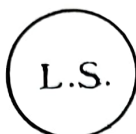

FISHERIES PROTECTION ORDINANCE, 1962.

ARRANGEMENT OF SECTIONS.

| <i>Section.</i> | <i>Page.</i> |
|--|--------------|
| 1. Short title | 182 |
| 2. Interpretation | 182 |
| 3. Appointment of officers | 182 |
| 4. Regulations | 182 |
| 5. Power of search and seizure | 183 |
| 6. Forfeiture of things in respect of which offences are committed | 183 |
| 7. Seizure and forfeiture of things used for the commission of offences | 184 |
| 8. Presumptions | 184 |
| 9. Proof of cause of death, injury or stupefaction of fish | 185 |
| 10. Amendment of Schedule | 185 |
| Schedule: Toxic substance | 185 |

HONG KONG

No. 39 OF 1962.



I assent.

R. B. BLACK,
Governor.

11th October, 1962.

An Ordinance to promote the conservation of fish and other forms of aquatic life within the waters of the Colony and to regulate fishing practices and to prevent activities detrimental to the fishing industry.

[12th October, 1962.]

BE it enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof, as follows—

Short title.

1. This Ordinance may be cited as the Fisheries Protection Ordinance, 1962.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—
 “Commissioner” means the Commissioner for Co-operative Development and Fisheries;
 “fish” includes all forms of aquatic life and turtles;
 “fisheries inspector” means an officer appointed under section 3;
 “fishing” includes the capture of fish;
 “research officer” includes any senior research officer or assistant research officer of the Department of Co-operative Development and Fisheries;

Schedule.

“toxic substance” means a substance specified in the Schedule;
 “vessel” means any vessel used for fishing, and any junk, sampan, native craft or boat.

Appointment of officers.

3. (1) The Governor may appoint in writing by name or office any public officer to be a fisheries inspector.

(2) Appointment made under this section may be made to give effect to the purposes of this Ordinance generally or may be limited to such purposes as may be specified in the appointment.

Regulations.

4. (1) The Governor in Council may by regulation prescribe or provide for—

(a) the prohibition or restriction of the use of explosives for the purpose of fishing;

Ordinance not disallowed, see G.N. 1407/62

- (b) the prohibition or restriction of the use of toxic substances for the purpose of fishing;
- (c) the prohibition or restriction of the taking of any variety of fish, or fish of any size, from the waters of the Colony;
- (d) the prohibition or restriction of the use of any specified kinds of net or of nets having a mesh of any specified size for the purpose of fishing;
- (e) the conservation of oysters and oyster beds;
- (f) the prohibition or restriction of the collection, removal or destruction of any variety of fish spawn or turtle eggs;
- (g) the protection of spawning areas;
- (h) generally for the protection or regulation of fishing.

(2) Regulations made under this Ordinance may provide that contravention of any of the provisions of such regulations shall constitute an offence and may prescribe penalties therefor not exceeding five thousand dollars and imprisonment for six months.

5. (1) The Commissioner or any fisheries officer, fisheries inspector or police officer may without warrant—

Power of search and seizure.

- (a) board and search any vessel or any part thereof;
- (b) seize, remove and retain any fish or other article or thing whether found on board any vessel or in any other place, in respect of which it appears to him that any offence against this Ordinance has been committed or which appears to him to constitute evidence of any such offence having been committed.

(2) The Commissioner or any fisheries officer or any police officer of the rank of inspector and above may enter and search without warrant any premises or place used or reasonably suspected of being used either wholly or in part for the storage of fish in respect of which he has reason to believe an offence against this Ordinance has been committed, or for the storage of any other article or thing capable of being used in the commission of an offence against this Ordinance.

6. (1) Where a magistrate is satisfied that an offence against this Ordinance has been committed in respect of any fish or any other article or thing seized under the provisions of section 5, whether or not any person has been convicted in respect of such offence, the magistrate shall order such fish or other article or thing to be forfeited to the Crown.

Forfeiture of things in respect of which offences are committed.

(2) Notwithstanding anything contained in subsection (1), where any fish is seized under section 5, the Commissioner or any officer authorized by him in writing in that behalf may cause such fish to be

sold or otherwise disposed of prior to application being made for the forfeiture thereof, and the proceeds thereof retained in lieu, and if in any such case the magistrate, upon such application for forfeiture being made, is not satisfied that an offence against this Ordinance has been committed in respect thereof, upon application made by any person claiming to be the owner of such fish he shall, if he is satisfied as to the validity of the claim, order such proceeds to be paid to the claimant, but where no claim is made or the magistrate is not satisfied as to the validity of any claim, the proceeds shall be paid into the general revenue of the Colony.

(3) For the purposes of this section—

“proceeds” means sale price less any commission or fee payable in respect of such sale.

Seizure and forfeiture of things used for the commission of offences.

7. Whenever it is lawful under this Ordinance for the Commissioner or any fisheries officer, fisheries inspector or police officer to seize and retain any fish or other article or thing, it shall be lawful—

(a) to seize and retain—

(i) any receptacle other than a vessel or vehicle in which such fish or other article or thing is contained;

(ii) any machinery other than the propellant machinery of a vessel or vehicle, implement, utensil, material or substance used for the commission of any offence against this Ordinance; and

(iii) any books or documents which appear to him to contain evidence that an offence has been or is about to be committed against this Ordinance; and

(b) to direct any vessel or vehicle in which any thing referred to in paragraph (a) is seized to proceed to such port or place as may be convenient for unloading from the vessel or vehicle anything seized thereon and may then detain the vessel or vehicle for such time as may reasonably be required to effect the unloading.

Presumptions.

8. (1) Any explosive or toxic substance found in the possession or control of any person engaged in fishing or in any vessel or in any premises or place used in whole or in part for the storage of fishing equipment or fish, shall be deemed, until the contrary is proved, to be possessed, stored or used for the purpose of fishing.

(2) The master or other person in charge of any vessel or the person in control of any premises or place used in whole or in part for the storage of fishing equipment or fish in which any explosive or toxic

substance is found shall be deemed, until the contrary is proved, to be in possession or control of such explosive or toxic substance for the purpose of fishing.

(3) Where any vessel is found to have on board any explosives or toxic substance or any premises or place used in whole or in part for the storage of fishing equipment or fish is found to contain any explosive or toxic substance, any fish found in such vessel, premises or place shall, until the contrary is proved, be deemed to have been captured by means of such explosives or toxic substance.

(4) Where any vessel is found to have on board any fish which has been killed, stupefied or otherwise injured by any explosive or toxic substance, such vessel shall, until the contrary is proved, be deemed to have been used for the capture of such fish by means of explosives or toxic substances.

9. Where in any case the cause of death, injury or stupefaction of any fish is in question, a certificate purporting to be signed by a research officer shall be *prima facie* evidence in any court as to the cause of death, injury or stupefaction of the fish.

Proof of
cause of
death, injury
or stupe-
faction of
fish.

10. The Governor in Council may amend the Schedule by order published in the *Gazette*.

Amendment
of Schedule.

SCHEDULE.

[ss. 2 & 10.]

Toxic substance.

1. The residue left after oil has been expressed from tea-seeds, commonly known as *Cha Tsai Peng* (茶仔餅).
2. The root, or any derivative of the root, of the shrub *derris elliptica* and *derris malaccensis*, commonly known as *Yue Tang* (魚藤).

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council on the 10th day of October, 1962, and is found by me to be a true and correctly printed copy of the said Bill.

A. CHAPMAN,

Deputy Clerk of Councils.

(Secretariat FIN2755/45)