatic resources on the premises,
    - (ii) require any person on the premises to produce any documents in his or her custody or possession relating to the taking, landing, sale or disposal of aquatic resources, and
    - (iii) take copies of any such document;
  - (f) if the officer has entered premises pursuant to sub-paragraph (c) and has reasonable cause to suspect that an offence under this Law or the Regulations has been committed –
    - (i) search the premises for any documents, or for any other thing, that may be evidence of such an offence,
    - (ii) require any person on the premises to do anything that appears to the officer to be necessary for facilitating the search, and
    - (iii) seize and detain any document produced to him or her under sub-paragraph (c) or any document, or other thing, found during a search under clause (i);
  - (g) require any person who claims to be the holder of a licence, or permit, granted under this Law or the Regulations to produce that licence or permit;
  - (h) require a person to produce any record, or other document, that the person is required to create, maintain or hold under this Law or Regulations;
  - (i) examine and take copies of any such record or other document or of a licence or permit granted under this Law or Regulations;
  - (j) while in a vehicle or in any place other than a dwelling, search for and examine any instrument or receptacle used in catching, carrying holding or storing aquatic resources or search for, examine and take samples of any matter the deposit or discharge of which is restricted or prohibited under this Law or Regulations; or
  - (k) require any record, or other document, referred to in this paragraph to be rendered in a visible and legible form or a form in which it may be removed.
- (2) An officer may seize –
- (a) aquatic resources in respect of which he or she has reasonable cause to suspect that an offence under this Law or Regulations has been committed; and
  - (b) any gear or other object –

- 
- (i) in respect of which the officer has reasonable cause to suspect that an offence under this Law or Regulations has been committed, or
    - (ii) that the officer has reasonable cause to suspect has been used for taking aquatic resources in respect of which any such offence has been committed.
  - (3) An officer may sell, destroy or otherwise dispose of any aquatic resources seized under paragraph (2) if the officer considers that it is not practicable to maintain the aquatic resources in a suitable condition pending notice being given under Article 8.
  - (4) An officer may sell, destroy or otherwise dispose of any gear seized under paragraph (2) if –
    - (a) notice of the seizure has been given under Article 8;
    - (b) the gear is not collected by the owner within 6 months after the notice is given; and
    - (c) a court has not ordered the forfeiture of the gear.
  - (5) Where an officer who is not a police officer detains any person in pursuance of this Article, he or she shall immediately report the matter to a police officer.
  - (6) The powers conferred on an officer by this Article may be exercised in Jersey or within the seaward limits of the territorial sea.
  - (7) The powers of detention of persons, entry and search conferred on an officer by this Article shall be in addition to and not in derogation from any powers of detention, entry or search given to a police officer under any other enactment.

## **8 Action where aquatic resources or gear seized**

- (1) If aquatic resources are seized under Article 7(2) in the absence of its owner (and of any person who has possession or control of the aquatic resources), and the aquatic resources are not sold, destroyed, or otherwise disposed of under Article 7(3), the Minister shall give notice of the seizure.
- (2) If gear is seized under Article 7(2) in the absence of its owner (and of any person who has possession or control of it), the Minister shall give notice of the seizure.
- (3) Notice under paragraph (1) or (2) shall –
  - (a) if the Minister knows who the owner is and his or her address, or can by reasonable inquiry discover those matters, be in writing served by post on the owner; or
  - (b) in any other case, be in writing published in the Jersey Gazette.
- (4) The Minister shall pay to the owner of aquatic resources seized under Article 7(2) the reasonable wholesale value of the aquatic resources (as at the date of the seizure) if –

- (a) the aquatic resources are disposed of under Article 7(2), but not by returning or passing the resources to the owner (or to any person who had possession or control of the aquatic resources immediately before seizure); and
  - (b) the Minister knows who the owner is and his or her address or can by reasonable inquiry discover those matters.
- (5) Paragraph (4) does not apply –
- (a) if the aquatic resources are returned immediately to the marine environment from which they were taken;
  - (b) if a court has ordered the aquatic resources to be forfeited under this Law;
  - (c) if sale of the aquatic resources would be contrary to this Law or any other enactment;
  - (d) if a court has ordered that, in all the circumstances, payment under paragraph (4) is unwarranted; or
  - (e) in circumstances prescribed by the Regulations.

## **9 Obstruction of officers**

Any person who –

- (a) fails without reasonable cause to comply with any requirement imposed by an officer under the powers conferred on such officers by Article 7;
- (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with any such requirement; or
- (c) intentionally obstructs any such officer in the exercise of any of those powers,

shall be liable to a fine.

## **10 Protection of officers**

- (1) An officer shall not be liable to any civil or criminal proceedings for anything done in the purported exercise of the powers conferred on the officer by Article 7 if the court is satisfied that the act was done in good faith, that there were reasonable grounds for doing it and that it was done with reasonable care and skill.
- (2) Paragraph (1) does not apply to any act or omission that is unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000<sup>1</sup>.

## **11 Recovery of fines**

Where a fine is imposed on the master, owner or charterer or a member of the crew of a boat who is convicted of an offence under this Law, the court may authorize the Viscount to seize and detain the boat and its gear and any aquatic resources and any property of the person convicted for the purpose of levying the amount of the fine.

