

PITCAIRN, HENDERSON

DUCIE & OENO ISLANDS

No 3 of 2016



*Jonathan Sinclair*

Enacted by the Governor of the Islands  
of Pitcairn, Henderson, Ducie and Oeno

**PITCAIRN ISLANDS MARINE PROTECTED AREA ORDINANCE 2016**

DATE MADE: *12 September 2016*

DATE PUBLISHED: *13 September 2016*

**Arrangement of sections**

**PART I – PRELIMINARY**

1. Short title
2. Commencement
3. Interpretation

**PART II – PITCAIRN ISLANDS MARINE PROTECTED AREA**

4. Pitcairn Islands Marine Protected Area established
5. Principles of Pitcairn Islands Marine Protected Area
6. Duty to comply with Ordinance and Marine Conservation Regulations
7. Specially Protected Areas

**PART III – PROHIBITED AND REGULATED ACTIVITIES**

8. Prohibited activities
9. Activities to which prohibition does not apply
10. Regulated activities

#### **PART IV – COASTAL CONSERVATION AREAS**

11. Coastal Conservation Areas established
12. Principles of Coastal Conservation Areas
13. Restriction on activity in Coastal Conservation Areas

#### **PART V – REGULATIONS AND PLANS**

14. Marine Conservation Regulations
15. Fisheries Management Plan

#### **PART VI – OFFENCES AND PENALTIES**

##### *Offences not involving commercial gain*

16. Offences not involving commercial gain
17. Penalty for offence against section 16

##### *Offences involving commercial gain*

18. Offences involving commercial gain
19. Penalty for offence against section 18
20. Offence for failure to comply with duty
21. Penalty for offence against section 20

##### *General provisions regarding offences and penalties*

22. Defences
23. Exercise of rights of foreign vessels
24. Burden of proof for fishing offences
25. Additional penalties for dumping and discharge offences
26. Forfeiture

##### *Other offences*

27. Knowingly making false statement
28. Engaging with IUU fishing

#### **PART VII – ENFORCEMENT**

29. Enforcement officers
30. Production of warrant
31. Power to question and require certain information and production of documents
32. Power of entry for inspection
33. Powers of seizure
34. Other powers of enforcement officers
35. Powers may be exercised outside of Pitcairn Islands Marine Protected Area
36. Obstruction of enforcement officers
37. Non-liability of enforcement officers

#### **PART VIII – CONSEQUENTIAL AMENDMENTS**

38. Interpretation and General Clauses Ordinance amended
39. Fisheries Zone Ordinance and Regulations repealed

#### **PART IX – TRANSITIONAL PROVISIONS**

40. Transitional provisions

## PITCAIRN ISLANDS MARINE PROTECTED AREA ORDINANCE 2016

An Ordinance to provide for the conservation and protection of the marine environment of the Pitcairn Islands

### PART I – PRELIMINARY

- |                |   |
|----------------|---|
| Short title    | 1. This Ordinance is the Pitcairn Islands Marine Protected Area Ordinance 2016.   |
| Commencement   | 2. (1) This Ordinance shall be brought into force by Order by the Governor, except as provided in subsection (2).<br><br>(2) Section 10 comes into force on a date appointed by the Governor by Order following the passing of Marine Conservation Regulations.   |
| Interpretation | 3. In this Ordinance–<br><br><b>Coastal Conservation Area</b> means an area described in section 11.<br><br><b>discharge offence–</b><br><br>(a) means an offence under this Ordinance or any Marine Conservation Regulations that is committed by discharging any substance into the marine environment; and<br><br>(b) includes an offence under section 20 (failure to comply with duty), where that offence results in the discharge of any substance into the marine environment in breach of this Ordinance or any Marine Conservation Regulations.<br><br><b>diving</b> means water-based activity involving the use of diving equipment, and includes scuba diving, surface-supply diving, submersible diving and remote operated vehicle diving.<br><br><b>dumping–</b><br><br>(a) means:<br><br>(i) any deliberate disposal into the sea of waste or other matter from vessels and structures at sea; and<br><br>(ii) any deliberate disposal into the sea of vessels and structures at sea; and<br><br>(iii) any storage of waste or other matter in the seabed and the subsoil of the seabed from vessels and structures at sea; and<br><br>(iv) any abandonment or toppling at the site of structures at sea for |

the sole purpose of deliberate disposal; but

(b) does not include:

- (i) the disposal into the sea of waste or other matter where that disposal is incidental to, or derived from, the normal operations of vessels and structures at sea and their equipment, other than waste or other matter transported by or to vessels and structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such waste or other matter on such vessels and structures; or
- (ii) placement of matter for a purpose other than the mere disposal of it; but only if the placement is not contrary to the aims of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972); or
- (iii) abandonment in the sea of matter (for example, cables, pipelines, and marine research devices) placed for a purpose other than the mere disposal of it.

