

Regulation, licensing & enforcement in the South Georgia fisheries: what is a good regulatory framework?



Introduction



- Legislation
- Licensing regime
 - Toothfish
 - Krill
- Regulation
 - Inspections
 - Monitoring
 - Observers
 - Catch verification
- Revenue and expenditure




Legislation

Fisheries (Conservation & Management) Ordinance

- Prohibits fishing except under permit / licence
- Defines roles and responsibilities;
- Legal basis of licensing and enforcement regime;
- Court proceedings and Administrative Penalties

ELIZABETH II



The Territories of South Georgia
and the South Sandwich Islands

RUSSELL THOMAS JARVIS,
Acting Commissioner.

FISHERIES (CONSERVATION AND MANAGEMENT) ORDINANCE 2000
(No. 2 of 2000)

ARRANGEMENT OF PROVISIONS

Section	
PART I INTRODUCTORY	
<i>Short title, commencement and interpretation</i>	
1.	Short title
2.	Interpretation
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4.	Director of Fisheries and Fisheries Protection Officers
<i>Restriction of fishing and fishing-related operations</i>	
5.	Licensing of fishing boats
6.	Receiving and trans-shipping of fish and other fishing-related operations
7.	Supplementary to sections 5 and 6
8.	Report prior to entry
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PART II	



Legislation

Marine Protected Areas Order



- Defines the area of the MPA;
- Identifies spatial and temporal closures;
- Ban on bottom trawling;
- Bottom fishing allowed in just 8% of the area;
- Enforced under the Wildlife & Protected Areas Ordinance.



Licensing System



- Needs to be consistent with CCAMLR;
- Competitive licensing rounds;
- Consultation;
- Prior to 2013/14 all licences issued on annual basis;
- This year, two-year licences introduced in icefish and toothfish fisheries;
- *Information for Applicants* document published for each round;



Information for Applicants



South Georgia and the South Sandwich Islands

Office of the Commissioner
Government House,
Stanley,
Falkland Islands.

KRILL LICENSING 2014 INFORMATION FOR APPLICANTS

1. Background

- 1.1. This document contains important information for anyone who wishes to apply for a licence to fish for krill in the South Georgia and South Sandwich Islands Maritime Zone (SGSSI MZ) in 2014.
- 1.2. The SGSSI MZ is within the area covered by the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR), to which the United Kingdom is a contracting party. Accordingly fisheries in the Maritime Zone are managed under the auspices of CCAMLR. It is a condition of every licence that all applicable CCAMLR Conservation Measures (CMs) must be adhered to. The Government of South Georgia and the South Sandwich Islands (GSGSSI) requires that certain additional conditions are also complied with, details of which are provided below.
- 1.3. The main legislation governing the management of the fisheries in the Maritime Zone are the Fisheries (Conservation and Management) Ordinance 2000 as amended (the FCMO) and the South Georgia and South Sandwich Islands Marine Protected Areas Order, which are available on the GSGSSI website at: <http://www.sgisland.gs>.
- 1.4. The South Georgia and South Sandwich Islands Marine Protected Area (SGSSI MPA) was established in February 2012 and the MPA Order updated in June 2013. All fishing operations must be in accordance with the SGSSI MPA Order (2013) and the associated Management Plan, including any amendments thereto made prior to the start of the fishing season.
- 1.5. The krill fishing season in the SGSSI MZ will be open from April 1st until October 31st 2014. Licences will only be issued for krill fishing activities in the area of the South Georgia and South Sandwich Islands Maritime Zone to the north of 60 degrees south.
- 1.6. In outline, under the FCMO the Director of Fisheries is responsible for issuing licences. The Director is obliged to consult the Secretary of State for Foreign and Commonwealth Affairs in London before issuing any licences and he must act in accordance with any foreign policy advice which is received.
- 1.7. GSGSSI's principal objectives are to regulate fishing in the Maritime Zone so as to conserve fish stocks and other marine living resources, in line with Article II of CCAMLR, and to maintain safe and sustainable fisheries. As part of these objectives GSGSSI is committed to maintaining, and raising, the standards of management, research and operation in the fisheries.

