

# STATES OF JERSEY



## **DRAFT SEA FISHERIES (AMENDMENT No. 2) (JERSEY) LAW 201-**

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**Lodged au Greffe on 27th June 2011  
by the Minister for Economic Development**

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**STATES GREFFE**





Jersey

## **DRAFT SEA FISHERIES (AMENDMENT No. 2) (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 Sea Fisheries (Amendment No. 2) (Jersey) Law 201- are compatible with the Convention Rights.

(Signed) **Senator A.J.H. Maclean**

## REPORT

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Fish stocks in local waters are constantly subject to a range of evolving influences, including changing fishing effort and natural occurrences. Effective management of fish stocks therefore depends on the ability of fishery managers to introduce appropriate measures to protect the stocks within a short timescale.

For a management measure to be effective, it often needs to be made into Regulations. The enabling provisions for such Regulations are found in the Sea Fisheries (Jersey) Law 1994. Those provisions are very specific and under the current Law, any modification to Regulations must go through exactly the same process as the creation of new Regulations. Jersey is party to a Fisheries Management Agreement with the United Kingdom and, under the terms of that Agreement, is obliged to seek the agreement of the Secretary of State before being able to introduce certain Fisheries Regulations.

In some situations, it is known that a particular restriction will be needed on an annual or regular basis. However, the precise area or dates or species of fish to which the restriction needs to occur can only be determined closer to the event. A good example of this is the annual closure of the spider crab fishery, the dates of which are usually determined at an international meeting held 3 months before the approximate closure date. The process of obtaining the agreement of the Secretary of State, coupled with the normal steps involved in producing or amending Regulations, can take a considerable amount of time to complete. The current process is therefore, in some cases, unable to deliver management measures within an appropriate timescale.

This draft amending Law introduces a new and more responsive method of introducing fisheries management measures which, whilst complying with the terms of the Fisheries Management Agreement, allows the Minister greater autonomy in setting the details of the restrictions. The amendment allows Regulations to be developed in the normal manner, setting the general principles of the management measure required. The detail can, however, either be contained in the Regulations themselves (as is the current practice) or introduced at a later stage by Ministerial Order. This more flexible system already has approval from the UK Department for Environment, Food and Rural Affairs.

In order to inspect catches and equipment at sea, Fishery Officers need the authority to instruct a boat to stop and the authority to then board that boat. The Sea Fisheries (Jersey) Law 1994 currently only permits such acts if the boat is a fishing boat, but it is not always apparent prior to inspection whether a boat is a fishing boat or otherwise within the definition of the Law. The proposed amendment will allow Fishery Officers working in Jersey territorial waters to board and inspect vessels (whether they are fishing vessels or not), but only in order to carry out their functions under the principal Law.

Advantage has also been taken of this amending Law to make a number of minor and inconsequential corrections to the principal Law.

### **Financial and manpower implications**

There are no financial or manpower implications for the States arising from this draft Law.

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

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 27th June 2011, the Minister for Economic Development made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Economic Development the provisions of the Draft Sea Fisheries (Amendment No. 2) (Jersey) Law 201- are compatible with the Convention Rights.

## Explanatory Note

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This draft Law would amend the Sea Fisheries (Jersey) Law 1994 to enable the timing (and other factors) of fisheries restrictions to be specified by Ministerial Order and to allow fisheries inspectors to board any vessel in order to carry out inspections.

*Article 1* specifies that in this draft Law the Sea Fisheries (Jersey) Law 1994 is referred to as the principal Law.

*Article 2* amends the long title of the principal Law to take account of the fact that the principal Law includes provisions about processing fish and placing fish on the market.

*Article 3* inserts a definition of “Order” in Article 1 of the principal Law.

Article 2 of the principal Law enables the States to make Regulations regulating fisheries. Such Regulations include Regulations that restrict fishing at certain times in certain areas. *Article 4* amends Article 2 of the principal Law to make it clear that the descriptions of fish, the sea areas, the timing and other detailed parameters of those fisheries restrictions can be set out either in the Regulations that impose the substance of the restrictions or in Orders made by the Minister. In a case of conflict between the Regulations and an Order, the Regulations are to prevail.

*Article 5* amends Article 11 of the principal Law to correct a reference in the singular to a plural subject.