**dumping offence—**

- (a) means an offence under this Ordinance or any Marine Conservation Regulations that is committed by dumping; and
- (b) includes an offence under section 20 (failure to comply with duty) where that offence results in dumping in breach of this Ordinance or any Marine Conservation Regulations.

**Exclusive Economic Zone** means the exclusive economic zone of Pitcairn Islands as defined in the Proclamation Establishing an Exclusive Economic Zone (Proclamation No 1 of 1977).

**Fisheries Management Plan** means a plan adopted in accordance with section 15.

**fishing—**

- (a) means the catching, taking, or harvesting of fish or other marine life; and
- (b) includes:
  - (i) any activity that may reasonably be expected to result in the catching, taking, or harvesting of fish or other marine life; and
  - (ii) any operation in support of or in preparation for any activities described in this definition.

**fishing offence** means an offence under this Ordinance or any Marine Conservation Regulations that is committed by fishing.

**fishing vessel** means any vessel of any size designed, equipped, or used for

the purposes of fishing, including support ships, fish processing vessels, vessels engaged in transshipment and carrier vessels equipped for the transportation of products of fishing, except container vessels.

**foreign vessel** means any vessel other than a vessel that is the property of the Government of Pitcairn Islands, or is wholly owned by, or under exclusive charter to, any resident of Pitcairn Island.

**lawful resident of Pitcairn** means any person who:

- (a) has the right of abode on Pitcairn as defined in the Right of Abode Ordinance; or
- (b) is a permanent resident of Pitcairn or has been granted entry clearance for settlement under the Immigration Ordinance; or
- (c) intends to reside in Pitcairn for 3 months or more and has a valid entry clearance permitting such residency, or is exempt from the requirement to have entry clearance, under the Immigration Ordinance.

**Marine Conservation Regulations** mean regulations made under section 14.

**marine environment**—

- (a) means the natural and biological resources comprising any marine ecosystem; and
- (b) includes all marine life and the oceans, seas, lagoons, coastal areas, and other places where marine life exists.

**marine life**—

- (a) means any species of plant or animal life or other organism that, at any stage in its life history, must inhabit the sea, whether living or dead; and
- (b) includes seabirds; and
- (c) includes all kinds of algae and sea-grasses that grow in the Pitcairn Islands Marine Protected Area.

**marine scientific research**—

- (a) means research (whether fundamental or applied) carried out for the purpose of increasing knowledge about the marine environment; and
- (b) includes any related scientific activity; but
- (c) excludes any research carried out in relation to a mining activity (unless that research relates to a mining activity undertaken outside the Pitcairn Islands Marine Protected Area).

**mining activity** means any of the following activities carried out for, or in

connection with, the identification of areas of the seabed likely to contain mineral deposits, the identification of mineral deposits, or the taking or extraction of minerals from the sea or seabed and associated processing of those minerals:

- (a) the construction, mooring or anchoring long-term, placement, alteration, extension, removal, or demolition of a structure, part of a structure, or a vessel used in connection with a structure;
- (b) the depositing of any thing or organism in, on or under the seabed or subsoil;
- (c) the destruction, damaging, or disturbance of the seabed or subsoil;
- (d) the discharging of a harmful substance.

**owner** includes:

- (a) in relation to a company, any person occupying the position of a director of the company by whatever name called;
- (b) in relation to a partnership (other than a limited partnership), any partner;
- (c) in relation to a limited partnership, any general partner; and
- (d) in relation to a body corporate or an unincorporated body, other than a company, partnership, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company.

**Pitcairn Islands** means the islands of Pitcairn, Henderson, Ducie and Oeno.

**Pitcairn Islands Marine Protected Area** means the area described in section 4.

**precautionary principle** means the principle that there is a need for caution in managing adverse effects where there is scientific and technical uncertainty about those effects.

**prohibited activity** means an activity listed as a prohibited activity in section 8.

**regulated activity** means an activity listed as a regulated activity in section 10.

**Specially Protected Area** means an area declared by the Governor as a Specially Protected Area in accordance with section 7.