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- Details of the process including:
 - Timescale;
 - Costs;
 - Selection criteria;
 - Licence conditions.
- Clear and transparent;
- Selection criteria include:
 - Safety; Experience; Catch efficiency; Raising standards.
- Decisions can be subject to Judicial review!



Krill licensing

- One-year licence;
- CCAMLR notification system;
- Most vessels that have notified CCAMLR get licences;
- FCO advice on flag-states;
- Monthly access fee;
- No quota limits (current catch is well below catch limit).



Toothfish licensing

- Two-year licences;
- No requirement for CCAMLR notification;
- Highly competitive
 - Not all applicants get licences;
 - Judicial reviews..
- FCO advice on flag-states;
- Access fee plus vessel specific quota;
- Catch verification.



Krill licence costs

- Licence approval fee:
 - £10,000 if application received in March;
 - £20,000 if later;
- Monthly access fee:
 - £42,000 first month;
 - £48,000 for subsequent months;
- Estimate £400,000 revenue in 2014.



Toothfish licence costs

- Monthly access fee:
 - £12,875;
- Quota fee:
 - £1648 per tonne;
- Quota buy-back scheme;
- Estimate revenue in SG fishery for 2014 of £4 million;
- SSI revenue £100,000;
- Catch value £22 million.



Carrot & stick: Ensuring Compliance

Carrot

- High value means competition for licences;
- Best operators get the licences and more quota;
- Mid-season allocation.

Stick

- Strong, enforceable legislation;
- Prosecute lack of compliance;
- Administrative penalties for minor offences;
- Withdrawal of licence

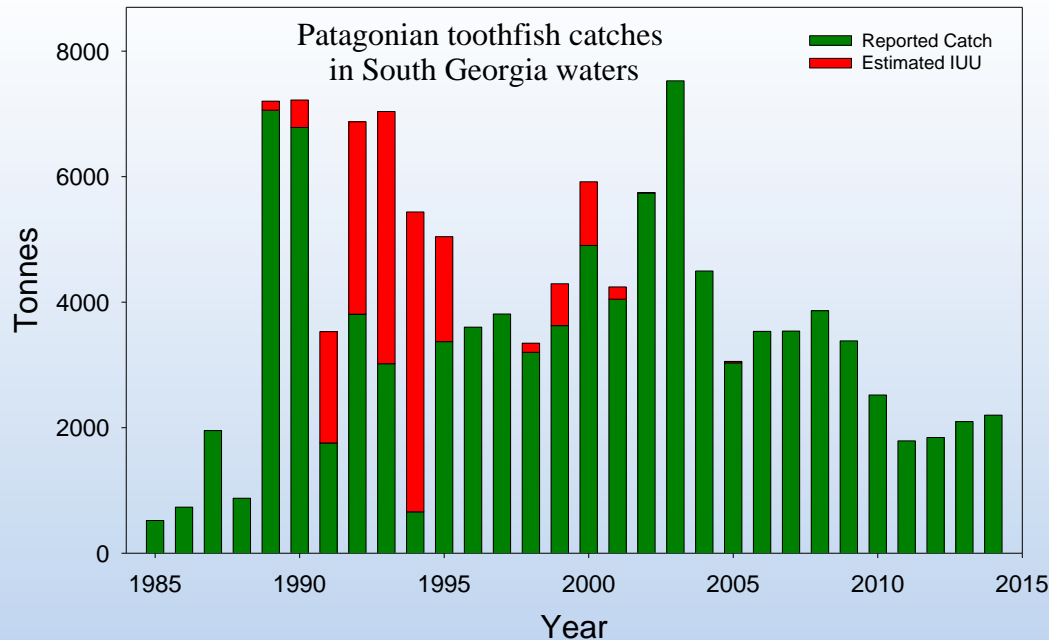


Rec Fishing

- Surveillance
- Fishing gear (marked hooks)



IUU Fishing



- Particular threat in remote, high value fisheries;
- Significant problem in SGSSI MZ in 1980s and 1990s;
- Regular patrolling since 2002;
- Other eyes and ears;
- Currently believed to be negligible
 - Surveillance
 - Fishing gear (marked hooks)



Fisheries Patrol



- Obvious presence deters IUU;
- Patrols the key parts of the SGSSI MZ;
- Inspects licensed vessels;
- Also supports other projects around South Georgia.