**12 Compensation for damage caused by offence**

- (1) Where, on convicting a person of an offence under this Law or under Regulations, it appears to the court that personal injury or damage to property has been caused by the offence, the court may order the person convicted to pay, in addition to any fine, a reasonable sum, not exceeding £5,000 (or, if the Regulations prescribe another maximum, that other maximum instead), as compensation for the injury or damage, and the sum when recovered shall be paid to the person who has suffered the injury or damage.
- (2) The provisions of this Article shall not be taken to derogate from any right of a person who has suffered personal injury or damage to property in consequence of an offence under this Law to recover in respect thereof damages in civil proceedings.

**13 Disposal of forfeitures**

- (1) If a court orders the forfeiture of any aquatic resources or gear under Article 3, the aquatic resources or gear may be disposed of as the court directs and any proceeds realized by the disposal shall be paid to the income of the States.
- (2) The court may order the forfeiture, and direct the disposal, of aquatic resources under paragraph (1) even if the aquatic resources have already been sold, destroyed or otherwise disposed of under Article 7(2).

**14 False statements**

- (1) A person shall not knowingly or recklessly make any statement, or provide any information, that is false or misleading in a material particular in or in connection with any application, or in providing any information, under this Law or Regulations.
- (2) A person who contravenes this Article shall be guilty of an offence and liable to imprisonment for a term of 12 months and to a fine of level 4 on the standard scale.

**15 Evidence**

Where any automatic recording equipment is required to be carried by a boat in accordance with Regulations under Article 2, any record produced by means of that equipment or partly by that and partly by other means, shall, in proceedings for an offence under this Law, be evidence of matters appearing from the record.

**16 General provisions as to offences**

- (1) Where an offence under this Law or the Regulations committed by a company, limited liability partnership or separate limited partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

(a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the company; or

(b) any person purporting to act in any such capacity,

the person shall also be guilty of the offence and liable in the same manner as the partnership or company to the penalty provided for that offence.

- (2) Where the affairs of a company are managed by its members, paragraph (1) shall apply in relation to acts and defaults of a member in connection with his or her functions of management as if the member were a director of the company.

## **17 Fees**

(1) Fees, if payable to the States, may, but need not, relate to the costs of the Minister in administering this Law, the commercial value of the aquatic area, licence or permit concerned, the profits of the business conducted by virtue of the licence or permit, or any other factor.

(2) Where this Law confers power to make Regulations with respect to fees, those Regulations may provide for amounts of fees to be prescribed by the Minister by Order under this Law and those fees (whether prescribed by Regulations or by Order) may, but need not, relate to the costs of administering this Law, the commercial value of a licence, permit or aquatic area to which the fee relates, the profits of the business to which the licence or permit relates, or any other factor.

## **18 Appeals**

(1) Any person aggrieved by –

(a) a refusal to grant, vary or renew a licence, or permit, under this Law or Regulations;

(b) the revocation or suspension of a licence, or permit, under this Law or Regulations; or

(c) the imposition of any conditions on a licence, or permit, under this Law or the Regulations, or the variation of the conditions to which such a licence or permit is subject, or a refusal to vary those conditions,

may within 28 days after the day on which the person receives notice of the refusal, revocation, suspension, imposition, or variation, as the case may be, appeal to the court.

(2) Once it has heard an appeal under this Article, the court shall either dismiss the appeal or give the Minister such directions as the court thinks fit as respects the licence or permit that is the subject of the appeal and may make such interim order as it thinks fit.

## **19 European Community provisions**

(1) Where Community provisions that are restrictions or prohibitions relating to aquatic resources are given effect by Regulations made under Article 2

of the European Communities Legislation (Implementation) (Jersey) Law 1996<sup>2</sup>, subject to anything to the contrary in those Regulations, Article 7 confers the same powers (and Article 8 applies to those powers) in relation to the enforcement of such restrictions or prohibitions as it does in relation to the enforcement of this Law.

- (2) Without limiting Article 2 of the European Communities Legislation (Implementation) (Jersey) Law 1996, the States may, by Regulations under this Law, make such provision as appears to them to be requisite for the enforcement of any Community provision that is given effect as referred to in paragraph (1) and such Regulations may in particular contain provisions that (with any necessary modifications) apply, or correspond to, any provisions of this Law.
- (3) In this Article “Community provision” has the same meaning as in Article 1 of the European Communities Legislation (Implementation) (Jersey) Law 1996<sup>3</sup>.

## **20 Regulations and Orders**

An Order or Regulations may contain such transitional, consequential, incidental or supplementary provisions as appear to the Minister or the States, as the case may be, to be necessary or expedient for the purposes of the Order or Regulations.

## **21 Repeal**

The Loi (1894) sur la coupe et la pêche des vraics<sup>4</sup> shall be repealed.

## **22 Citation**

This Law may be cited as the Aquatic Resources (Jersey) Law 201- and shall come into force 7 days after it is registered.

- 
- <sup>1</sup> *chapter 15.350*
  - <sup>2</sup> *chapter 17.245*
  - <sup>3</sup> *chapter 17.245*
  - <sup>4</sup> *L.1/1894 (chapter 14.075)*