**territorial sea** means:

- (a) in relation to Pitcairn and Henderson Islands, any part of the sea within 12 nautical miles measured from the nearest point of the low-water line along the coast; and

- (b) in relation to Ducie and Oeno Islands, any part of the sea within 12 nautical miles measured from the nearest point of the seaward low-water line of the reef, together with the lagoons of those islands.

**UNCLOS** means the United Nations Convention on the Law of the Sea, 10 December 1982.

**vessel** means any description of vessel, hovercraft, submersible vessel, or other vessel of whatever size, and includes a seaplane while travelling on water.

## **PART II – PITCAIRN ISLANDS MARINE PROTECTED AREA**

Pitcairn Islands  
Marine Protected  
Area established

4. The area comprising the Exclusive Economic Zone and the territorial seas of Pitcairn, Henderson, Ducie and Oeno Islands is established as the Pitcairn Islands Marine Protected Area.

Principles of  
Pitcairn Islands  
Marine Protected  
Area

5. The principles of the Pitcairn Islands Marine Protected Area are:
- (a) conservation and protection of the marine environment for present and future generations;
  - (b) maintenance of biodiversity;
  - (c) minimisation of human impact;
  - (d) maintenance of the Pitcairn Islands Marine Protected Area as a global reference site against which other marine areas can be benchmarked;
  - (e) preservation of customary fishing practices of Pitcairn residents.

Duty to comply  
with Ordinance and  
Marine  
Conservation  
Regulations

6. (1) Any person within the Pitcairn Islands Marine Protected Area must comply with this Ordinance and any Marine Conservation Regulations.
- (2) The following persons have a duty to exercise due diligence to prevent a breach of this Ordinance or any Marine Conservation Regulations:
- (a) in relation to any breach or potential breach that may be carried out from a vessel, the owner, master and charterer (if any) of the vessel;
  - (b) in relation to any breach or potential breach that involves a mining activity, any person able to make decisions affecting the whole or a substantial part of the operations connected with the activity.
- (3) However, nothing in this section restricts or prevents the lawful exercise of internationally recognised rights of passage or freedom of navigation through the Pitcairn Islands Marine Protected Area, and any activities internationally recognised as appurtenant thereto.

Specially Protected  
Areas

7. (1) The Governor may by order declare any specified area within the Pitcairn Islands Marine Protected Area to be a Specially Protected Area.
- (2) No vessel may enter a Specially Protected Area without express permission of the Governor or a person designated for that purpose by the Governor.
- (3) The Governor may make an order under subsection (1) only if:
- (a) the Governor considers the order necessary for the protection of the marine environment; and
  - (b) the order is consistent with international law, including UNCLOS.
- (4) An order under this section must specify:
- (a) the boundaries of the area;
  - (b) the reasons for the designation;
  - (c) the conditions with which permission may be granted to enter the area; and
  - (c) when the order will expire, or, if it is to operate indefinitely, that it remains in force until further order.
- (5) An order under this section must be published:
- (a) on the Public Notice Board; and
  - (b) in any other manner and place directed by the Governor, including on any official website.

### **PART III – PROHIBITED AND REGULATED ACTIVITIES**

Prohibited activities

8. Subject to section 9, no person may undertake any of the following activities in the Pitcairn Islands Marine Protected Area:
- (a) fishing;
  - (b) any mining activity;
  - (c) the disturbance of, or the removal of non-living natural material from, the seabed or subsoil;
  - (d) the dumping of waste or other matter (including from vessels or structures);
  - (e) the causing of vibrations (other than vibrations caused by the propulsion of a ship) in a manner that is likely to have an adverse effect on marine life;
  - (f) any other activity specified as a prohibited activity under any Marine Conservation Regulations.



Activities to which prohibition does not apply

9. (1) Section 8 does not apply to activities to which subsections (2) to (4) apply.

(2) This subsection applies to fishing by lawful residents of Pitcairn, provided that fishing is:

(a) conducted while in transit to or from other islands in or outside the Pitcairn Islands Marine Protected Area, for consumption during that trip;

(b) by an attended line (whether or not with a rod); and

(c) conducted in accordance with any Marine Conservation Regulations and Fisheries Management Plan.

(3) This subsection applies to any activity carried out under a permit granted under this Ordinance and Marine Conservation Regulations for the purpose of marine scientific research.

(4) This subsection applies to any activity carried out in a Coastal Conservation Area in accordance with section 13.

(5) The Governor may in Marine Conservation Regulations specify further activities that:

(a) are not prohibited under section 8;

(b) are not prohibited under section 8 only insofar as they are conducted in accordance with a permit granted under the Regulations; or

(c) are not prohibited under section 8 only insofar as they are conducted in accordance with conditions specified in the Regulations.