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Vessel Inspections



- Four types of inspection
 - “Torremolinos”
 - Licensing inspection
 - At-sea inspections
 - Catch verification



“Torremolinos” Inspections



- Vessels must meet the standards of provisions of the Torremolinos Protocol of 1993;
- General safety and seaworthiness;
- Safety equipment;
- Competent drills;
- Hygiene and accommodation.



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Licensing inspections



- All vessels must report to King Edward Point for a licensing inspection prior to fishing;
- Check the fishing gear, e.g.
 - Marked hooks;
 - Packaging bands;
 - Streamer lines;
 - Mesh sizes;
 - Safety equipment.



At-sea inspections



- Aim to inspect all licensed vessels once each year;
- Fisheries Protection Officers from FIFD for 6 months;
- CCAMLR Inspections;
- GSGSSI Inspections.



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Catch verification



- Toothfish vessels must undergo catch verification;
- All catch offloaded and weighed in Stanley;
- Products must be labeled to be traceable;
- Sample of cases checked to ensure products properly marked;
- CCAMLR CDS.



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Monitoring



- Daily reporting of catch and by-catch;
- Twice daily position reports;
- Observers;
- VMS;
- AIS.



Observers



- CCAMLR Scheme of International Observation;
 - UK observers on non-UK flagged vessels;
 - Typically Spanish, South Africa or Chilean observers on UK vessels;
- Biological data collection;
- Limited compliance role;
- Reports & data to CCAMLR;
- 100% on toothfish and icefish; > 50% on krill.



Prosecutions



- Elqui arrested in 2005;
 - Illegally fishing;
 - Fines of £135,000 not paid;
 - Vessel was seized and sunk;
- Other prosecutions for breaches of licence conditions.
- Administrative Penalties in 2010 & 2014.



Judicial Reviews

IN THE SUPREME COURT OF THE FALKLAND ISLANDS JUDICIAL REVIEW

Case Ref: SC/CIV/03/12

BETWEEN:

THE QUEEN
On the Application of
QUARK FISHING LIMITED

Applicant

-and-

THE DIRECTOR OF FISHERIES OF THE GOVERNMENT OF SOUTH
GEORGIA AND THE SOUTH SANDWICH ISLANDS

Respondent

Hearing: 27 – 30 November 2012

Representation:

Applicant:
Fergus Randolph QC
David Scannell, Counsel
Instructed by Pinsent Masons, Solicitors

Respondent:
Dermot Woolgar, Counsel
Instructed by the Attorney General

Judgment

1. The Applicant (Quark), a company owned jointly by Mr. Michael Summers and a Spanish company, owns the MV Jacqueline, which is registered and flagged to the Falkland Islands. On 2 March 2012 the Director of Fisheries of the Government of South Georgia and the South Sandwich Islands (GSGSSI), Dr. Martin Collins (the Director), notified Quark that its application for a licence for its vessel to fish for Patagonian toothfish in the South Georgia and South Sandwich Islands (GSGSI) maritime zone (sub-area 48.3) during the 2012 season had

- Process of scrutiny of the exercise of public power through the courts;
- Quark 2000;
 - Muddled decision making by GSGSSI & FCO;
 - Led to change in legislation.
- Copemar 2011
- Quark 2012



Quark Judicial Review 2012

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A YOUNG elephant seal is mystified but seemingly relaxed during an unexpected road trip to the veterinary department. The injured and underweight youngster was discovered on Surf Bay and has since received medical treatment and has been returned to the sea, ably assisted by Falklands Conservation staff and vet Aniket Sardana. Page 3 for the full story.



Court upholds SG decision to refuse licence for *Jacqueline*

THE decision of the Director of Fisheries of the South Georgia Government to refuse a valuable toothfish licence for the 2012 season to a vessel with a long history in the fishery was upheld in court on Wednesday.

Quark Ltd, a fishing company jointly owned by MLA Mike Summers and a Spanish fishing company, applied in 2012 for a Judicial Review of the decision of the Director of the Director of Fisheries of the Government of South Georgia and the South Sandwich Islands (GSGSSI) to refuse a licence to fish for Patagonian toothfish for their vessel MV *Jacqueline* for the 2012 season.