*Article 6* converts references to fishing boats into references to vessels, to allow fisheries inspectors in Jersey or in Jersey territorial waters to board and inspect vessels (whether they are fishing vessels or not) in order to carry out their functions under the principal Law.

*Article 7* amends Article 30(2)(b) of the principal Law to remove a reference to the Merchant Shipping Act 1894 of the United Kingdom because that Act was repealed in its application to Jersey by the Shipping (Jersey) Law 2002.

*Article 8* names the draft Law.

*Article 9* specifies that the draft Law comes into force on the 28th day after it is registered.



Jersey

## **DRAFT SEA FISHERIES (AMENDMENT No. 2) (JERSEY) LAW 201-**

### **Arrangement**

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#### **Article**

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Jersey

## **DRAFT SEA FISHERIES (AMENDMENT No. 2) (JERSEY) LAW 201-**

**A LAW** to amend further the Sea Fisheries (Jersey) Law 1994

*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**

In this Law, the “principal Law” means the Sea Fisheries (Jersey) Law 1994<sup>1</sup>.

### **2 Long title amended**

In the long title of the principal Law, after the words “licensing of fishing boats,” there shall be inserted the words “for controls on the possession and sale of sea fish,”.

### **3 Article 1 amended**

In Article 1(1) of the principal Law, after the definition of “Minister”, there shall be inserted the following definition –

“ ‘Order’ means an Order made under this Law by the Minister;”.

### **4 Article 2 amended**

In Article 2 of the principal Law –

(a) for paragraph (4) there shall be substituted the following paragraphs –

- “(4) Without limiting the operation of paragraphs (4A) to (4D), Regulations made under this Article may be framed so as to apply only to such descriptions or sexes of sea fish, to such areas, during such periods, or according to such other parameter or factor, as may be provided for in those Regulations.
- (4A) Regulations made under paragraph (1)(a) or (b) may make provision for the Minister to specify by Order –
- (a) the description, or sex, of sea fish;
  - (b) the area of the sea;
  - (c) the period; or
  - (d) any other parameter, or factor, of a class prescribed by those Regulations,
- to, during or according to which those Regulations shall apply.
- (4B) The Minister may make Orders for the purposes of Regulations referred to in paragraph (4A).
- (4C) Regulations made under this Article shall apply to the description, or sex, of sea fish, to the area of the sea, during the period, and according to the parameters or factors, to the extent that those matters are specified in those Regulations.
- (4D) Regulations made under paragraph (1)(a) or (b) shall apply to the description, or sex, of sea fish, to the area of the sea, during the period, and according to the parameters or factors, specified by an Order under paragraph (4B) to the extent that those matters are not specified in those Regulations.”;
- (b) for paragraph (6) there shall be substituted the following paragraph –
- “(6) An Order, or Regulations, made 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.”.

## 5 Article 11 amended

In Article 11(2) of the principal Law for the words “such exemption” there shall be substituted “any such exemption”.

## 6 Article 16 amended

In Article 16 of the principal Law –

- (a) in paragraph (1)(b), (c), (d), (p), (q), (r) and (s) for the words “fishing boat” wherever occurring there shall be substituted the word “vessel”;
- (b) in paragraph (1)(s)(i), (ii) and (iii) for the word “boat” wherever occurring there shall be substituted the word “vessel”;
- (c) in paragraphs (2) and (7) for the words “fishing boat” wherever occurring there shall be substituted the word “vessel”;

- (d) in paragraph (2)(a) and (b) for the word “boat” wherever occurring there shall be substituted the word “vessel”;
- (e) in paragraph (4) for the word “boat” there shall be substituted the word “vessel”;
- (f) in paragraph (5) for the word “boat” wherever occurring there shall be substituted the word “vessel”;
- (g) for paragraph (11)(a) there shall be substituted the following sub-paragraph –
  - “(a) in Jersey or within the territorial sea, in relation to any vessel, whether it is a fishing boat or not; or”.

**7 Article 30 amended**

Article 30(2)(b) of the principal Law shall be repealed.

**8 Citation**

This Law may be cited as the Sea Fisheries (Amendment No. 2) (Jersey) Law 201-.

**9 Commencement**

This Law shall come into force on the 28th day after it is registered.

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<sup>1</sup> *chapter 14.825*