Regulated activities

10. No person may undertake any of the following activities in the Pitcairn Islands Marine Protected Area, except in accordance with and to the extent permitted by Marine Conservation Regulations:

(a) diving;

(b) anchoring;

(c) discharging of ballast water;

(d) any other activity specified as a regulated activity in Marine Conservation Regulations.

#### **PART IV – COASTAL CONSERVATION AREAS**

Coastal Conservation Areas established

11. The following areas are established as Coastal Conservation Areas in the Pitcairn Islands Marine Protected Area:

(a) the territorial seas around Pitcairn, Henderson, Ducie and Oeno Islands;

- (b) the area within 2 nautical miles of 40 mile reef; and
- (c) a transit zone between Pitcairn Island and 40 mile reef as described in Marine Conservation Regulations.

Principles of Coastal Conservation Areas

12. The principles of the Coastal Conservation Areas are:
- (a) conservation of the unique marine environments and biodiversity in the coastal areas, reefs and lagoons;
  - (b) sustenance and sustainable development of the Pitcairn community;
  - (c) sustainable management of marine resources.

Restriction on activity in Coastal Conservation Areas

13. A person may undertake a prohibited activity in a Coastal Conservation Area if that activity is permitted by and conducted in accordance with:
- (a) any applicable Marine Conservation Regulations, including any requirement to obtain a permit that is specified in those regulations; and
  - (b) any applicable Fisheries Management Plan.

#### **PART V – REGULATIONS AND PLANS**

Marine Conservation Regulations

14. (1) The Governor may, in consultation with the Island Council and the community of Pitcairn Island, pass regulations, to be known as Marine Conservation Regulations.
- (2) Marine Conservation Regulations may apply in relation to all or any specified part of the Pitcairn Islands Marine Protected Area, and may:
- (a) prescribe requirements of entry to or exit from that area or both;
  - (b) prohibit specified activities in that area;
  - (c) specify activities that may only be undertaken in certain conditions, and the conditions in which such activities can be undertaken;
  - (d) specify activities that may only be undertaken in accordance with a permit;
  - (e) prescribe a framework for applying for and granting permits, including regulations that, in relation to all or any specified type of permit:
    - (i) specify the authority that may grant permits;
    - (ii) prescribe a process for applying for permits and for varying permits, including prescribing any information to be included and any forms to be used in an application;
    - (iii) prescribe fees to be paid upon application or upon the

grant of a permit or both;

(iv) prescribe information, reports or records that must be provided by applicants, permit holders or both;

(v) specify criteria for granting permits;

(vi) specify conditions that must attach to a permit;

(vii) specify consequences for breaching conditions of a permit;

(viii) specify when a permit may be suspended or cancelled;

(f) exempt persons or categories of person from specified provisions of this Ordinance;

(g) create offences and prescribe penalties for breach of any regulation;

(h) otherwise give effect to any of the purposes of this Ordinance.

(3) In passing Marine Conservation Regulations, the Governor shall have particular regard to:

(a) the principles of the Pitcairn Islands Marine Protected Area as described in section 5, and in relation to regulations that apply in the Coastal Conservation Areas, the principles of that area as described in section 12;

(b) applicable principles of international law, including UNCLOS;

(c) the precautionary principle;

(d) Part 2 of the Pitcairn Constitution, and in particular section 19 (the right to protection of the environment); and

(e) the views of the Pitcairn community.

(4) Marine Conservation Regulations must be published:

(a) on the Public Notice Board; and

(b) in any other manner and place directed by the Governor, including on any official website.

Fisheries  
Management Plan

15. (1) The Island Council may, with approval of the Governor, adopt a Fisheries Management Plan to apply to any fishing permitted under this Ordinance, for the purpose of ensuring the sustainable management of fish and other marine life and protection of the marine environment.

(2) Without prejudice to the generality of subsection (1), a Fisheries Management Plan may include rules that limit or prohibit fishing:

(a) in a particular area;

- (b) of a particular species;
- (c) during a particular season or for a specified period of time;
- (d) carried out by particular methods.

- (3) A Fisheries Management Plan adopted under this section must be consistent with this Ordinance and any applicable Marine Conservation Regulations, and to the extent there is any conflict, the Ordinance and Regulations prevail.