The case was heard in Stanley between November 27 and 30, 2012 before Chief Justice Mr Christopher Gardner QC, but his detailed judgement was only released on Wednesday, in the Falkland Islands Supreme Court.

Acting Judge, Mr Carl Gumsley, took an hour and a quarter to read the judgement. This included a preamble, in which it was explained that the purpose of a Judicial Review was not to consider the merits of a decision, but to consider whether the decision-making process was in itself lawful.

It was, according to Mr Justice Gardner, "for the applicant to establish on the balance of probab-

ilities that the decision-maker took into account matters he ought not to have taken into account, or failed to take into account matters he should have taken into account, or has nevertheless come to a decision which is irrational."

The Chief Justice continued: "The threshold of irrationality is a high one, namely that the challenged decision is so unreasonable that no reasonable decision-maker could ever have come to it."

Quark had argued as the first of its grounds that the Director of Fisheries had breached "natural justice" in making what it described as, "key changes," to his criteria for awarding licences, without the consultation that the company had a, "legitimate expectation," to receive.

Concluding a very lengthy summary of his reasons for dismissing this ground, Mr Justice Gardner said that while he accepted that Quark considered it had been disadvantaged by changes to the weighting of the licensing criteria and that the value of its historical participation in the South Georgia Fishery had been reduced by them, he had to view the situation from the perspective of the decision maker.

Any changes to the criteria, the Chief Justice said, might be

regarded as benefiting some applicants and disadvantaging others. The repeated granting of a licence to the *Jacqueline* in the past should not in itself have generated any expectation that it would automatically be granted one in the future. "In 2012 all that it (Quark) had was the ability to apply for a fresh licence and an expectation that its application would, along with all the others, be considered fairly."

The second of the other three grounds for Quark's application concerned an allegation that the Director of GSGSSI's Fisheries had wrongly applied advice given to him by the British Government's Secretary of State for Foreign and Commonwealth Affairs.

In Mr Justice Gardner's opinion, the Director had acted in accordance with this advice, which was to the effect that licences should be awarded to a minimum of two United Kingdom or United Kingdom Overseas Territory-flagged vessels. There were, in fact, three applications for licences from such vessels, two of which scored significantly higher than the *Jacqueline* when judged by the Director's criteria.

The criteria used by the Director were the subject of both the Third and Fourth of Quark's grounds, in particular the reduc-

tion in the weighting given to 'loyalty' to the GSGSSI Fishery.

Mr Gardner agreed with the contention of GSGSSI's counsel in November that the shift of weighting from 'loyalty' to 'track record' acknowledged the development of the Fishery from its uncertain early days, to the present competitive situation in which it was important to choose applicants that would raise the Fishery's standards.

The Chief Justice concluded that the Director's criteria were merely guidelines to enable him to arrive at an overall assessment of the strength of any particular applicant. These were, he said, "matters for the Director's expertise and not matters that a disappointed applicant can ask the court to review, short of irrationality."

Asked for a reaction to the judgement, Mr Summers expressed unhappiness about the length of time it took for the decision to be delivered, its implications for GSGSSI's policy and the lack of value given to FI registration, adding, "Quark Fishing Ltd is disappointed, though not overly surprised, at the conclusions drawn by the Chief Justice in his review of the 2012 South Georgia Licensing process, in so much as it affected our company."

- Director of Fisheries licensing decisions challenged on four counts;
- Decisions were upheld by Chief Justice;
- GSGSSI awarded costs;
- Previous attempt at Judicial Review had gone to Court of Appeal & Privy Council



Revenue

- Toothfish:
 - 6 licences in SG; 2 in SSL;
 - Around £4 million
- Icefish
 - 5 licences
 - Around £300,000;
- Krill
 - Variable, maybe 7 this year;
 - £100K to £500K per year.
 - Also transshipping fees

Costs

- Fisheries Patrol Vessel
 - £3.25 million;
- Observers
 - £250K;
- Fishery Officers
 - £24,000;
- Science & management advice
 - £250K;
- Catch verification
 - £15,000;





Fisheries Management

Legislation

Policy and Objectives

Licensing

Monitoring

Enforcement