## PART VI – OFFENCES AND PENALTIES

### *Offences not involving commercial gain*

Offences not involving commercial gain

16. (1) A person commits an offence if the person, otherwise than in the course of producing a commercial gain:
- (a) undertakes a prohibited activity in the Pitcairn Islands Marine Protected Area in breach of section 8; or
  - (b) undertakes a regulated activity in the Pitcairn Islands Marine Protected Area in breach of section 10.
- (2) In a prosecution for an offence against this section, it is not necessary to prove that the defendant intended to commit the offence.
- (3) It is a defence to a prosecution for an offence against this section if the defendant proves one or more of the defences described in section 22.

Penalty for offence against section 16

17. (1) A person convicted of an offence against section 16 is liable:
- (a) in the case of a natural person, to imprisonment for a maximum term of 12 months or a fine not exceeding \$50,000 or both; or
  - (b) in the case of a person other than a natural person, to a fine not exceeding \$500,000.
- (2) A person convicted of an offence against section 16 is also liable, if the offence is a continuing one, to a fine not exceeding \$2,000 for every day or part of a day during which the offence continues.
- (3) The continued existence of anything, or the intermittent repetition of any actions, contrary to any provision of this Ordinance or Marine Conservation Regulations is a continuing offence.

### *Offences involving commercial gain*

Offences involving commercial gain

18. (1) A person commits an offence if the person, in the course of producing a commercial gain:
- (a) undertakes a prohibited activity in the Pitcairn Islands Marine Protected Area in breach of section 8; or
  - (b) undertakes a regulated activity in the Pitcairn Islands Marine

## Protected Area in breach of section 10.

(2) In a prosecution for an offence against this section, it is not necessary to prove that the defendant intended to commit the offence.

(3) It is a defence to a prosecution for an offence against this section if the defendant proves one or more of the defences described in section 22.

Penalty for offence  
against section 18

19. (1) A person convicted of an offence against section 18 is liable:

(a) in the case of a natural person, to imprisonment for a maximum term of 3 years or a fine not exceeding \$150,000 or both; or

(b) in the case of a person other than a natural person, to a fine not exceeding \$1,500,000.

(2) A person convicted of an offence against section 18 is also liable, if the offence is a continuing one, to a fine not exceeding \$6,000 for every day or part of a day during which the offence continues.

(3) The continued existence of anything, or the intermittent repetition of any actions, contrary to any provision of this Ordinance or Marine Conservation Regulations is a continuing offence.

(4) A court may, in addition to any penalty described above, order a person convicted of an offence under section 18 to pay an amount not exceeding 3 times the value of any commercial gain resulting from the commission of the offence.

(5) The court must assess the value of any gain for the purpose of subsection (4).

(6) The amount of any additional penalty imposed under subsection (4) is recoverable in the same manner as a fine.

Offence for failure  
to comply with duty

20. (1) A person commits an offence against this section if the person:

(a) has a duty under section 6(2); and

(b) in the course of producing a commercial gain, fails to comply with that duty.

(2) In a prosecution for an offence against this section, it is not necessary to prove that the defendant intended to commit the offence.

Penalty for offence  
against section 20

21. (1) A person convicted of an offence against section 20 is liable:

(a) in the case of a natural person, to imprisonment for a maximum term of 3 years or a fine not exceeding \$150,000 or both;

(b) in the case of a person other than a natural person, to a fine not exceeding \$1,500,000.

(2) A person convicted of an offence against section 20 is also liable, if the offence is a continuing one, to a fine not exceeding \$6,000 for every day

or part of a day during which the offence continues.

- (3) The continued existence of anything, or the intermittent repetition of any actions, contrary to any provision of this Ordinance or Marine Conservation Regulations is a continuing offence.
- (4) The court must assess the value of any gain for the purpose of subsection (4).
- (5) The amount of any additional penalty imposed under subsection (4) is recoverable in the same manner as a fine.

*General provisions regarding offences and penalties*

Defences

22. (1) It is a defence to a prosecution for an offence against section 16 or 18 if the defendant proves that:

(a) the commission of the offence was due to:

(i) an act or omission of another person; or

(ii) an accident; or

(iii) some other cause outside the defendant's control; and

(b) the defendant took all reasonable steps to avoid the commission of the offence or offences of the same kind.

(2) It is a defence to a prosecution for an offence under section 16 or 18 if the defendant proves that the act or omission that is alleged to constitute the offence:

(a) was necessary to save or prevent danger to human health or safety, or the marine environment, to avert a serious threat to the vessel or structure, or (in the case of force majeure caused by stress of weather) to secure the safety of the vessel or structure; and

(b) was a reasonable step to take in all the circumstances; and

(c) was likely to result in less damage than would otherwise have occurred; and

(d) was done in such a way that the likelihood of damage to human life or the marine environment was minimised.

Exercise of rights of foreign vessels

23. No prosecution shall be brought against a foreign vessel for any action that is a lawful exercise of rights at international law, including UNCLOS.

Burden of proof for fishing offences

24. (1) For the purposes of any prosecution under this Ordinance or Marine Protection Regulations, the following presumptions apply in the absence of proof to the contrary:

(a) any fishing vessel found or observed by any means stationary, moored, drifting, or sailing in a fishing pattern within the Pitcairn

Islands Marine Protected Area shall be deemed to be engaged in fishing;

- (b) any fish or other marine life found on a vessel that is in the Pitcairn Islands Marine Protected Area shall be deemed to have been caught or taken within the Pitcairn Islands Marine Protected Area;
- (c) any vessel found in the Pitcairn Islands Marine Protected Area in possession of fishing equipment shall be deemed to be engaged in fishing unless that equipment is stowed so that it is not readily available for use for fishing.

(2) The onus of proof to rebut the presumptions described in subsection (1) shall lie upon the person charged.

(3) For the purposes of paragraph (1)(a), the means by which a fishing vessel may found or observed to fall within that paragraph include, but are not limited to:

- (a) remote satellite technology;
- (b) electronic monitoring by a Vessel Monitoring System (VMS);
- (c) an Automated Information System (AIS);
- (d) unmanned aerial, surface or underwater vehicle observations;
- (e) video, radar, acoustical and visual observations;
- (f) any other means that can reasonably be used to determine vessel activity historically or in real time.

Additional penalties  
for dumping and  
discharge offences

25. (1) In addition to any other penalty imposed under this Ordinance or any Marine Conservation Regulations, the court may order a person convicted of a dumping offence or a discharge offence to pay such amounts as the court may assess in respect of the costs incurred in respect of or associated with removing, containing, rendering harmless, or dispersing any waste or other matter to which the offence relates.

(2) A court that convicts a person of a dumping offence or a discharge offence may order that the whole or part of the fine or other monetary penalty imposed on the person under this Ordinance or any Marine Conservation Regulations to be paid to another person specified by the court.

(3) The specified person must apply the money towards meeting the costs of either or both:

- (a) removing, containing, rendering harmless, or dispersing the harmful substance or waste or other matter;
- (b) repairing the damage resulting from the harmful substance or waste or other matter.

Forfeiture

26. Upon conviction of a person for an offence under this Ordinance or any Marine Conservation Regulations, the court may order the forfeiture to the Crown of:
- (a) where the person convicted is the master, owner or charterer of a vessel used in the commission of the offence, that vessel;
  - (b) any fish or other marine life obtained in contravention of this Ordinance or Marine Conservation Regulations and any proceeds from the sale of that fish or other marine life;
  - (c) any fishing gear, apparatus, cargo, stores or other equipment found on a vessel used in the commission of the offence;
  - (d) any other property used in the commission of the offence.

*Other offences*

Knowingly making false statement

27. (1) A person commits an offence if the person knowingly, for the purpose of obtaining a benefit or avoiding a penalty:
- (a) makes a false or misleading statement; or
  - (b) omits any information—
- in any communication, application, record, or document prescribed by or in accordance with Marine Conservation Regulations, or required for their administration.
- (2) A person commits an offence if the person knowingly, for the purpose of obtaining a benefit or avoiding a penalty:
- (a) uses, deals with, or acts upon; or
  - (b) causes any other person to use, deal with, or act upon—
- any false communication, application, record or other document prescribed by or in accordance with Marine Conservation Regulations, or required for their administration.
- (3) A person commits an offence if the person knowingly, for the purpose of obtaining a benefit or avoiding a penalty, destroys or partially destroys any communication, application, record or other document prescribed by or in accordance with Marine Conservation Regulations or required for their administration.
- (4) A person convicted of an offence against this section is liable to imprisonment for a maximum term of 12 months, or a fine not exceeding \$10,000 or both.

Engaging with IUU fishing

28. (1) A person commits an offence if the person has knowingly or recklessly conducted business directly related to illegal, unreported and unregulated fishing, including the trade in, or the importation,



exportation, or re-exportation of, fishery products.

(2) In this section:

(a) “illegal fishing” means fishing:

(i) conducted by a fishing vessel in the Pitcairn Islands Marine Protected Area in breach of this Ordinance;

(ii) conducted by a fishing vessel flying the flag of a State which is a party to a regional fisheries management organisation, but which is operating in contravention of the conservation and management measures of that organisation; or

(iii) conducted in contravention of international law applicable to Pitcairn;

(b) “unreported fishing” means:

(i) where an obligation to report is in place under Marine Conservation Regulations or a Fisheries Management Plan, fishing that has not been reported in accordance with that obligation, or has been misreported; and

(ii) in any case, fishing which has been undertaken in the area of application of a regional fisheries management organisation but which has not been reported, or has been misreported, in contravention of the reporting procedures of that organisation;

(c) “unregulated fishing” means fishing:

(i) conducted in the area of application of a regional fisheries management organisation by a fishing vessel of a State that is not a contracting party to that organisation, or by a fishing vessel that does not fly the flag of any State or of any other fishing entity, in a manner that contravenes the conservation and management measures of the regional fisheries management organisation; or

(ii) conducted in an area, or for fish stocks, in relation to which there are no conservation or management measures, but in a manner that is not consistent with the responsibilities of the flag State for the conservation of marine living resources under international law;

(d) “regional fisheries management organisation” means a regional, sub-regional or a similar organisation with competence to establish conservation and management measures for marine living resources that the members of that organisation have placed under its responsibility.

- (4) A person convicted of an offence against this section is liable to a fine not exceeding \$10,000.

## PART VII – ENFORCEMENT

### Enforcement officers

29. (1) The Governor may appoint enforcement officers to ensure compliance with this Ordinance, Marine Conservation Regulations, or permits granted under this Ordinance and Marine Conservation Regulations.
- (2) An enforcement officer may be appointed to exercise some or all of the powers conferred on enforcement officers under this Ordinance.
- (3) The Governor must supply each enforcement officer with a warrant that:
- (a) states the full name of the person; and
  - (b) includes a summary of the powers conferred on the person.
- (4) An enforcement officer who holds a warrant issued under this section must, on the termination of his or her appointment, surrender the warrant to the Governor.
- (5) For the purposes of this Ordinance, every police officer shall be deemed to be an enforcement officer and may, without warrant, exercise the powers conferred on enforcement officers under this Ordinance.
- (6) Subsection (5) shall not be taken to limit the powers of search and seizure or other powers held by a police officer under any other law.

### Production of warrant

30. An enforcement officer exercising a power under this Ordinance must have with him or her, and must produce if required to do so, his or her warrant and evidence of his or her identity.

### Power to question and require certain information and production of documents

31. (1) This section applies if an enforcement officer believes on reasonable grounds that a person is committing or has committed an offence against this Ordinance or Marine Conservation Regulations.
- (2) The enforcement officer may at any reasonable time:
- (a) question that person or any other person;
  - (b) require that person to produce any permit, authority, approval or other document issued in respect of any vessel or person;
  - (c) require that person to give the officer his or her full name, address and, if that person is a natural person, date of birth.

### Power of entry for inspection

32. (1) An enforcement officer may at all reasonable times, enter and inspect a place, vehicle, vessel, or structure in Pitcairn Islands or the Pitcairn Islands Marine Protected Area except a dwellinghouse, for the purpose of determining whether this Ordinance, Marine Conservation Regulations, or any permit granted under this Ordinance and Marine

Conservation Regulations are being complied with.

(2) An enforcement officer may, for the purpose of determining whether this Ordinance, Marine Conservation Regulations, or any permit granted under this Ordinance and Marine Conservation Regulations are being complied with:

- (a) inspect any item found in a place, vehicle, vessel, or structure entered in accordance with subsection (1), including, but not limited to:
  - (i) any fish or other marine life; and
  - (ii) any article, gear, container, apparatus, device, or thing relating to the taking, sale, purchase, farming or possession of any fish or other marine life;
- (b) take a sample of any substance;
- (c) conduct examinations, tests, inquiries, and demonstrations;
- (d) require the production of, and copy, any document or part of a document, including any accounts, records, returns, authority, approval, permit or other documents that may be relevant to monitoring such compliance.

(3) In this section, **enter**, in relation to a vessel, means board.

Powers of seizure

33. (1) An enforcement officer may seize:

- (a) any vessel, vehicle or other conveyance, fishing gear, implement, appliance, material, container, goods, equipment, or thing which he or she believes on reasonable grounds is being or has been or is intended to be used in the commission of an offence against this Ordinance or Marine Conservation Regulations;
- (b) any fish or other marine life which he or she believes on reasonable grounds are being or have been, taken, killed, bought, sold or found in the possession of any person in contravention of this Ordinance or Marine Conservation Regulations, or any fish or other marine life with which such fish or marine life have been intermixed;
- (c) any article, record, document, or thing which he or she believes on reasonable grounds is evidence of the commission of an offence against this Ordinance or Marine Conservation Regulations.

(2) Where any foreign vessel is seized under this section, the master, owner or charterer of the boat may at any time before the determination of any proceedings or charge in respect of the offence for which the vessel was seized, apply to the Magistrate's Court for the release of the vessel on the provision of security in accordance with subsection (3).

(3) On hearing the application, the Magistrate's Court shall order the release

of the foreign vessel on the execution by any suitable person or persons approved by the Court for the purpose of a bond in favour of the Crown of an amount not less than the aggregate of the value of the vessel and the maximum fine to which the defendant will be liable if he or she is convicted of the offence.

Other powers of enforcement officers

34. (1) For the purposes of enforcement of this Ordinance or any Marine Conservation Regulations, an enforcement officer may:
- (a) if he or she believes on reasonable grounds that any person is offending against this Ordinance or any Marine Conservation Regulations, order that person to forthwith desist from offending;
  - (b) if a person continues to offend after being ordered to desist under paragraph (a), arrest that person without a warrant;
  - (c) if he or she believes that a vessel is being or has been used in contravention of the provisions of this Ordinance or any Marine Conservation Regulations, or of the conditions of any permit granted under this Ordinance and Marine Conservation Regulations, require the master to take the vessel, as soon as reasonably practicable, to the nearest available port, or such other port or place as is agreed between the master and the enforcement officer, and give the master any reasonable directions while the vessel is proceeding to port;
  - (d) use such reasonable force as is necessary to enable the exercise of his or her powers under this Ordinance.
- (2) If an enforcement officer arrests a person under subsection (1)(b), the enforcement officer shall cause the person to be delivered into the custody of a police officer as soon as practicable.

Powers may be exercised outside of Pitcairn Islands Marine Protected Area

35. (1) Powers of enforcement officers may be exercised at a port or in waters under the jurisdiction of another State, where:
- (a) the enforcement officer believes on reasonable grounds that any person on board the vessel has committed an offence in the Pitcairn Islands Marine Protected Area; and
  - (b) the powers are exercised in accordance with:
    - (i) any international agreement made on behalf of the Government of Pitcairn with the State with jurisdiction in that place; and
    - (ii) the laws in force at that place.
- (2) The Governor may pass regulations to further provide for the enforcement of this Ordinance outside of the Pitcairn Islands Marine Protected Area in accordance with international agreements allowing for such enforcement.

Obstruction of  
enforcement  
officers

36. (1) A person commits an offence if the person:
- (b) resists or obstructs any enforcement officer in the exercise of any powers or duties; or
  - (c) uses any threatening language or behaves in a threatening manner towards any enforcement officer executing his or her powers or duties; or
  - (d) fails to comply with any request by any enforcement officer to give that officer particulars of a type listed under section 31(2)(b) or (c); or
  - (e) being on board any vessel being pursued or about to be boarded by any enforcement officer throws overboard or destroys any fish, fishing equipment, or any other thing; or
  - (f) personates or falsely claims to be an enforcement officer.
- (2) A person who refuses to allow any enforcement officer to exercise any of the powers conferred on that officer by this Ordinance shall be deemed to be obstructing that enforcement officer.
- (3) A person convicted of an offence against this section is liable to a fine not exceeding \$2,000.

Non-liability of  
enforcement  
officers

37. No enforcement officer shall be personally liable in respect of any act done or omitted to be done by him or her in good faith in the execution or purported execution of any powers and duties under this Ordinance.

#### **PART VIII – CONSEQUENTIAL AMENDMENTS**

Interpretation and  
General Clauses  
Ordinance amended

38. The definition of “territorial waters” in section 2(1) of the Interpretation and General Clauses Ordinance is repealed and replaced by the following definition:
- ““territorial waters” means the inland waters of the Islands, together with any part of the sea within 12 nautical miles of the Islands, measured from:
- (a) in the case of Pitcairn and Henderson Islands, the nearest point of the low-water line along the coast; and
  - (b) in the case of Ducie and Oeno Islands, the nearest point of the seaward low-water line of the reef.

Fisheries Zone  
Ordinance and  
Regulations  
repealed

39. The Fisheries Zone Ordinance and all Regulations made under it are repealed.

**PART IX – TRANSITIONAL PROVISIONS**

Transitional  
provisions

40. Until such time as Marine Conservation Regulations are passed section 8 does not apply to anything done or omitted within the territorial waters of Pitcairn Island.